

EMPLOYMENT LAW

MARCH 2023

IN THIS ISSUE

In this article, Alfred Perkins offers suggestions for voir dire in the trial of an employment case.

Voir Dire Suggestions for an Employment Trial

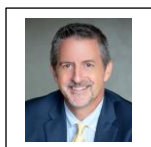
ABOUT THE AUTHOR



Alfred Perkins is a partner at Starnes Davis Florie LLP. His practice consists primarily of Employment, Products Liability, and Commercial Litigation. Alfred has 25 years of litigation experience in both state and federal courts and in arbitrations. Alfred also serves on his firm's Executive Committee. He is a member of the Alabama bar and practices in the firm's Birmingham office. Alfred can be reached at aperkins@starneslaw.com.

ABOUT THE COMMITTEE

The Employment Law Committee serves members who represent employers and their insurers. Committee members publish newsletters and Journal articles and present educational seminars for the IADC membership-at-large and mini-seminars for the committee's membership at the Annual and Midyear Meetings. The Committee presents significant opportunities for networking and business referrals. The goal of the Employment Law Committee is to build an active committee with projects that will attract and energize attorneys who practice employment law on a domestic and international basis. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

As with any trial, an effective voir dire can lead to a jury that will fairly consider and determine the case. The hope and goal are to learn which venire members have biases and/or life experiences that would cause them to be predisposed against the defendant or in favor of the plaintiff. In most civil trials, the majority of the venire will not have experienced what the plaintiff experienced that led to the lawsuit- i.e. alleged medical malpractice, injury by an allegedly defective product, a business dispute, etc. Unlike most civil trials, nearly every person in the venire of an employment case will have been an employee or have had employees. In courts where the judge allows it, testing the venire as to their experiences is critical to making informed decisions about each venire member.

There are hundreds of questions one could ask in this regard. Of course, no judge will allow that number, and no venire would like a lawyer who chose to ask that many questions. For your consideration, below are some of the questions I frequently use during voir dire in employment trials.

1. Anyone here that has never had a job?
2. Anyone here who has never been fired or demoted?
3. Anyone here who has never gotten a promotion at a job?
4. Anyone here who had a supervisor/manager that you really, really did not like?
5. Do any of you own a business and have employees?
6. Are any of you managers or supervisors at your place of employment?
 - a. Have you had to discipline or terminate a subordinate?
7. Have any of you filed a discrimination claim or complaint against your employer?
 - a. What was the nature of your complaint?
 - b. What happened after you made your complaint or claim?
 - c. Given your experience, is it fair to say that it would be hard for you to be fair and impartial in this matter?
8. Have any of you been [fired, written up, denied a promotion, etc.] at your job?
 - a. What reason were you given for the decision?
 - b. Because of your experience, you could not be fair and impartial in this matter, is that correct?
9. When it comes to [hiring/disciplinary/promotion] decisions on the job, who believes subjective criteria is more important than objective criteria?
10. Raise your hand if you **agree** with this statement: When deciding between candidates for a position an employer should [hire/promote] the person it

- believes is most qualified for the position.
11. Raise your hand if you **disagree** with this statement: The employer - not the applicant/employee - gets to decide who the most qualified candidate is.
 12. Raise your hand if you **agree** that an employer can discipline or terminate its employees if they fail to follow company policies and/or rules?
 13. Other than those of you who have filed a discrimination claim, have any of you experienced discrimination of any kind at work?
 - a. What were the circumstances?
 - b. Does your experience affect your ability to be fair and impartial in this matter?
 14. Have any of you ever worked for a [whatever type of company defendant is]?
 - a. What company? How long? What position? Why did employment end?
 15. Is there anyone sitting here that it is just your nature to side with an employee rather than an employer?
 16. Raise your hand if you are of the opinion that companies, their managers/supervisors just can't be trusted to be fair?
 17. Do any of you have family members or close friends who believe they have been discriminated against in their employment?
 - a. Who and what do you know about their circumstances?
 - b. Do you agree with your family member/close friend that there was discrimination?
 - c. Is it fair to say that your [family member's/friend's] circumstances affect your ability to be fair and impartial in this case?
 18. When considering the times in which we live, in addition to your own personal experiences, is there anything that causes you to start off on the side of the employee in an employment dispute, even just a little bit, before hearing any evidence in this case?
 - a. If yes, please explain.
 19. Does everyone understand that there are two sides to this dispute? Two sides of the story? By rule, the plaintiff gets to go first. Can you wait until you have heard BOTH sides of the story and ALL of the testimony from ALL of the witnesses before you form any conclusions in this case?
 20. Both sides want a fair and impartial jury. Is there anything that would cause you to rule against [the Defendant] even if the evidence and the instructions from the court required a decision in [the Defendant] favor?
 21. In other words, is there anyone who – for whatever reason – could not, under any circumstances, rule

for [the employer] and against [Mr./Ms. Employee]? Please raise your hand.

22. Anyone here just doesn't like [the defendant] for whatever reason? And I won't ask what the reason is.
23. Should you find yourself in a situation where your personal opinion conflicts with the law and you believe that the law is wrong, please raise your hand if you could not follow that law and apply it to the facts of this case?
24. Have any of you ever served on a jury in a civil case like this— where the plaintiff is seeking to recover money damages from the defendants?
 - a. When, where describe the case, what was the verdict?
25. Have any of you (or a member of your family or a close friend) ever worked in a law firm or in the legal field?
26. Anyone think that if a lawsuit has been filed then the defendant must have done something wrong?
27. Anyone think that just because a lawsuit is filed, the person who filed the lawsuit is supposed to get money?
28. Does everyone agree that if the person who files the lawsuit does not prove their case to you under the law, they are not entitled to any money?

such as Nos. 9, 10 and 11, are designed to start establishing the basis upon which the jury's decision should be made. Most are an attempt to determine which jurors are most likely to be for or against my client and to establish a basis to combat a *Batson* challenge.

Additional questions should be developed which, in a favorable way, will tell the specific story of the matter at issue and set the stage for opening statements.

Picking a jury is not an exact science. Sometimes jurors you were certain would be against the defendant turn out to have been vocal supporters- and vice versa. However, the more info you can obtain about each juror, the better the chances you make the right decisions on each potential juror.

Some of these questions, such as Nos. 7, 8, 13 and 17, are designed to obtain a basis to remove a potential juror for cause. Others,

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