

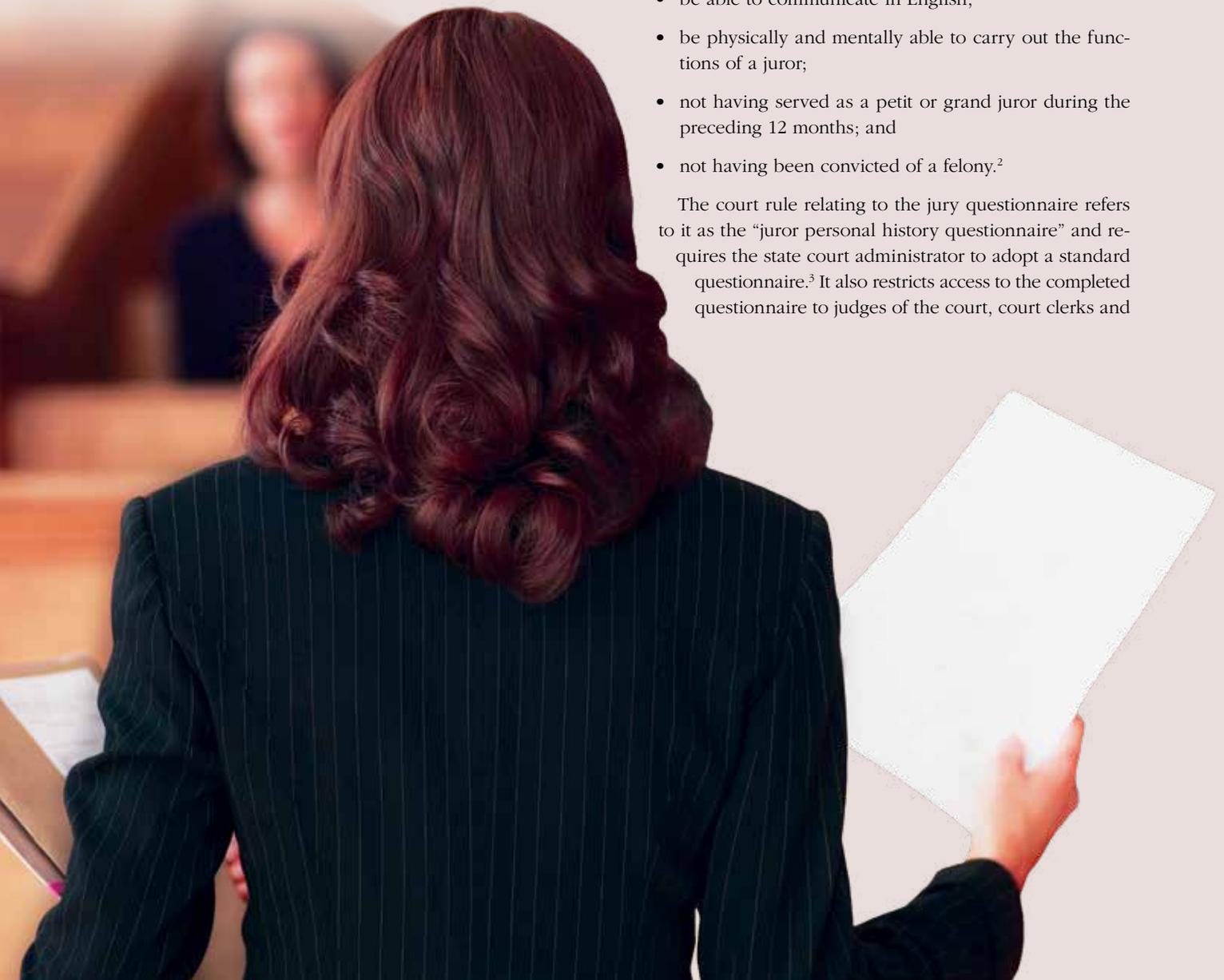
# Using Jury Questionnaires

By Michael D. Wade and Tara L. Velting

All litigators have made the trek to the courthouse before trial to review the jury questionnaires used by court clerks to determine the qualifications of the jurors.<sup>1</sup> To qualify as a juror in Michigan, one must meet certain statutory criteria, including:

- be a citizen of the U.S., at least 18 years of age, and a resident in the county (or district);
- be able to communicate in English;
- be physically and mentally able to carry out the functions of a juror;
- not having served as a petit or grand juror during the preceding 12 months; and
- not having been convicted of a felony.<sup>2</sup>

The court rule relating to the jury questionnaire refers to it as the “juror personal history questionnaire” and requires the state court administrator to adopt a standard questionnaire.<sup>3</sup> It also restricts access to the completed questionnaire to judges of the court, court clerks and



## AT A GLANCE

MCR 2.510 restricts access to jury questionnaires.

The sole purpose of voir dire is to facilitate challenges.

Supplemental jury questionnaires can be a valuable adjunct to the standard questionnaire.

deputy clerks, parties and their attorneys, and persons authorized by court order.<sup>4</sup>

The standard jury questionnaire provides information to determine statutory juror qualifications, but a qualified juror may be challenged for cause on 12 grounds by court rule, including bias, having opinions that would improperly influence the verdict, having a financial interest in the outcome, blood relationship to a party or attorney, and being interested in a question like the issue to be tried.<sup>5</sup> The voir dire process is specifically designed to discover grounds for challenges for cause and to gain knowledge to facilitate intelligent preemptory challenges.<sup>6</sup> Indeed, for criminal cases, MCR 6.412(C)(1) states, “The court should confine the examination to these purposes...”

Although the jury questionnaire contains questions that, if answered truthfully, are sufficient to determine the statutory criteria found in MCL 600.1307(a), the questions are insufficient to determine the grounds for a challenge for cause under MCR 2.511(D). The bias, interest, or relationship factors of that court rule are not probed in any way in the questionnaire. Voir dire and supplemental jury questionnaires are required to determine challenges for cause.

Despite this insufficiency, returned questionnaires contain information often overlooked by the reviewing attorney. The questionnaires should be analyzed for handwriting, grammar, and spelling in addition to how well the juror followed instructions and whether the answers were thorough. Careful analysis can often provide important clues to a potential juror’s personality and character.

While graphology (the analysis of personality through handwriting) is not an exact science, its use has some tendency to accuracy, though not as accurate as forensic handwriting analysis, which is a scientific comparison of handwriting samples to determine authenticity.<sup>7</sup> For example, a typed questionnaire, as opposed to a handwritten one, would indicate a careful, meticulous personality. If the questionnaire is handwritten, outgoing personalities write using large letters, while introverts write in small letters. People who leave large spaces between words favor independence, and those who squeeze words together tend to like the company of others. If one dots the “i” high, one is imaginative; if the dot is close to the “i,” one is organized and detail-oriented. If one crosses a “t”

with a long cross, one may be determined or stubborn; a short cross indicates laziness. Legible writing is a sign of confidence, while illegible writing is the sign of a private person. If the slant of one’s writing changes dramatically on the questionnaire, there is a good chance one is lying. These general rules are used by graphologists to determine personality traits. Google “handwriting analysis” to view several websites on the subject, including <https://www.handwriting-graphology.com/handwriting-analysis-chart/>.

To get more information about potential jurors, one can use a supplemental jury questionnaire. Supplemental questionnaires have been used in a number of high-profile cases nationwide.<sup>8</sup> They may be sent in advance of jury selection either with or in addition to the jury qualification questionnaire, during the venire-imp paneling process, or after the jury venire is settled but before jury selection.<sup>9</sup> It’s best to distribute the supplemental questionnaire with the jury qualification questionnaire to give counsel time to analyze the responses. Counsel must file a motion for leave to use a supplemental questionnaire and obtain leave of court.<sup>10</sup> Counsel on both sides usually consult with one another to obtain agreement on the process and the content of the supplemental questionnaire. Frequently, opposing counsel will cooperate because supplemental questionnaires provide the court and attorneys with useful background material to inform the voir dire process and support challenges for all sides of the case.

Whereas some commentators question the usefulness of supplemental jury questionnaires by finding them inefficient, irrelevant, and intrusive,<sup>11</sup> others see them as advantageous for:

- Saving time during voir dire
- Obtaining more detailed information on attitudes, beliefs, and experiences
- Obtaining personal information privately
- Reducing the chance of inadvertently tainting the jury panel during voir dire<sup>12</sup>

The supplemental jury questionnaire is particularly useful in cases involving sensitive subject matters such as race, religion, sexual matters, or personal issues that may have implications for your case or are better addressed in writing than in an open courtroom, though follow-up questions during voir dire may be necessary.<sup>13</sup>

After receiving completed supplemental questionnaires, counsel can identify jurors to be challenged for cause or excused for hardship, focus on clarifying voir dire (perhaps requiring sequestered voir dire), and rate each juror for desirability generally and leadership specifically.<sup>14</sup>

Michigan law grants wide discretion to the trial court in the scope and conduct of voir dire.<sup>15</sup> No party has a right to have counsel conduct voir dire, nor does a party have a right to

sequestered voir dire.<sup>16</sup> The court is not required to ask questions submitted by counsel.<sup>17</sup> But when the court conducts the entire voir dire, it must “adequately question jurors regarding potential bias so that challenges for cause, or even peremptory challenges, can be intelligently exercised.”<sup>18</sup> *People v Turbinski* addressed the use of supplemental jury questionnaires:

Where pretrial publicity creates the danger of prejudice, a court has several options. It can allow submission of a questionnaire to potential jurors, prepared by the parties and approved by the court. Questionnaires have the advantage of allowing an in-depth exploration of the source, extent, and content of media exposure for each potential juror at a minimum of the court’s time. However, questionnaires have the disadvantage of not allowing observation of demeanor in order to assess credibility. Used in the proper context, however, they serve as a useful starting point by allowing identification of those potential jurors who may be most tainted because of exposure to particularly prejudicial news items or by extensive exposure.<sup>19</sup>

Pretrial publicity is not the only problem area addressed by the supplemental questionnaire. Suggested content for a supplemental questionnaire is discussed in one treatise, which contains specific awareness of inquiring about employment information, personal information, education and training, and publicity as well as questions to be asked in an employment discrimination case or a personal injury case.<sup>20</sup> The supplemental questionnaire should address particular areas of concern in the case at hand, including pretrial publicity; racial, religious, or cultural issues; potential areas of bias or prejudice; etc. Grounds for challenges for cause should be explored. Common topics include:

- Membership in organizations
- Religious affiliation
- Newspapers and magazines read
- Favorite radio and TV stations and programs
- Hobbies
- Ownership of firearms
- Bumper stickers



Questions impermissible on the supplemental jury questionnaire include asking for a juror’s Social Security number, telephone number, or driver’s license number, and other questions requesting personal information used by identity thieves.<sup>21</sup>

While Michigan cases addressing supplemental jury questionnaires are limited, we suggest that their use in appropriate cases would generate useful information for assessing jurors’ attitudes, beliefs, and biases for exercising challenges while also making voir dire more efficient and saving time for the court, counsel, and jurors.

Once all information is available regarding the jury panel, voir dire can focus on making an appropriate record for challenges, educating the jurors regarding the case, and gaining rapport with the jurors. ■



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## ENDNOTES

1. MCR 2.510 and MCL 600.1313.
2. MCL 600.1307a and MCL 600.1313(1).
3. MCR 2.510(A).
4. MCR 2.510(C)(1).
5. MCR 2.511 (D).
6. MCR 6.412(C)(1) and *People v Tyburski*, 445 Mich 606, 618; 518 NW2d 441 (1994).
7. *US v Jones*, 107 F3d 1147, 1160; 46 Fed E Evid Serv 885 (CA 6, 1997).
8. Colquitt, *Using Jury Questionnaires: (Ab)using Jurors*, 40 Conn L Rev 1 (2007).
9. *Id.* at 14–15.
10. *Id.* at 15–16.
11. *Id.* at 17–29.
12. Hale Starr and Dolnik, *Forensic Sciences: Forensic Psychology, Selection of Jurors and Other Courtroom Applications* (New York: Matthew Bender & Co, 2018), Chapter 32B, § 32B.08.
13. *Id.*
14. *Id.*
15. *People v Tyburski*, 445 Mich at 618.
16. *Id.* at 619.
17. *Id.*
18. *Id.*
19. *Id.* at 623–624.
20. Latin and Swarbrick, *Art of Advocacy—Jury Selection* (New York: Matthew Bender & Co, 2017), Chapter 1, § 1.04.
21. *Using Jury Questionnaires*, p 47.

