Agenda

Supreme Court Advisory Committee
Utah Rules of Civil Procedure
November 30, 2022
4:00 to 6:00 p.m.
Via Webex

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Public Comments to Rules 7, 7A, 7B (none)		Lauren DiFrancesco
Rule 83 – vexatious litigant filing restriction exception for appeals	Tab 2	Lisa Collins/Nicole Gray/Clark Sabey/Nick Stiles
Rule 7, 7A, 83 – motions to strike improper vexatious litigant filings	Tab 3	John Bogart
Rule 100A – Office of Recovery Svcs exception to case management conference requirement	Tab 4	Jim Hunnicutt
Rule 47 – attorney voir dire	Tab 5	Kara North / Brandon Baxter
Rule 10(d) – change top margins to 1"	Tab 6	Lauren DiFrancesco
Rule 4(d)(1)(D) – allow for personal service on inmates	Tab 7	Lauren DiFrancesco
Update as to meeting with Nick Stiles regarding Two New Member Seats; Rule 26.1(h) – Supreme Court direction to clarify when disclosures are required; and Rule 104 – Supreme Court direction to consider repealing or clarifying when sworn pleading would suffice for affidavit	Tab 8	Lauren DiFrancesco
Update as to Rule 3(a)(2) – deletion of this subparagraph	Tab 9	Trevor Lee
Consent agenda - *None*		
Verify Pipeline items: • Rule 30(b)(6) (Justin, Rod, Tonya, Kim)		Lauren DiFrancesco

Next Meeting: January 25

Meeting Schedule: 4th Wednesday at 4pm unless otherwise scheduled

Committee Webpage: http://www.utcourts.gov/committees/civproc/

TAB 1

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – October 26, 2022

DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason	X		Stacy Haacke, Staff
Lauren DiFrancesco, Chair	X		Crystal Powell, Recording Secretary
Judge Kent Holmberg	X		Keri Sargent
James Hunnicutt	X		
Trevor Lee	X		
Ash McMurray	X		
Kim Neville		X	
Timothy Pack	X		
Loni Page	X		
Bryan Pattison	X		
Judge Laura Scott		X	
Judge Clay Stucki	X		
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Tonya Wright	X		
Judge Rita Cornish	X		
Vacant Commissioner Seat			
Vacant Academic Seat			
Vacant Academic Seat			
Vacant Self-Rep Perspective Seat			
Vacant Self-Rep Perspective Seat			
2 *Emeritus* Seats Vacant			

(1) INTRODUCTIONS

The meeting started at 4:01 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the Minutes subject to minor amendments noted by the Minutes subcommittee. Mr. Rod Andreason moved to adopt the Minutes as amended. Mr. Jim Hunniucutt seconded. The Minutes were unanimously approved.

(3) RULE 47. ATTORNEY VOIR DIRE

Ms. DiFrancesco reported to the committee that the invited representatives are not finished consultations with the defense bar on this proposed rule change and will not present on the voir dire issue at this meeting. The Committee made some suggestions of other considerations they would like the proposal to address such as input from academia regarding equity and making sure that opposing viewpoints are selected objectively. The Committee discussed some practical issues regarding convening a jury pool by Webex versus in person across the various court districts and how the proposed rule change taking discretion away from judges would impact that.

(4) RULE 26. EDITS TO COMMENTS

Judge Clay Stucki reported the changes made in the comments of the Rule where the cross-references no longer match. Judge Stucki raised the issue of the legislative note that appears to be outdated. The Committee had previously reached out to the legislative liaison regarding how to address the legislative note. The Committee discussed whether the Committee has the authority to remove a legislative note from the comments. It was suggested that in transmitting the draft rule to the Supreme Court, the Committee would also include the draft comments omitting the legislative note along with a note on the reason for the deletion. Another suggestion was to resolve the outdated comment by deleting it and leaving a reference for the legislative history citing to the resolution originally adopting the legislative note. Ultimately, the Committee decided that it is the Supreme Court that should make the decision on how to resolve the expired legislative comment. Judge Stucki moved to refer the note with the suggestions to the Supreme Court for final decision. Judge Cornish seconded. The motion passed unanimously.

(5) NEW MEMBER SEATS

Lauren DiFrancesco advised the Committee, that she and Ms. Susan Vogel will meet with Mr. Nick Stiles to further discuss best ways to recruit the desired representation.

(6) RULE 12(a)(1). SUPREME COURT DIRECTION TO REVIEW FILING AN ANSWER

The Rule 5 subcommittee is not yet prepared to present on this issue.

(7) RULE 26.1(h). SUPREME COURT DIRECTION TO CLARIFY WHEN DISCLOSURES ARE REQUIRED.

The Committee has sent out changes to the Rule for comments but have not made any draft changes to reflect the Supreme Court's concern to make it clear that disclosures are only required if the other party files an answer or otherwise disagrees with the petition but deadline to serve the disclosures is only triggered by the filing of the answers to the complaint. Ms. Vogel expressed that even though the deadlines are set, parties still get confused on whether they have to file disclosures where there had been a stipulation leading to the respondent not filing an answer. The Committee reviewed subpart 26.1 (b). Ms. Vogel suggested that the clarification be placed in 26.1 (a) where the initial disclosures are not required if the claim is uncontested. Mr. Hunnicutt noted that it might be unclear to self-represented persons what it means for a case to be contested or uncontested when there is some agreement, but other information is still necessary such as financial declarations relating to child support. The Committee also wondered if the clarification is best placed on the forms because the deadlines are clear in the rules. The committee decided without motion to discuss this issue more carefully with Nick Stiles before proceeding further.

(8) RULE 104. SUPREME COURT DIRECTION TO CONSIDER REPEALING OR CLARIFYING WHEN PLEADING WOULD SUFFICE FOR AFFIDAVIT (IN A DIVORCE).

Mr. Jim Hunnicutt reviewed how persons historically went to court in person to get their divorce finalized even if the divorce was settled. The modern rule no longer requires parties to physically go to court because jurisdiction is typically spelt out in the original petition. He expressed that this is not always the case when there are no minor children involved or in a default divorce. He explained that the issue in the Rule is to clarify whether an affidavit (declaration of jurisdiction and grounds) is needed to finalize a divorce or if a sworn pleading would suffice. Ms. Vogel also added that the majority of persons are using OCAP which provides a verified petition that then confuses many persons when they also have to do a findings of facts and conclusions. The Committee also considered that the party should swear to the court that the findings of fact has not been altered from the petition where there is a default divorce. The Committee also raised that amending Rule 104 to no longer require the affidavit, then Rule 7 may need to be changed also as in many situations there would no longer be a verification of jurisdiction. The Committee decided to table the issue and discuss further with Mr. Nick Stiles for more guidance.

(9) RULE 59 (e) AND UC 78B-6-811 INCONSISTENCY

Ms. DiFrancesco relayed that an inconsistency was brought to the attention of the Committee where the 78b-6-811 allows for a modification of judgment within 180 days. The Committee suggested amending rule 59(e) to include "unless otherwise provided by statute or rule." The Committee also discussed whether an augmented judgement was also a modification of a judgment and noted that those motions usually come well beyond 28 days outlined in Rule 59. Judge Stucki moved to approve the change. Ms. Tonya Wright seconded. The motion was passed by majority.

(10) 6(a) (6). ADDING JUNETEENTH HOLIDAY

The Utah government has a different rule on how to observe the holiday than the federal government. The Committee is asked to add Juneteenth to Rule 6 under the list of legal holidays. The concern on how to add it is that the state has designated it to observed on a Monday; but under the Federal government it is observed on the day of or either the Friday or Monday depending on which weekend day it falls on. The Committee discussed whether it would create an ambiguity on which day should be followed or if both the State and Federal days would be observed. The issue would affect not the observation of the holiday but the filing deadlines in cases and how the deadline is calculated. The Committee also discussed that the courts should make this decision and referred the issue back Supreme Court.

(10) RULE 60. FINALITY AND WHETHER FRAUD ON THE COURT CAN BE EFFECTIVELY ADDRESSED

A subcommittee (preventing fraud on the court subcommittee) was created to look at the case law on the issue and report whether a Rule change is needed and the draft language. The subcommittee will comprise Judge Holmberg, Justin Toth, Susan Vogel and Judge Cornish.

(11) OTHER BUSINESS

Ms. DiFrancesco suggested pushing November meeting to 30th of November on the fifth Wednesday. The December meeting is cancelled. The Committee discussed briefly the status of pipeline issues

(12) ADJOURNMENT.

The meeting adjourned at 5:55 p.m.

TAB 2

Rule 83. Vexatious litigants.

Effective: 5/1/2021

(a) Definitions.

(1) The court may find a person to be a "vexatious litigant" if the person, with or without legal representation, including an attorney acting pro se, does any of the following:

(A) In the immediately preceding seven years, the person has filed at least five claims for relief, other than small claims actions, that have been finally determined against the person, and the person does not have within that time at least two claims, other than small claims actions, that have been finally determined in that person's favor.

(B) After a claim for relief or an issue of fact or law in the claim has been finally determined, the person two or more additional times re-litigates or attempts to re-litigate the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined.

(C) In any action, the person three or more times does any one or any combination of the following:

(i) files unmeritorious pleadings or other papers,

(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

(D) The person purports to represent or to use the procedures of a court other than a court of the United States, a court created by the Constitution of the United States or by Congress under the authority of the Constitution of the United States, a tribal court recognized by the United States, a court created by a state or territory of the United States, or a court created by a foreign nation recognized by the United States.

(2) "Claim" and "claim for relief" mean a petition, complaint, counterclaim, cross claim or third-party complaint.

(b) Vexatious litigant orders. The court may, on its own motion or on the motion of any party, enter an order requiring a vexatious litigant to:

(1) furnish security to assure payment of the moving party's reasonable expenses, costs and, if authorized, attorney fees incurred in a pending action;

(2) obtain legal counsel before proceeding in a pending action;

(3) obtain legal counsel before filing any future claim for relief;

(4) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any paper, pleading, or motion, with exception to a notice of appeal, in a pending action;

(5) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any future claim for relief in any court; or

(6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct.

(c) Necessary findings and security.

(1) Before entering an order under subparagraph (b), the court must find by clear and convincing evidence that:

(A) the party subject to the order is a vexatious litigant; and

(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

(2) A preliminary finding that there is no reasonable probability that the vexatious litigant will prevail is not a decision on the ultimate merits of the vexatious litigant's claim.

(3) The court shall identify the amount of the security and the time within which it is to be furnished. If the security is not furnished as ordered, the court shall dismiss the vexatious litigant's claim with prejudice.

(d) Prefiling orders in a pending action.

(1) If a vexatious litigant is subject to a prefiling order in a pending action requiring leave of the court to file any paper, pleading, or motion, the vexatious litigant shall submit any proposed paper, pleading, or motion, with exception to a notice of appeal, to the judge assigned to the case and must:

(A) demonstrate that the paper, pleading, or motion is based on a good faith dispute of the facts;

(B) demonstrate that the paper, pleading, or motion is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(C) include an oath, affirmation or declaration under criminal penalty that the proposed paper, pleading or motion is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(2) A prefiling order in a pending action shall be effective until a final determination of the action on appeal, unless otherwise ordered by the court.

(3) After a prefiling order has been effective in a pending action for one year, the person subject to the prefiling order may move to have the order vacated. The motion shall be decided by the judge to whom the pending action is assigned. In granting the motion, the judge may impose any other vexatious litigant orders permitted in paragraph (b).

(4) All papers, pleadings, and motions filed by a vexatious litigant subject to a prefiling order under this paragraph (d) shall include a judicial order authorizing the filing and any required security. If the order or security is not included, the clerk or court shall reject the paper, pleading, or motion.

(e) Prefiling orders as to future claims.

(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims shall submit an application seeking an order before filing. The presiding judge of the judicial district in which the claim is to be filed shall decide the application. The presiding judge may consult with the judge who entered the vexatious litigant order in deciding the application. In granting an application, the presiding judge may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

(2) To obtain an order under paragraph (e)(1), the vexatious litigant's application must:

(A) demonstrate that the claim is based on a good faith dispute of the facts;

(B) demonstrate that the claim is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(C) include an oath, affirmation, or declaration under criminal penalty that the proposed claim is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(D) include a copy of the proposed petition, complaint, counterclaim, cross-claim, or third party complaint; and

(E) include the court name and case number of all claims that the applicant has filed against each party within the preceding seven years and the disposition of each claim.

(3) A prefiling order limiting the filing of future claims is effective indefinitely unless the court orders a shorter period.

(4) After five years a person subject to a pre-filing order limiting the filing of future claims may file a motion to vacate the order. The motion shall be filed in the same judicial district from which the order entered and be decided by the presiding judge of that district.

(5) A claim filed by a vexatious litigant subject to a prefiling order under this paragraph (e) shall include an order authorizing the filing and any required security. If the order or security is not included, the clerk of court shall reject the filing.

(f) Notice of vexatious litigant orders.

(1) The clerks of court shall notify the Administrative Office of the Courts that a pre-filing order has been entered or vacated.

(2) The Administrative Office of the Courts shall disseminate to the clerks of court a list of vexatious litigants subject to a prefiling order.

(g) Statute of limitations or time for filing tolled. Any applicable statute of limitations or time in which the person is required to take any action is tolled until 7 days after notice of the decision on the motion or application for authorization to file.

(h) Contempt sanctions. Disobedience by a vexatious litigant of a pre-filing order may be punished as contempt of court.

(i) Other authority. This rule does not affect the authority of the court under other statutes and rules or the inherent authority of the court.

(j) Applicability of vexatious litigant order to other courts. After a court has issued a vexatious litigant order, any other court may rely upon that court's findings and order its own restrictions against the litigant as provided in paragraph (b).

TAB 3

Rule 7

A proposal to amend (l) to authorize judges to strike improper filings by previously-designated vexatious litigants with prefiling restrictions without awaiting a response.

Emails from John Bogart

From: JHB <jbogart@telosvg.com>
Sent: Monday, October 31, 2022 12:01 PM
To: DiFrancesco, Lauren E. (Shld-SLC-LT) <Lauren.DiFrancesco@gtlaw.com>
Cc: jbogart@telosvglaw.com; stacyh@utcourts.gov; jacew@utcourts.gov
Subject: Re: Rules 7A and 83

The docket runs to 50 pages, so perhaps the whole thing may be overkill. Attached is an excerpt running from the entry of the Vexatious Litigant Order (12 July 20919 dkt. #220) on page 12 to date. The filings most salient to the discussion are on page 1 beginning with docket #2884. The docket is in reverse chronological order.

As you will see from the docket excerpt, Mr. Short's Objection (is that a motion? Or an opposition?) has been accepted and filed and a hearing set. The hearing was set the morning (9 a.m.) the clerk received Short's Objection. It took only slightly longer for the second Objection to be added to the hearing.

My motion to strike for violation of the vexatious litigant order remains pending, although submitted for decision with a proposed order.

If there is anything that you would like information about, please let me know.

On 31 Oct 2022, at 18:20, <Lauren.DiFrancesco@gtlaw.com>
<Lauren.DiFrancesco@gtlaw.com> wrote:

Thanks John – this is helpful. I think it would be helpful to be able to see the docket and what happened as a specific example to bring to the committee. So if you're willing to provide, that would be great. We will take all of this info and put it into a memo to the committee (with the docket, if you'll provide) and get it on the agenda. Would you like to present it? You can do so remotely.

From: JohnBogart <jbogart@telosvglaw.com>
Sent: Monday, October 31, 2022 11:01 AM
To: DiFrancesco, Lauren E. (Shld-SLC-LT) <Lauren.DiFrancesco@gtlaw.com>
Cc: Jbogart@telosvg.com; stacyh@utcourts.gov; jacew@utcourts.gov
Subject: Re: Rules 7A and 83

83(d)(4) sometimes works, but not always. As far as I can tell, the clerks do not have a way of checking vexatious litigant names against filings except by hand. So there are errors. To correct, my experience is that it is necessary to file a motion. I have done that under 7(l), although it

really does not fall under the provision for motions with immediate consideration. To no effect so far.

My thought is (1) amend 7(l) to include motions enforcing 83 pre-approval and representation orders (not including requests for contempt finding) and/or (2) make 7A just about contempt.

The language of 7A now is motion to enforce an order. A request to correct mistaken acceptance of vexatious litigant filing meets that description — a request that the court enforce the pre-filing approval order by striking the filing.

I don't think putting clerks into these events is a good idea — once the paper is on the docket it seems to me a better practice that the court order removal, not have attorneys calling the clerks asking for actions. And when the court acts it should be on some public record, not a telephone call to a clerk.

Could be I am misreading the rules.

If knowing the details of the case is helpful I can provide that separately.

From: DiFrancesco, Lauren E. (Shld-SLC-LT)
Sent: Monday, October 31, 2022 10:23 AM
To: 'JHB' <jbogart@telosvg.com>
Cc: 'difrancescol@gtlaw.com' <difrancescol@gtlaw.com>
Subject: RE: Rules 7A and 83

Hey John,

Thanks for the email. Can you help me understand what your specific proposal is? I think I understand the issue, but I think it's dealt with by URCP 83(d)(4) – that any vexatious litigant filing not accompanied by a prefiling order be rejected by the clerk. So I would think you wouldn't have to use 7A to avoid having to respond to the filing, you could just notify the clerk, who would reject the filing – negating any obligation to respond. And then if you wanted them held in contempt in addition to that, you could use 7A, but wouldn't have to.

Am I missing your point though?

From: JHB <jbogart@telosvg.com>
Sent: Sunday, October 30, 2022 4:43 AM
To: DiFrancesco, Lauren E. (Shld-SLC-LT) <Lauren.DiFrancesco@gtlaw.com>
Subject: Rules 7A and 83

I wonder if the Committee might take a look at the interaction of Rules 7A with Rule 83. Rule 83 is the vexatious litigant rule, in particular 83(d). 83(d) sets out the parameters of pre-filing orders applicable to someone found to be a vexatious litigant. In brief, 83(d) requires a vexatious litigant to get approval from the court before filing any papers. If there is an attempted filing without a pre-filing approval order, the clerk is to reject the filing. Violations may be subject to

contempt proceedings (83(h). Rule 7A requires a fairly elaborate process of personal service of a motion to enforce orders: an affidavit or verified motion, admissible evidence, and a proposed order which sets a hearing date and the standard motion calendar. The order, when completed by the clerk/court has to be served under Rule 4 at least 28 days before the hearing date. So assume the following scenario: A is found a vexatious litigant and made subject to a pre-filing order. A ignores the pre-filing requirement and files a motion or opposition memorandum or some other such paper.

Does Rule 7A govern what happens? The vexatious litigant pre-filing order applies and what the adverse party wants to do is enforce its provisions, so 7A looks like it applies, so the adverse party has to file a motion with affidavit, etc., with the 28 days calendar and wait for a hearing (or ask for shortened time -- which is not expressly authorized under Rules 6 and 7)?

If so, that strikes me as, well, absurd. It makes a vexatious litigant finding almost worthless -- one point of such findings is to relieve the adverse party of the burdens of responding to frivolous, harassing papers. If 7A applies, that goal is mostly impossible to achieve -- there is no short fast way to get court intervention ending the unauthorized filing. The adverse party can't really do anything -- a contempt proceeding is not much comfort as it also increases costs and fees of the adverse party, takes a long time.

Or does Rule 83 trigger its own process?

I should note that I raised these issues during comments on 7A. It is not just a theoretical problem so I thought another try would be worth an email at least.

070915820 : YAN ROSS et al. vs. GLOBAL FRAUD SOLUTIONS et al.

3RD DISTRICT COURT - Salt Lake County District Court

Case Number	070915820
Case Type	CN
Opened	2007-11-07
Status	active

Plaintiff	RANDI WAGNER et al
Defendant	GLOBAL FRAUD SOLUTIONS et al
Judge	KEITH KELLY
Amt. of Claim	$71341.20

⊞ Show/Hide Participants

File Date	Seq	Case History
10-31-2022 01:29:00 AM	2909	Return of Electronic Notification
10-31-2022 01:26:00 AM	2906	Exhibit 1 to Motion to Strike
10-31-2022 01:26:00 AM	2905	Motion to Strike Objections Filed In Violation of the Vexatious Litigant Order
10-31-2022 01:26:00 AM	2908	Order (Proposed) re Motion to Strike Objections Filed in Violation of the Vexatious Litigant Order
10-31-2022 01:26:00 AM	2907	Request/Notice to Submit re Motion to Strike Objections Filed in Violationof Vexatious Litigant Order
10-28-2022 01:51:00 PM	2904	Return of Electronic Notification
10-27-2022 11:41:00 AM	2903	Return of Electronic Notification
10-27-2022 11:36:00 AM	2902	Request/Notice to Submit Motion to Augment Judgment
10-27-2022 11:36:00 AM	2901	Return of Electronic Notification
10-27-2022 11:32:00 AM	2897	Exhibit 1 to Reply In Support of Motion to Augment Judgment
10-27-2022 11:32:00 AM	2898	Exhibit 2 to Reply In Support of Motion to Augment Judgment
10-27-2022 11:32:00 AM	2899	Exhibit 3 to Reply In Support of Motion to Augment Judgment
10-27-2022 11:32:00 AM	2900	Exhibit 4 to Reply In Support of Motion to Augment Judgment
10-27-2022 11:32:00 AM	2896	Reply In Support of Motion to Augment Judgment
10-27-2022 10:00:50 AM	0	Notice for Case 070915820 CN Judge: KEITH KELLY
10-27-2022 10:00:49 AM	2895	Notice for Case 070915820 CN Judge: KEITH KELLY
10-26-2022 04:56:00 PM	2894	Return of Electronic Notification
10-26-2022 04:33:00 PM	2893	Return of Electronic Notification
10-26-2022 04:25:00 PM	2892	Request/Notice to Submit OBJECTION TO REQUEST TO SUBMIT RE MOTION TO RENEW JUDGMENT AND REQUEST FOR HEARING ON OBJECTION
10-26-2022 04:08:00 PM	2891	Objection to REQUEST TO SUBMIT RE MOTION TO RENEW JUDGMENT AND REQUEST FOR HEARING ON OBJECTION
10-26-2022 06:15:00 AM	2890	Return of Electronic Notification
10-26-2022 12:12:00 AM	2889	Return of Electronic Notification
10-26-2022 12:05:00 AM	2888	Request/Notice to Submit re Motion to Renew Judgment
10-25-2022 08:59:41 AM	0	Notice for Case 070915820 CN Judge: KEITH KELLY
10-25-2022 08:59:40 AM	2887	Notice for Case 070915820 CN Judge: KEITH KELLY
10-25-2022 12:02:00 AM	2886	Return of Electronic Notification
10-24-2022 11:56:00 PM	2884	Objection to Attempt to Violate the Automatic Stay and Request for Hearing
10-24-2022 11:56:00 PM	2885	Request/Notice to Submit Objection to Attempt to Violate the Automatic Stay and Request for Hearing
10-10-2022 05:31:00 AM	2883	Return of Electronic Notification
10-10-2022 05:30:00 AM	2880	Exhibit 1 to Plaintiffs Rule 73(f) Motion to Augment Judgment
10-10-2022 05:30:00 AM	2881	Exhibit 2 to Plaintiffs Rule 73(f) Motion to Augment Judgment
10-10-2022 05:30:00 AM	2882	Exhibit 3 to Plaintiffs Rule 73(f) Motion to Augment Judgment
10-10-2022 05:26:00 AM	2879	Return of Electronic Notification
10-10-2022 05:23:00 AM	2877	Affidavit/Declaration Declaration of David P. Billings in Support of Award of Costs and Fees to Telos Ventures Group, PLLC and John H. Bogart
10-10-2022 05:23:00 AM	2876	Affidavit/Declaration of John H. Bogart in SUpport of Rule 73(f) Motin to Augment Judgment
10-10-2022 05:23:00 AM	2878	Exhibit 1 to Declaration of David P. Billings in Support of Award of Costs and Fees
10-10-2022 05:23:00 AM	2875	Motion Rule 73(f) Motion to Augment Judgment
10-10-2022 05:16:00 AM	2874	Return of Electronic Notification
10-10-2022 05:14:00 AM	2873	Affidavit/Declaration of John H. Bogart in Support of Motion to Renew July 2, 2015 Judgment
10-10-2022 05:14:00 AM	2872	Motion to Renew July 2, 2015 Judgment
10-10-2022 01:52:00 AM	2871	Return of Electronic Notification
10-10-2022 01:49:00 AM	2870	Notice of Withdrawal of Plaintiffs October 4, 2022 Rule 73(f) Motion
10-04-2022 01:35:00 PM	2869	Return of Electronic Notification
10-04-2022 01:30:00 PM	2866	Affidavit of Attorney Fees and Costs of John H. Bogart to Augment Judgment
10-04-2022 01:30:00 PM	2867	Affidavit of Attorney Fees and Costs of David P. Billings
10-04-2022 01:30:00 PM	2868	Billings Decl - Exhibit
10-04-2022 01:30:00 PM	2863	Exhibit 1
10-04-2022 01:30:00 PM	2864	Exhibit 2
10-04-2022 01:30:00 PM	2865	Exhibit 3

10-04-2022	01:30:00 PM	2862	Motion (Hearing Requested) Rule 73(f) Motion for Costs and Fees
07-15-2020	01:16:00 PM	2861	Return of Electronic Notification
07-15-2020	01:13:00 PM	2860	Notice of Settlement with Raymond Short
07-15-2020	11:21:00 AM	2859	Return of Electronic Notification
07-15-2020	11:18:00 AM	2858	NOTICE OF SURETYS FULL PAYMENT OF BOND
07-01-2020	04:17:00 PM	2857	Return of Electronic Notification
07-01-2020	04:13:00 PM	2856	Order Awarding Rule 33 Sanctions Against Douglas Short
07-01-2020	04:07:00 PM	2855	Return of Electronic Notification
07-01-2020	04:03:00 PM	2854	Order Awarding Costs and Fees Against Raymond Shorrt
07-01-2020	12:44:00 AM	2853	Return of Electronic Notification
07-01-2020	12:39:00 AM	2851	Order (Proposed) Awarding Costs and Fees Against Raymond Shorrt
07-01-2020	12:39:00 AM	2852	Order (Proposed) Awarding Rule 33 Sanctions Against Douglas Short
07-01-2020	12:39:00 AM	2850	Request/Notice to Submit re Proposed Orders re June 22, 2020 Hearing
06-28-2020	12:09:00 AM	2849	Return of Electronic Notification
06-28-2020	12:06:00 AM	2848	Certificate of Service of Proposed Orders
06-25-2020	11:42:00 PM	2847	Return of Electronic Notification
06-25-2020	08:28:10 AM	2846	Request for Copy of Audio Record - Completed
06-25-2020	12:11:00 AM	2845	Return of Electronic Notification
06-24-2020	08:00:10 AM	2844	Request for Audio Record - Completed
06-22-2020	08:20:00 PM	2842	Return of Electronic Notification
06-22-2020	08:20:00 PM	2843	Return of Electronic Notification
06-22-2020	08:17:00 PM	2841	Other - Not Signed Ex Parte Order (Proposed) re Costs and Fees
06-22-2020	08:16:00 PM	2840	Other - Not Signed Order (Proposed) re Costs and Fees
06-22-2020	03:02:00 PM	2839	Return of Electronic Notification
06-22-2020	03:02:00 PM	2838	Return of Electronic Notification
06-22-2020	02:56:00 PM	2837	Other - Not Signed Order (Proposed) re Award of Fees and Costs Against Raymond Short
06-22-2020	02:55:00 PM	2836	Other - Not Signed Order (Proposed) re Sanctions
06-19-2020	03:51:00 PM	2835	Return of Electronic Notification
06-19-2020	03:49:00 PM	2832	: Request for Leave to File Papers
06-19-2020	03:49:00 PM	2834	Motion to Continue
06-19-2020	03:49:00 PM	2833	Objection to Bench Trial
06-19-2020	03:46:00 PM	2831	Return of Electronic Notification
06-19-2020	03:44:00 PM	2830	Appearance of Counsel/Notice of Limited Appearance
06-19-2020	03:41:00 PM	2829	Return of Electronic Notification
06-19-2020	03:39:00 PM	2828	: Notice of Limited Scope Appearance
06-19-2020	02:26:00 PM	2827	Return of Electronic Notification
06-19-2020	02:23:00 PM	2826	Order re Contempt
06-19-2020	02:16:00 PM	2825	Return of Electronic Notification
06-19-2020	02:14:00 PM	2824	Order Scheduling Order
06-18-2020	01:31:00 PM	2823	Return of Electronic Notification
06-18-2020	01:27:00 PM	2819	Certificate of Service
06-18-2020	01:27:00 PM	2821	Order (Proposed) Scheduling Order
06-18-2020	01:27:00 PM	2822	Order (Proposed) re Contempt
06-18-2020	01:27:00 PM	2820	Request/Notice to Submit re Proposed Orders re June 9, 2020 Hearing
06-18-2020	11:16:00 AM	2818	Return of Electronic Notification
06-18-2020	11:15:00 AM	2817	Opposition to Plaintiffs Request for Attorneys Fees
06-18-2020	01:51:00 AM	2816	Return of Electronic Notification
06-18-2020	01:45:00 AM	2815	Order (Proposed) re Sanctions
06-18-2020	01:45:00 AM	2814	Request/Notice to Submit re Plaintiffs Request for Fees Under URAP 33
06-18-2020	01:36:00 AM	2813	Return of Electronic Notification
06-18-2020	01:32:00 AM	2812	Order (Proposed) re Award of Fees and Costs Against Raymond Short
06-18-2020	01:32:00 AM	2811	Request/Notice to Submit re Request for Fees and Costs re Raymond Short
06-15-2020	07:08:00 PM	2809	Order Clarifying Order of July 12, 2019
06-15-2020	07:08:00 PM	2810	Return of Electronic Notification
06-12-2020	04:08:00 AM	2808	Return of Electronic Notification
06-12-2020	04:05:00 AM	2805	Certificate of Service of Proposed Order Clarifying July 12, 2019 Order
06-12-2020	04:05:00 AM	2807	Order (Proposed) Order Clarifying Order of July 12, 2019
06-12-2020	04:05:00 AM	2806	Request/Notice to Submit re Proposed Order Clarifying Order of July 12, 2019
06-12-2020	03:28:00 AM	2803	Order (Proposed) re Costs and Fees
06-12-2020	03:28:00 AM	2804	Return of Electronic Notification
06-12-2020	02:03:00 AM	2798	Affidavit/Declaration Declaration of John H. Bogart
06-12-2020	02:03:00 AM	2799	Affidavit/Declaration Sean N. Egan Declaration re Costs and Fees
06-12-2020	02:03:00 AM	2801	Ex Parte Order (Proposed) re Costs and Fees
06-12-2020	02:03:00 AM	2800	Exhibit A to Sean N. Egan Declaration

06-12-2020	02:03:00 AM	2802	Return of Electronic Notification
06-10-2020	11:51:00 PM	2796	Return of Electronic Notification
06-10-2020	04:26:00 PM	2792	Return of Electronic Notification
06-10-2020	04:26:00 PM	2793	Return of Electronic Notification
06-10-2020	04:26:00 PM	2794	Return of Electronic Notification
06-10-2020	04:26:00 PM	2795	Return of Electronic Notification
06-10-2020	04:25:00 PM	2791	Other - Not Signed Order (Proposed) re Scope of Production by Raymond Short
06-10-2020	04:23:00 PM	2790	Other - Not Signed Order (Proposed) re Plaintiffs Motion for an Order to Show Cause re Mark Shurtleff
06-10-2020	04:22:00 PM	2789	Other - Not Signed Order (Proposed) re Costs and Fees
06-10-2020	04:21:00 PM	2788	Other - Not Signed Order (Proposed) re Costs and Fees
06-10-2020	01:34:10 PM	2787	Notice of Withdraw of Mr. Barlow and Request to Not Receive Notice
06-10-2020	09:53:10 AM	2797	Email Correspondence from John Barlow in re: Notice of Withdrawal
06-10-2020	08:27:30 AM	2786	Notice for Case 070915820 CN: Judge KEITH KELLY
06-10-2020	08:23:35 AM	2785	Notice for Case 070915820 CN: Judge KEITH KELLY
06-04-2020	12:52:00 AM	2784	Return of Electronic Notification
06-04-2020	12:50:00 AM	2783	Order (Proposed) re Scope of Production by Raymond Short
06-04-2020	12:50:00 AM	2781	Reply re Scope of Production by Raymond Short
06-04-2020	12:50:00 AM	2782	Request/Notice to Submit re Scope of Production by Raymond Short
06-04-2020	12:02:00 AM	2780	Return of Electronic Notification
06-03-2020	02:06:58 PM	2779	Notice for Case 070915820 CN: Judge KEITH KELLY
06-03-2020	12:07:00 PM	2778	Return of Electronic Notification
06-03-2020	12:05:00 PM	2777	Request/Notice to Submit NOTICE OF SURETYS STATUTORY SUBROGATION TO JULY 2015 JUDGMENT AGAINST DOUGLAS SHORT
06-03-2020	11:32:00 AM	2776	Return of Electronic Notification
06-03-2020	11:31:00 AM	2775	NOTICE OF SURETYS STATUTORY SUBROGATION TO JULY 2015 JUDGMENT AGAINST DOUGLAS SHORT
06-02-2020	07:11:00 AM	2774	Return of Electronic Notification
06-02-2020	07:09:00 AM	2773	Corrected Exhibits to Request for Judicial Notice
06-01-2020	06:16:00 AM	2772	Return of Electronic Notification
06-01-2020	06:13:00 AM	2769	Exhibit A to Plaintiffs Proffer
06-01-2020	06:13:00 AM	2771	Exhibits to Request for Judicial Notice
06-01-2020	06:13:00 AM	2768	Plaintiffs Proffer for June 3, 2020 Hearing
06-01-2020	06:13:00 AM	2770	Request for Judicial Notice
05-27-2020	12:31:00 AM	2767	Return of Electronic Notification
05-27-2020	12:29:00 AM	2766	Order (Proposed) re Costs and Fees
05-27-2020	12:29:00 AM	2765	Request/Notice to Submit re Request for Costs and Fees
05-22-2020	11:11:00 PM	2764	Return of Electronic Notification
05-22-2020	08:33:37 AM	2763	Notice for Case 070915820 CN: Judge KEITH KELLY
05-21-2020	07:56:00 AM	2762	Return of Electronic Notification
05-21-2020	07:55:00 AM	2760	Reply re Plaintiffs Second Motion to Compel Compliance
05-21-2020	07:55:00 AM	2761	Request/Notice to Submit re Plaintiffs Second Motion to Compel Compliance
05-19-2020	11:41:00 PM	2759	Return of Electronic Notification
05-19-2020	07:00:00 PM	2758	Return of Electronic Notification
05-19-2020	06:55:00 PM	2757	Opposition to Plaintiffs Second Motion to Compel Surety
05-19-2020	01:34:13 PM	2756	Notice for Case 070915820 CN: Judge KEITH KELLY
05-18-2020	01:25:00 PM	2755	Return of Electronic Notification
05-18-2020	01:20:00 PM	2754	Order Protective Order re Douglas Short
05-18-2020	06:55:00 AM	2753	Return of Electronic Notification
05-18-2020	06:51:00 AM	2751	Reply re Motion for OSC re Raymond Short
05-18-2020	06:51:00 AM	2752	Request/Notice to Submit re Motion for OSC re Raymond SHort
05-18-2020	05:10:00 AM	2750	Return of Electronic Notification
05-18-2020	05:05:00 AM	2749	Request/Notice to Submit re Notice of Lifting of Bankruptcy Stay
05-18-2020	03:15:00 AM	2748	Return of Electronic Notification
05-18-2020	03:14:00 AM	2747	Notice of Lifting of Bankruptcy Stay
05-17-2020	04:55:00 AM	2746	Return of Electronic Notification
05-17-2020	04:50:00 AM	2744	Certificate of Service of Proposed Order
05-17-2020	04:50:00 AM	2745	Order (Proposed) Protective Order re Douglas Short
05-17-2020	04:50:00 AM	2743	Request/Notice to Submit re Proposed Protective Order
05-16-2020	08:54:00 AM	2742	Return of Electronic Notification
05-16-2020	08:51:00 AM	2739	Exhibit 1 to Notice of Lifting of Stay
05-16-2020	08:51:00 AM	2740	Exhibit 2 to Notice of Lifting of Stay
05-16-2020	08:51:00 AM	2741	Exhibit 3 to Notice of Lifting of Stay
05-16-2020	04:23:00 AM	2738	Return of Electronic Notification
05-16-2020	04:04:00 AM	2736	Affidavit of Attorney Fees and Costs of Sean N. Egan re Costs and Fees
05-16-2020	04:04:00 AM	2735	Affidavit/Declaration of John H. Bogart re Costs and Fees

05-16-2020	04:04:00 AM	2737	Order (Proposed) re Costs and Fees
05-15-2020	11:18:00 PM	2734	Return of Electronic Notification
05-15-2020	11:13:00 AM	2733	Return of Electronic Notification
05-15-2020	11:10:00 AM	2732	Notice of Correction of Citation
05-15-2020	11:10:00 AM	2731	Request/Notice to Submit Amended Notice to Submit
05-15-2020	10:53:47 AM	2730	Notice for Case 070915820 CN: Judge KEITH KELLY
05-15-2020	02:48:00 AM	2729	Return of Electronic Notification
05-15-2020	02:46:00 AM	2728	Order (Proposed) re Plaintiffs Motion for an Order to Show Cause re Mark Shurtleff
05-15-2020	02:46:00 AM	2726	Reply re Plaintiffs motion for an Order to Show Cause re Mark Shurtleff
05-15-2020	02:46:00 AM	2727	Request/Notice to Submit re Plaintiffs Motion for an Order to Show Cause re Mark Shurtleff
05-15-2020	12:08:00 AM	2725	Return of Electronic Notification
05-15-2020	12:03:00 AM	2724	Opposition to Motion for Order to Show Cause
05-14-2020	04:27:00 PM	2723	Return of Electronic Notification
05-14-2020	04:24:00 PM	2722	Order re Motion for Shortened Calendar
05-14-2020	12:52:00 PM	2721	Return of Electronic Notification
05-14-2020	12:48:00 PM	2718	Exhibit 1
05-14-2020	12:48:00 PM	2717	Motion to Shorten Calendar re Second Motion to Compel Compliance with Court Orders
05-14-2020	12:48:00 PM	2720	Order (Proposed) re Motion for Shortened Calendar
05-14-2020	12:48:00 PM	2719	Request/Notice to Submit re Motion for Shortened Calendar
05-14-2020	12:42:00 PM	2716	Return of Electronic Notification
05-14-2020	12:40:00 PM	2700	Exhibit 1
05-14-2020	12:40:00 PM	2709	Exhibit 10
05-14-2020	12:40:00 PM	2710	Exhibit 11
05-14-2020	12:40:00 PM	2711	Exhibit 12
05-14-2020	12:40:00 PM	2712	Exhibit 13
05-14-2020	12:40:00 PM	2713	Exhibit 14
05-14-2020	12:40:00 PM	2714	Exhibit 15
05-14-2020	12:40:00 PM	2715	Exhibit 16
05-14-2020	12:40:00 PM	2701	Exhibit 2
05-14-2020	12:40:00 PM	2702	Exhibit 3
05-14-2020	12:40:00 PM	2703	Exhibit 4
05-14-2020	12:40:00 PM	2704	Exhibit 5
05-14-2020	12:40:00 PM	2705	Exhibit 6
05-14-2020	12:40:00 PM	2706	Exhibit 7
05-14-2020	12:40:00 PM	2707	Exhibit 8
05-14-2020	12:40:00 PM	2708	Exhibit 9
05-14-2020	12:40:00 PM	2699	Motion Plaintiffs Second Motion to Compel Compliance with Court Orders
05-14-2020	12:26:00 PM	2698	Return of Electronic Notification
05-14-2020	12:22:00 PM	2697	Request/Notice to Submit NOTICE OF SURETYS PAYMENT OF 2015 JUDGMENT AGAINST DOUGLAS SHORT TO YAN ROSS AND RANDI WAGNER AND NOTICE OF MOOTNESS OF SUPPLEMENTAL PROCEEDINGS AGAINST SURETY
05-14-2020	10:26:00 AM	2695	Return of Electronic Notification
05-14-2020	10:26:00 AM	2696	Return of Electronic Notification
05-14-2020	10:22:00 AM	2694	Notice of Mootness of Supplemental Proceedings Against Surety
05-14-2020	10:21:00 AM	2693	Order re Plaintiffs Motion to Compel and Motions for OSC re Contempt and Raymond Shorts Motion for Continuance
05-14-2020	10:11:00 AM	2692	Return of Electronic Notification
05-14-2020	10:08:00 AM	2691	Surety Notice of Payment of 2015 Judgment
05-12-2020	03:27:00 PM	2690	Return of Electronic Notification
05-12-2020	03:22:00 PM	2689	Order re Raymond Shorts Motion to Quash
05-12-2020	09:22:00 AM	2688	Return of Electronic Notification
05-12-2020	09:19:00 AM	2687	Affidavit of Attorney Fees and Costs for Sean N. Egan, Esq. with Attachment
05-11-2020	10:07:00 AM	2686	Return of Electronic Notification
05-11-2020	10:05:00 AM	2685	Affidavit/Declaration of John H. Bogart re Supplemental Costs and Fees Pursuant to Rule 73 and April 9, 2019 Order
05-04-2020	10:28:00 AM	2684	Return of Electronic Notification
05-04-2020	10:25:00 AM	2680	Certificate of Service of Proposed Orders
05-04-2020	10:25:00 AM	2682	Order (Proposed) re Plaintiffs Motion to Compel and Motions for OSC re Contempt and Raymond Shorts Motion for Continuance
05-04-2020	10:25:00 AM	2683	Order (Proposed) re Raymond Shorts Motion to Quash
05-04-2020	10:25:00 AM	2681	Request/Notice to Submit re Proposed Order re April 30, 2020 Hearing
05-04-2020	09:43:00 AM	2678	Return of Electronic Notification
05-04-2020	09:43:00 AM	2679	Return of Electronic Notification
05-04-2020	09:40:00 AM	2677	Other - Not Signed Order (Proposed) re Raymond Shorts Motion to Quash
05-04-2020	09:39:00 AM	2676	Other - Not Signed Order (Proposed) re Plaintiffs Motion to Compel and Motions for OSC re Contempt and Raymond Shorts Motion for Continuance
05-04-2020	09:28:00 AM	2675	Return of Electronic Notification

05-04-2020	09:23:00 AM	2674	Order (Proposed) re Plaintiffs Motion to Compel and Motions for OSC re Contempt and Raymond Shorts Motion for Continuance
05-04-2020	09:23:00 AM	2673	Order (Proposed) re Raymond Shorts Motion to Quash
05-04-2020	09:23:00 AM	2672	Request/Notice to Submit re Orders re April 30 Hearing
05-01-2020	11:09:00 PM	2671	Return of Electronic Notification
05-01-2020	08:32:54 AM	2670	Notice for Case 070915820 CN: Judge KEITH KELLY
04-30-2020	02:08:00 PM	2669	Return of Electronic Notification
04-30-2020	02:04:00 PM	2665	Exhibit 1 to Notice of Lifting of Bankruptcy Stay
04-30-2020	02:04:00 PM	2666	Exhibit 2 to Notice of Lifting of Bankruptcy Stay
04-30-2020	02:04:00 PM	2667	Exhibit 3 to Notice of Lifting of Bankruptcy Stay
04-30-2020	02:04:00 PM	2664	Notice of Lifting of Bankruptcy Stay
04-30-2020	02:04:00 PM	2668	Request/Notice to Submit re Notice of Lifting of Bankruptcy Stay
04-30-2020	02:03:00 PM	2663	Return of Electronic Notification
04-30-2020	02:01:00 PM	2662	Ray Short Doctors Note re Quarantine
04-28-2020	10:37:00 AM	2661	Return of Electronic Notification
04-28-2020	10:33:00 AM	2660	Order on Plaintiffs Objection to Limited Scope Appearance of MLS for Ray Short
04-27-2020	02:37:00 PM	2659	Return of Electronic Notification
04-27-2020	02:35:00 PM	2658	Written Conflict Waiver
04-24-2020	01:37:00 PM	2657	Return of Electronic Notification
04-24-2020	01:35:00 PM	2656	Order (Proposed) on Plaintiffs Objection to Limited Scope Appearance of MLS for Ray Short
04-22-2020	11:17:00 PM	2655	Return of Electronic Notification
04-22-2020	04:11:36 PM	2654	Notice for Case 070915820 CN: Judge KEITH KELLY
04-16-2020	11:30:00 PM	2653	Return of Electronic Notification
04-16-2020	06:38:49 PM	2652	Notice for Case 070915820 CN: Judge KEITH KELLY
04-01-2020	07:26:00 AM	2651	Return of Electronic Notification
04-01-2020	07:21:00 AM	2650	Request/Notice to Submit re Motion to Clarify July 12, 2019 Order Finding Douglas Short a Vexatious Litigant
04-01-2020	07:16:00 AM	2649	Return of Electronic Notification
04-01-2020	07:14:00 AM	2648	Reply re Motion to Clarify the July 12, 2019 Order Finding Douglas Short a Vexatious Litigant
04-01-2020	06:46:00 AM	2647	Return of Electronic Notification
04-01-2020	06:42:00 AM	2646	Opposition to Motion for Continuance
04-01-2020	06:36:00 AM	2645	Return of Electronic Notification
04-01-2020	06:35:00 AM	2644	Request/Notice to Submit re Motion to Compel Compliance With Orders To Produce Documents
04-01-2020	12:04:00 AM	2643	Return of Electronic Notification
03-31-2020	11:59:00 PM	2642	Objection to Motion to Clarify filed by Plaintiffs
03-31-2020	11:50:00 PM	2641	Return of Electronic Notification
03-31-2020	11:49:00 PM	2640	Return of Electronic Notification
03-31-2020	11:47:00 PM	2639	Motion FOR CONTINUANCE TO FILE OPPOSITION TO PLAINTIFFS MOTION TO COMPEL COMPLIANCE WITH ORDER TO PRODUCE DOCUMENTS
03-31-2020	11:45:00 PM	2638	Appearance of Counsel/Notice of Limited Appearance of Mark Shurtleff for Ray Short Motion to Compel
03-24-2020	12:09:00 AM	2637	Return of Electronic Notification
03-23-2020	03:05:10 PM	2636	Utah Court of Appeals Order dated 3-23-2020 - (Petition for permission to appeal is denied)
03-23-2020	03:05:10 PM	2635	Utah Court of Appeals Notice of Decision dated 3-23-2020 - (Order Isssued: 3-23-2020)
03-18-2020	12:34:00 AM	2634	Return of Electronic Notification
03-17-2020	12:44:10 PM	2633	Utah Court of Appeals Notice dated 3-17-2020 - (Case assigned to Court of Appeals - Case remain the same)
03-17-2020	05:32:00 AM	2632	Return of Electronic Notification
03-17-2020	05:28:00 AM	2631	Motion to Clarify July 12, 2019 Order Finding Douglas Short a Vexatious Litigant
03-17-2020	05:22:00 AM	2630	Return of Electronic Notification
03-17-2020	05:19:00 AM	2629	Affidavit/Declaration of John H. Bogart in Support of Motion to Compel Compliance
03-17-2020	05:19:00 AM	2618	Exhibit 1 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2627	Exhibit 10 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2619	Exhibit 2 to Motion to Compel Complance
03-17-2020	05:19:00 AM	2620	Exhibit 3 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2621	Exhibit 4 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2622	Exhibit 5 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2623	Exhibit 6 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2624	Exhibit 7 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2625	Exhibit 8 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2626	Exhibit 9 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2628	Exhiibit 11 to Motion to Compel Compliance
03-17-2020	05:19:00 AM	2617	Motion for Temporary Order to Compel Compliance With Orders
03-17-2020	12:53:00 AM	2616	Return of Electronic Notification
03-16-2020	04:14:35 PM	2615	Notice for Case 070915820 CN: Judge KEITH KELLY
03-16-2020	04:04:39 PM	2614	Notice for Case 070915820 CN: Judge KEITH KELLY
03-15-2020	11:22:00 AM	2613	Return of Electronic Notification

03-15-2020	11:17:00 AM	2612	Opposition to Motion to Quash Declaration and Motion for OSC
03-11-2020	12:17:00 AM	2611	Return of Electronic Notification
03-10-2020	01:59:22 PM	2610	Notice for Case 070915820 CN: Judge KEITH KELLY
03-06-2020	11:56:00 PM	2609	Return of Electronic Notification
03-06-2020	12:44:10 PM	2608	Supreme Court of Utah COPY of Petition for Permission to Appeal Supplemental Order Against Surety dated 3-4-2020
03-06-2020	12:43:10 PM	2607	Supreme Court of Utah Letter dated 3-6-2020 - (Interlocutory appeal filed - Case 20200202 should be indicated on future filings - rules/info etal AND 225.00 filing fee is due)
03-05-2020	01:17:00 AM	2606	Return of Electronic Notification
03-05-2020	01:16:00 AM	2604	Notice Copy of Petition for Interlocutory Appeal Filed March 4, 2020
03-05-2020	01:16:00 AM	2605	Request/Notice to Submit Notice of Petition for Interlocutory Appeal
02-14-2020	11:46:00 PM	2603	Return of Electronic Notification
02-14-2020	03:52:00 PM	2602	Return of Electronic Notification
02-14-2020	03:49:00 PM	2601	Order re: Motion to Modify Order re: Supplemental Proceedings Against Raymond Short
02-14-2020	09:37:00 AM	2600	Return of Electronic Notification
02-14-2020	09:34:00 AM	2598	Motion to Modify Order re: Supplemental Proceedings Against Raymond Short with Exhibits 1-2
02-14-2020	09:34:00 AM	2599	Order (Proposed) re: Motion to Modify Order re: Supplemental Proceedings Against Raymond Short
02-12-2020	06:16:00 PM	2597	Return of Electronic Notification
02-12-2020	06:15:00 PM	2596	Order re Supplemental Proceedings re Raymnd Short
02-11-2020	09:09:00 AM	2595	Return of Electronic Notification
02-11-2020	09:06:00 AM	2594	Order (Proposed) re Supplemental Proceedings re Raymnd Short
02-11-2020	09:06:00 AM	2592	Request/Notice to Submit re Proposed Order re Supplemental Proceedings re Raymond Short
02-11-2020	09:06:00 AM	2593	Request/Notice to Submit re Proposed Order re Supplemental Proceedings re Raymond Short
01-29-2020	12:36:00 PM	2591	Return of Electronic Notification
01-29-2020	12:35:00 PM	2590	Order RE NO STAY OF PROCEEDINGS RE RAYMOND SHORT
01-29-2020	02:09:00 AM	2589	Return of Electronic Notification
01-29-2020	02:06:00 AM	2588	Order (Proposed) re January 27, 2020 Hearing
01-29-2020	02:06:00 AM	2587	Request/Notice to Submit re Proposed Order re January 27, 2020 Hearing
01-28-2020	12:08:00 AM	2586	Return of Electronic Notification
01-27-2020	02:46:17 PM	2585	Notice for Case 070915820 CN: Judge KEITH KELLY
01-27-2020	02:40:12 PM	2584	Notice for Case 070915820 CN: Judge KEITH KELLY
01-22-2020	04:12:00 PM	2583	Return of Electronic Notification
01-22-2020	04:09:00 PM	2581	Affidavit/Declaration of Raymond Short in Support of Reply Memorandum re Automatic Stay
01-22-2020	04:09:00 PM	2582	Exhibit A to Ray Short Declaration in Support of Reply Memorandum
01-22-2020	04:09:00 PM	2580	Reply Memorandum Re Automatic Stay
01-22-2020	11:56:00 AM	2579	Return of Electronic Notification
01-22-2020	11:52:00 AM	2577	Exhibit 1 to Reply
01-22-2020	11:52:00 AM	2578	Exhibit 2 to Reply
01-22-2020	11:52:00 AM	2576	Reply In Support of Finding Supplemental Proceedings re Raymond Short are Proper
01-17-2020	05:30:00 PM	2575	Return of Electronic Notification
01-17-2020	05:25:00 PM	2574	Affidavit/Declaration of Raymond Short in Support of Supplemental Brief on Effect of Automatic Bankruptcy Stay
01-17-2020	05:00:00 PM	2573	Return of Electronic Notification
01-17-2020	04:55:00 PM	2572	Supplemental Memorandum on Effect of Automatic Bankruptcy Stay to Supplemental Proceedings agains Surety
01-17-2020	04:20:00 PM	2571	Return of Electronic Notification
01-17-2020	04:18:00 PM	2567	Exhibit 1
01-17-2020	04:18:00 PM	2568	Exhibit 2
01-17-2020	04:18:00 PM	2569	Exhibit 3
01-17-2020	04:18:00 PM	2570	Exhibit 3
01-17-2020	04:18:00 PM	2566	Memorandum Brief re Supplemental Proceedings re Raymond Short
01-15-2020	10:41:00 AM	2565	Return of Electronic Notification
01-15-2020	10:37:00 AM	2564	Order Re Motion to Disqualify Douglas Short
01-13-2020	08:31:00 AM	2563	Return of Electronic Notification
01-13-2020	08:28:00 AM	2562	Order (Proposed) Re Motion to Disqualify Douglas Short
01-13-2020	08:28:00 AM	2561	Request/Notice to Submit Re Plaintiffs Motion to Disqualify Douglas Short
01-10-2020	12:32:00 AM	2560	Return of Electronic Notification
01-09-2020	04:11:05 PM	2559	Notice for Case 070915820 CN: Judge KEITH KELLY
01-09-2020	03:54:00 PM	2558	TELEPHONE ORAL ARGUMENT
01-08-2020	12:38:00 AM	2557	Return of Electronic Notification
01-07-2020	10:35:00 AM	2556	Notice for Case 070915820 CN: Judge KEITH KELLY
01-07-2020	12:46:00 AM	2555	Return of Electronic Notification
01-06-2020	01:16:09 PM	2554	Notice for Case 070915820 CN: Judge KEITH KELLY
01-02-2020	03:41:00 AM	2553	Return of Electronic Notification
01-02-2020	03:37:00 AM	2552	Bankruptcy Second Notice of Bankruptcy of Douglas R. Short
12-31-2019	01:33:10 PM	2551	Minute Entry
12-31-2019	11:06:00 AM	2550	Return of Electronic Notification

12-31-2019	11:02:00 AM	2549	Order Granting Over Length Memorandum re Motion to Disqualify Judge Kelly
12-29-2019	02:31:00 AM	2548	Return of Electronic Notification
12-29-2019	02:26:00 AM	2546	Bankruptcy Notice of Bankruptcy by Douglas R. Short
12-29-2019	02:26:00 AM	2547	Request/Notice to Submit Notice of Bankruptcy
12-26-2019	04:58:10 PM	2545	Corrected Certification to Reviewing Judge Pursuant to UTAH R. CIV. P. 63(c)(1)
12-26-2019	12:46:10 PM	2544	Certification to Reviewing Judge Pursuant to UTAH R. CIV. P. 63(c)(1)
12-26-2019	07:32:02 AM	2543	TRANSCRIPT for Hearing of 12-19-2019
12-26-2019	05:11:00 AM	2542	Return of Electronic Notification
12-26-2019	05:08:00 AM	2541	Motion to Disqualify Douglas Short from Representing Raymond Short
12-25-2019	12:48:00 AM	2540	Return of Electronic Notification
12-25-2019	12:45:00 AM	2537	Motion Overlength Memo in support of Motion to Disqualify Judge Kelly
12-25-2019	12:45:00 AM	2539	Order (Proposed) Granting Over Length Memorandum re Motion to Disqualify Judge Kelly
12-25-2019	12:45:00 AM	2538	Request/Notice to Submit Motion for Overlength Memo in Support of Motion to Disqualify Judge Kelly
12-25-2019	12:07:00 AM	2536	Return of Electronic Notification
12-25-2019	12:04:00 AM	2535	Request/Notice to Submit Motion to Disqualify Judge Kelly
12-25-2019	12:02:00 AM	2534	Return of Electronic Notification
12-24-2019	11:58:00 PM	2533	Affidavit/Declaration Surety re Motion to Disqualify Judge Kelly
12-24-2019	11:58:00 PM	2531	Appearance of Counsel/Notice of Limited Appearance Limited Scope Appearance by Douglas R. Short for Raymond W Short
12-24-2019	11:58:00 PM	2532	Motion to Disqualify/Recuse Judge Kelly by Surety
12-23-2019	11:10:00 PM	2530	Return of Electronic Notification
12-23-2019	11:08:00 PM	2529	Certificate of Service
12-20-2019	01:13:00 PM	2528	Return of Electronic Notification
12-20-2019	01:12:00 PM	2527	Order Amended Order re Motion for Order to Show Cause re Raymond Short and 2nd Order in Supplemental Proceedings
12-20-2019	10:38:14 AM	2526	Notice for Case 070915820 CN: Judge KEITH KELLY
12-20-2019	10:32:43 AM	2525	Notice for Case 070915820 CN: Judge KEITH KELLY
12-20-2019	09:43:00 AM	2524	Return of Electronic Notification
12-20-2019	09:40:00 AM	2522	Motion to Amend December 19, 2019 Order re Motion for Order to Show Cause re Raymond Short and 2nd Order in Supplemental Proceedings
12-20-2019	09:40:00 AM	2523	Order (Proposed) Amended Order re Motion for Order to Show Cause re Raymond Short and 2nd Order in Supplemental Proceedings
12-19-2019	05:48:00 PM	2521	Return of Electronic Notification
12-19-2019	05:46:00 PM	2520	Order to Show Cause re Raymond Short and 2ND ORDER IN SUPPLEMENTAL PROCEEDINGS
12-19-2019	05:28:00 PM	2519	Return of Electronic Notification
12-19-2019	05:23:00 PM	2518	Return of Electronic Notification
12-19-2019	05:22:00 PM	2517	Order to Show Cause re Mark Shurtleff
12-19-2019	05:18:00 PM	2515	Return of Electronic Notification
12-19-2019	05:18:00 PM	2516	Return of Electronic Notification
12-19-2019	05:17:00 PM	2514	Other - Not Signed Order (Proposed) Disqualifying Mark L. Shurtleff
12-19-2019	05:15:00 PM	2513	Other - Not Signed Order (Proposed) re Motion to Expedite
12-19-2019	05:12:00 PM	2512	Other - Not Signed Order (Proposed) re Sanctions
12-19-2019	04:13:00 PM	2511	Return of Electronic Notification
12-19-2019	04:07:00 PM	2510	Other - Not Signed Order (Proposed) Granting Prefiling Request and Motion for Extension
12-19-2019	12:18:00 PM	2509	Return of Electronic Notification
12-19-2019	12:15:00 PM	2508	Objection to Proposed Order
12-19-2019	10:48:00 AM	2507	Return of Electronic Notification
12-19-2019	10:45:00 AM	2506	Opposition to Motion for Extension of Time
12-19-2019	07:23:00 AM	2505	Return of Electronic Notification
12-19-2019	07:20:00 AM	2500	Appearance of Counsel/Notice of Limited Appearance Limited Scope
12-19-2019	07:20:00 AM	2502	Motion For Extension to file Objection to Protective Order doc no 2489
12-19-2019	07:20:00 AM	2504	Order (Proposed) Granting Prefiling Request and Motion for Extension
12-19-2019	07:20:00 AM	2501	Pre Filing Request
12-19-2019	07:20:00 AM	2503	Request/Notice to Submit Prefiling Request and Motion for Extension
12-18-2019	03:17:00 PM	2499	Return of Electronic Notification
12-18-2019	02:57:00 PM	2496	Exhibit 1 to Motion for Protective Order
12-18-2019	02:57:00 PM	2497	Exhibit 2 to Motion for Protective Order
12-18-2019	02:57:00 PM	2498	Exhibit 3 to Motion for Protective Order
12-18-2019	08:56:00 AM	2495	Return of Electronic Notification
12-18-2019	08:51:00 AM	2494	Order to Show Cause (Proposed) re Mark Shurtleff
12-18-2019	08:51:00 AM	2493	Request/Notice to Submit re Plaintiffs Unopposed Motion for Order to Show Cause re Mark Shurtleff
12-18-2019	08:51:00 AM	2492	Return of Electronic Notification
12-18-2019	08:46:00 AM	2489	Motion to Expedite Motion for Protective Order and Motion for Protective Order
12-18-2019	08:46:00 AM	2491	Order (Proposed) re Motion to Expedite
12-18-2019	08:46:00 AM	2490	Request/Notice to Submit re Motion to Expedite
12-18-2019	08:31:00 AM	2488	Return of Electronic Notification

12-18-2019	08:22:00 AM	2487	Order to Show Cause (Proposed) Order re Motion for Order to Show Cause re Raymond Short
12-18-2019	08:22:00 AM	2486	Request/Notice to Submit re Plaintiffs Unopposed Motion for Order to Show Cause re Raymond Short
12-17-2019	10:37:00 PM	2485	Return of Electronic Notification
12-17-2019	10:37:00 PM	2484	Return of Electronic Notification
12-17-2019	10:33:00 PM	2483	Motion to Quash Bogart Declaration and Attempted Service
12-17-2019	10:32:00 PM	2482	Appearance of Counsel/Notice of Limited Appearance of Mark L. Shurtleff for Raymond Short for Motion to Quash
12-17-2019	09:12:00 PM	2481	Return of Electronic Notification
12-17-2019	09:10:00 PM	2480	Objection to Service of OSC on Raymond Short
12-12-2019	05:01:00 PM	2479	Return of Electronic Notification
12-12-2019	05:00:00 PM	2478	Supplemental Order for Douglas R. Short
12-12-2019	04:12:00 PM	2477	Return of Electronic Notification
12-12-2019	04:08:00 PM	2476	Supplemental Order (Proposed) for Douglas R. Short
12-11-2019	01:17:00 AM	2475	Return of Electronic Notification
12-11-2019	01:12:00 AM	2474	Order (Proposed) Disqualifying Mark L. Shurtleff
12-11-2019	01:12:00 AM	2473	Request/Notice to Submit re Plaintiffs Objection to the Appearance of Mark L.. Shurtleff For Non-Party Raymond Short
12-11-2019	12:32:00 AM	2472	Return of Electronic Notification
12-11-2019	12:30:00 AM	2471	Request/Notice to Submit re Raymond Shorts Objection to Ruling re Supplemental Proceedings and Notice of Non-Appearance
12-06-2019	12:54:16 PM	2470	Notice for Case 070915820 CN: Judge KEITH KELLY
12-05-2019	01:07:00 AM	2469	Return of Electronic Notification
12-05-2019	01:06:00 AM	2468	Request/Notice to Submit re Motion for Extension to Object to Declaration re Fees Awarded Under Rule of Appellate Procedure Filed With the OCurt 11/15/2019
12-04-2019	11:42:00 PM	2467	Return of Electronic Notification
12-04-2019	11:39:00 PM	2466	Reply to the Opposition doc no 2024 to the Motion for Extension of Time doc no 2419.
12-03-2019	12:00:00 PM	2465	Return of Electronic Notification
12-03-2019	11:57:00 AM	2464	Motion for an Order to Show Cause re Mark L. Shurtleff
12-03-2019	11:45:00 AM	2463	Return of Electronic Notification
12-03-2019	11:44:00 AM	2462	Motion for an Order to Show Cause re Raymond Short
12-03-2019	11:40:00 AM	2461	Return of Electronic Notification
12-03-2019	11:36:00 AM	2454	Affidavit/Declaration of Sean N. Egan In Support of Motions For Order to Show Cause
12-03-2019	11:36:00 AM	2455	Exhibit A to Declaration of Sean N. Egan
12-03-2019	11:36:00 AM	2456	Exhibit B to Declaration of Sean N. Egan
12-03-2019	11:36:00 AM	2457	Exhibit C to Declaration of Sean N. Egan
12-03-2019	11:36:00 AM	2458	Exhibit D to Declaration of Sean N. Egan
12-03-2019	11:36:00 AM	2459	Exhibit E to Declaration of Sean N. Egan
12-03-2019	11:36:00 AM	2460	Exhibit F to Declaration of Sean N. Egan
12-03-2019	11:25:00 AM	2453	Return of Electronic Notification
12-03-2019	11:24:00 AM	2451	Exhibit 1 to Reply re Raymond Shorts Objection to Ruling
12-03-2019	11:24:00 AM	2452	Exhibit 2 to Reply re Raymond Shorts Objection to Ruling
12-03-2019	11:24:00 AM	2450	Reply re Raymond Shorts Objection to Ruling
12-03-2019	01:54:00 AM	2449	Return of Electronic Notification
12-03-2019	01:51:00 AM	2448	Request/Notice to Submit re re Unopposed Request for Fees Awarded by Court of Appeals
11-27-2019	01:55:00 PM	2447	Return of Electronic Notification
11-27-2019	01:53:00 PM	2446	Order re Plaintiffs Request for Costs and Fees
11-26-2019	02:12:00 PM	2445	Return of Electronic Notification
11-26-2019	02:08:00 PM	2444	Objection to Order Denying Motion for Exthension and Continuance of Supp Order Hearing on Ray Short
11-26-2019	10:57:00 AM	2443	Return of Electronic Notification
11-26-2019	10:53:00 AM	2442	Order DENYING Motion for Extension of Time to Object to Supp Order on Ray Short
11-26-2019	06:52:00 AM	2441	Return of Electronic Notification
11-26-2019	06:48:00 AM	2440	Objection to Limited Scope Appearance of Mark L. Shurtleff for Raymond Short
11-26-2019	06:48:00 AM	2439	Opposition to Motion for Extension of Time to Object to 10-31-19 Order
11-25-2019	07:57:00 PM	2438	Return of Electronic Notification
11-25-2019	07:56:00 PM	2436	Objection to Request-Notice to Submit
11-25-2019	07:56:00 PM	2437	Request/Notice to Submit Objection to Request-Notice to Submit
11-25-2019	04:53:00 PM	2435	Return of Electronic Notification
11-25-2019	04:51:00 PM	2432	Motion for Extension of Time to Object to Supp Order on Ray Short
11-25-2019	04:51:00 PM	2434	Order (Proposed) on Motion for Extension of Time to Object to Supp Order on Ray Short
11-25-2019	04:51:00 PM	2433	Request/Notice to Submit Motion for Extension of Time to Object to Supp Order on Ray Short
11-25-2019	04:23:00 PM	2431	Return of Electronic Notification
11-25-2019	04:22:00 PM	2430	Appearance of Counsel/Notice of Limited Appearance of Mark L. Shurtleff Specially Appearung for Raymond Short
11-25-2019	10:17:00 AM	2429	Return of Electronic Notification
11-25-2019	10:14:00 AM	2428	Request/Notice to Submit re Plaintiffs Request for Fees Awarded by Court of Appeals Under Rule of Appellate Procedure 33
11-24-2019	11:07:00 PM	2427	Return of Electronic Notification
11-24-2019	11:02:00 PM	2426	Opposition to Motion for Extension

11-22-2019	04:57:00 PM	2425	Return of Electronic Notification
11-22-2019	04:52:00 PM	2424	Order Granting Pre Filing Request
11-21-2019	04:22:00 PM	2423	Return of Electronic Notification
11-21-2019	04:20:00 PM	2421	Appearance of Counsel/Notice of Limited Appearance Limited Scope Appearance of John Christian Barlow
11-21-2019	04:20:00 PM	2419	Motion for Extension to Object to Mr. Bogarts Declaration
11-21-2019	04:20:00 PM	2422	Order (Proposed) Order Granting Pre Filing Request
11-21-2019	04:20:00 PM	2418	Prefiling Request
11-21-2019	04:20:00 PM	2420	Request/Notice to Submit Prefiling Request
11-15-2019	11:12:00 AM	2417	Return of Electronic Notification
11-15-2019	11:06:00 AM	2413	Affidavit/Declaration of John H. Bogart re Fees Awarded by Court of Appeals Under Rule of Appellate Procedure
11-15-2019	11:06:00 AM	2414	Exhibit 1 to Declaration
11-15-2019	11:06:00 AM	2415	Exhibit 2 to Declaration
11-15-2019	11:06:00 AM	2416	Order (Proposed) re Sanctions
11-14-2019	02:53:10 PM	2412	Utah Court of Appeals Order dated 9-26-2019
11-14-2019	02:52:10 PM	2411	Utah Court of Appeals Remittitur dated 11-14-2019 - (Decision Issued: 9-26-2019)
11-07-2019	10:03:00 AM	2410	Return of Electronic Notification
11-07-2019	10:01:00 AM	2409	Order in Supplemental Proceedings
11-07-2019	10:01:00 AM	2408	Return of Service for Service on the Clerk of The Court upon CHRIS DAVIES, CLERK OF THE COURT for
11-07-2019	12:02:00 AM	2407	Return of Electronic Notification
11-06-2019	11:59:00 PM	2406	Objection to Bogart Declaration
11-06-2019	03:26:33 PM	2405	Notice for Case 070915820 CN: Judge KEITH KELLY
11-05-2019	02:18:10 PM	2404	Return- Order in Supplemental Proceedings
11-02-2019	11:37:00 PM	2403	Return of Electronic Notification
11-02-2019	11:33:00 PM	2402	Order (Proposed) re Plaintiffs Request for Costs and Fees
11-02-2019	11:33:00 PM	2401	Request/Notice to Submit re Plaintiffs Unopposed Request for Costs and Fees
11-01-2019	11:32:00 PM	2400	Return of Electronic Notification
11-01-2019	11:28:00 PM	2399	Emergency Notice of Unavailability of Counsel
11-01-2019	12:22:10 PM	2398	Utah Court of Appeals Order of Dismissal dated 9-27-2019 - (The appeal is dismissed)
11-01-2019	12:22:10 PM	2397	Utah Court of Appeals Remittitur dated 11-01-2019 - (Decision Issued: 9-27-2019)
10-31-2019	10:07:00 AM	2396	Return of Electronic Notification
10-31-2019	10:02:00 AM	2395	Other - Not Signed Order (Proposed) re Plaintiffs Request for Cost and Fees
10-31-2019	09:52:00 AM	2394	Return of Electronic Notification
10-31-2019	09:51:00 AM	2393	Order on Motion for 3rd Extension of Time to File Objection to Bogart Declaration
10-31-2019	09:12:00 AM	2392	Return of Electronic Notification
10-31-2019	09:11:00 AM	2391	Supplemental Order 11/26/19-Raymond Short
10-31-2019	05:57:00 AM	2390	Return of Electronic Notification
10-31-2019	05:53:00 AM	2389	Order (Proposed) re Plaintiffs Request for Cost and Fees
10-31-2019	05:53:00 AM	2388	Request/Notice to Submit re Plaintiffs Request for Costs and Fees
10-30-2019	09:02:00 PM	2387	Return of Electronic Notification
10-30-2019	08:59:00 PM	2386	Order (Proposed) on Motion for 3rd Extension of Time to File Objection to Bogart Declaration
10-30-2019	08:57:00 PM	2385	Return of Electronic Notification
10-30-2019	08:53:00 PM	2383	Motion for 3rd Extension of Time to File Objection to Bogart Declaration
10-30-2019	08:53:00 PM	2384	Request/Notice to Submit Motion for 3rd Extension of Time to File Objection to Bogart Declaration
10-30-2019	10:27:00 AM	2382	Return of Electronic Notification
10-30-2019	10:23:00 AM	2381	Supplemental Order (Proposed)
10-29-2019	10:17:00 AM	2380	Return of Electronic Notification
10-29-2019	10:13:00 AM	2379	Order on Motion for 2nd Extension of Time to File Objection to Bogart Declaration
10-28-2019	08:46:00 PM	2378	Return of Electronic Notification
10-28-2019	08:44:00 PM	2377	Order (Proposed) on Motion for 2nd Extension of Time to File Objection to Bogart Declaration
10-28-2019	08:36:00 PM	2376	Return of Electronic Notification
10-28-2019	08:33:00 PM	2374	Motion for 2nd Extension of Time to File Objection to Bogart Declaration
10-28-2019	08:33:00 PM	2375	Request/Notice to Submit for Leave and to Submit Motion for 2nd Extension to file Objection to Bogart Declaration
10-23-2019	10:47:00 AM	2373	Return of Electronic Notification
10-23-2019	10:42:00 AM	2371	Other - Not Signed Order (Proposed) re Costs and Fees
10-23-2019	10:42:00 AM	2372	Return of Electronic Notification
10-23-2019	10:40:00 AM	2370	Order Motion for Extension of Time to Object to Bogart Declaration
10-22-2019	06:42:00 PM	2369	Return of Electronic Notification
10-22-2019	06:39:00 PM	2367	Memorandum IN REPLY to Objection to Motion for Extension of Time to Object to Bogart Declaration
10-22-2019	06:39:00 PM	2368	Request/Notice to Submit REPLY to Objection to Motion for Extension of Time to Object to Bogart Declaration
10-22-2019	07:27:00 AM	2366	Return of Electronic Notification
10-22-2019	07:24:00 AM	2365	Opposition to Shorts Filing Request and Motion for Extension of Time
10-22-2019	05:52:00 AM	2364	Return of Electronic Notification
10-22-2019	05:48:00 AM	2363	Request/Notice to Submit re Declaration of John H. Bogart re Award of Costs and Fees
10-21-2019	09:18:00 PM	2362	Return of Electronic Notification

10-21-2019	09:17:00 PM	2358	Motion for Extension of Time to File Objection to Bogart Declaration
10-21-2019	09:17:00 PM	2361	Order (Proposed) Motion for Extension of Time to Object to Bogart Declaration
10-21-2019	09:17:00 PM	2360	Request for Leave to File Motion for Extension of Time to Object to Bogart Declaration
10-21-2019	09:17:00 PM	2359	Request/Notice to Submit Motion for Extension of Time to Object to Bogart Declaration
10-14-2019	10:53:00 AM	2357	Return of Electronic Notification
10-14-2019	12:12:00 AM	2355	Affidavit/Declaration of John H. Bogart Re Costs and Fees Awarded by Order of October 8, 2019
10-14-2019	12:12:00 AM	2356	Order (Proposed) re Costs and Fees
10-08-2019	05:38:00 PM	2354	Return of Electronic Notification
10-08-2019	05:34:00 PM	2353	Order re Motion for Sanctions Against Short
10-01-2019	09:49:00 AM	2351	Return of Electronic Notification
10-01-2019	09:45:00 AM	2350	Order Denying Request for Leave to File Motion to Strike
10-01-2019	03:19:00 AM	2349	Return of Electronic Notification
10-01-2019	03:17:00 AM	2348	Motion to Strike Motion to Bifurate
10-01-2019	03:14:00 AM	2347	Return of Electronic Notification
10-01-2019	03:13:00 AM	2346	Order (Proposed) re Motion for Sanctions Against Short
10-01-2019	03:13:00 AM	2344	Reply in Support of Motion for Sanctions Against Short
10-01-2019	03:13:00 AM	2345	Request/Notice to Submit re Motion for Sanctions Against Short
09-30-2019	11:59:00 PM	2343	Return of Electronic Notification
09-30-2019	11:58:00 PM	2342	Motion to Bifurcate Motion to Strike and Opposition to Motion for Sanctions
09-30-2019	06:14:00 PM	2341	Return of Electronic Notification
09-30-2019	06:10:00 PM	2340	Order (Proposed) Reqest for Leave to File Motion to Strike
09-30-2019	06:10:00 PM	2338	Reqest for Leave to File Motion to Strike
09-30-2019	06:10:00 PM	2339	Request/Notice to Submit Reqest for Leave to File Motion to Strike
09-28-2019	10:54:00 PM	2337	Return of Electronic Notification
09-28-2019	10:49:00 PM	2336	Motion to Strike and Opposition to Motion for Sanctions
09-26-2019	02:58:10 PM	2352	Utah Court of Appeals Order dated 9-26-2019
09-25-2019	10:59:00 AM	2335	Return of Electronic Notification
09-25-2019	10:58:00 AM	2334	Other - Not Signed Order (Proposed) re: Motion to Examine Raymond Short
09-24-2019	10:16:00 PM	2333	Return of Electronic Notification
09-24-2019	10:15:00 PM	2332	Order Granting Pre Filing Request
09-19-2019	11:01:00 AM	2331	Return of Electronic Notification
09-19-2019	11:00:00 AM	2329	Motion for Examination of Raymond W. Short as Surety for Judgment Debtor Douglas R. Short with Exhibits 1 and 2
09-19-2019	11:00:00 AM	2330	Order (Proposed) re: Motion to Examine Raymond Short
09-16-2019	08:11:00 PM	2328	Return of Electronic Notification
09-16-2019	08:06:00 PM	2323	Appearance of Counsel/Notice of Limited Appearance Limited Scope Appearance
09-16-2019	08:06:00 PM	2324	Notice of Pre Filing Request
09-16-2019	08:06:00 PM	2327	Order (Proposed) Order Granting Pre Filing Request
09-16-2019	08:06:00 PM	2326	Request/Notice to Submit Pre Filing Request
09-16-2019	08:06:00 PM	2325	Second Motion for Extension
09-10-2019	01:03:10 PM	2322	Utah Court of Appeals Notice dated 9-10-2019 - (Case assigned to Court of Appeals - Case remain the same)
09-10-2019	09:50:10 AM	2321	Supreme Court of Utah Order dated 9-10-2019 - (Pursuant to rule 42(a), this matter is transferred to the Utah Court of Appeals for disposition)
09-10-2019	09:49:10 AM	2320	Utah Court of Appeals COPY of NOA filed 9-6-2019
09-03-2019	01:07:00 PM	2319	Return of Electronic Notification
09-03-2019	01:05:00 PM	2318	Reply re Motion to Dismiss Amended Complaint
08-30-2019	09:27:00 AM	2317	Return of Electronic Notification
08-30-2019	09:25:00 AM	2316	Other - Not Signed Order (Proposed) re Motion for Sanctions
08-29-2019	05:22:00 PM	2315	Return of Electronic Notification
08-29-2019	05:22:00 PM	2314	Return of Electronic Notification
08-29-2019	05:21:00 PM	2313	Order for Extension of Time to file Memorandum in Opposition to Plaintiffs Motion for Sanctions
08-29-2019	05:20:00 PM	2312	Order ON Request to File Motion for Extension of Time
08-29-2019	01:22:00 AM	2311	Return of Electronic Notification
08-29-2019	01:17:00 AM	2310	Request/Notice to Submit re Request for Leave (to file Motion for Extension re Opposition to Motion for Sanctions)
08-29-2019	01:07:00 AM	2308	Return of Electronic Notification
08-29-2019	01:07:00 AM	2309	Return of Electronic Notification
08-29-2019	01:04:00 AM	2307	Opposition to Request for Leave (to file Motion for Extension re Motion for Sanctions)
08-29-2019	01:02:00 AM	2306	Order (Proposed) re Motion for Sanctions
08-29-2019	01:02:00 AM	2305	Request/Notice to Submit re Motion for Sanctions
08-28-2019	07:16:00 PM	2304	Return of Electronic Notification
08-28-2019	07:14:00 PM	2303	Order (Proposed) for Extension of Time to file Memorandum in Opposition to Plaintiffs Motion for Sanctions
08-28-2019	07:06:00 PM	2302	Return of Electronic Notification
08-28-2019	07:01:00 PM	2300	Motion for Extension of Time to file Memorandum in Opposition to Plaintiffs Motion for Sancdtions
08-28-2019	07:01:00 PM	2301	Return of Electronic Notification
08-28-2019	06:57:00 PM	2299	Order (Proposed) ON Request to File Motion for Extension of Time

08-28-2019	06:56:00 PM	2298	Return of Electronic Notification
08-28-2019	06:53:00 PM	2296	Request to File Motion for Extension of Time
08-28-2019	06:53:00 PM	2297	Request/Notice to Submit Request to File Motion for Extension of Time
08-28-2019	06:22:00 PM	2295	Return of Electronic Notification
08-28-2019	06:18:00 PM	2294	Order Corrected Order: ORDER GRANTING LEAVE TO FILE MOTION FOR EXTENSION TO OPPOSE THE PLAINTIFFS MOTION TO STRIKE AND TO ENTER AN OSC RE WHY DOUGLAS SHORT SHOULD NOT BE FOUND IN CONTEMPT OF COURT RE APPEAL OF RULE 83 ORDER.
08-27-2019	04:44:00 PM	2293	Return of Electronic Notification
08-27-2019	04:40:00 PM	2292	Order (Proposed) Corrected Order: ORDER GRANTING LEAVE TO FILE MOTION FOR EXTENSION TO OPPOSE THE PLAINTIFFS MOTION TO STRIKE AND TO ENTER AN OSC RE WHY DOUGLAS SHORT SHOULD NOT BE FOUND IN CONTEMPT OF COURT RE APPEAL OF RULE 83 ORDER.
08-27-2019	03:23:00 PM	2291	Return of Electronic Notification
08-27-2019	03:18:00 PM	2290	Other - Not Signed Order (Proposed) Order on PreFiling Request to File Motion for Extension re rule 83
08-27-2019	10:39:00 AM	2289	Return of Electronic Notification
08-27-2019	10:35:00 AM	2284	Appearance of Counsel/Notice of Limited Appearance Second Notice of Limited Scope Appearance
08-27-2019	10:35:00 AM	2286	Motion for Extension to Oppose Plaintiffs Motion re rule 83
08-27-2019	10:35:00 AM	2288	Order (Proposed) Order on PreFiling Request to File Motion for Extension re rule 83
08-27-2019	10:35:00 AM	2285	Pre Filing Request
08-27-2019	10:35:00 AM	2287	Request/Notice to Submit Notice to Submit Pre Filing Request
08-21-2019	02:42:10 PM	2283	Order Striking Plaintiffs' 7/31/19 Request to Submit
08-21-2019	02:38:10 PM	2282	Order Denying Plaintiffs' 7/1/19 Request for Judicial Notice
08-15-2019	06:03:00 PM	2281	Return of Electronic Notification
08-15-2019	06:00:00 PM	2280	Order on Prefiling Request to File Motion for Extention
08-14-2019	10:42:00 PM	2279	Return of Electronic Notification
08-14-2019	10:36:00 PM	2274	Appearance of Counsel/Notice of Limited Appearance Limited Scope Appearance of Counsel John Christian Barlow for Doug Short
08-14-2019	10:36:00 PM	2276	Motion for Extension to Oppose Motion to Strike the Notice of Appeal re May 22, 2019 Judgment
08-14-2019	10:36:00 PM	2278	Order (Proposed) Order on Prefiling Request to File Motion for Extention
08-14-2019	10:36:00 PM	2275	Prefiling Request to File Motion for Extension
08-14-2019	10:36:00 PM	2277	Request/Notice to Submit Notice to Submit Prefiling Request to File motion for Extension
08-13-2019	04:08:00 PM	2273	Return of Electronic Notification
08-13-2019	04:03:00 PM	2270	Application for Writ -- Exhibit A
08-13-2019	04:03:00 PM	2269	Application for Writ of Execution Against Raymond W. Short as Surety for Douglas R. Short
08-13-2019	04:03:00 PM	2272	Writ of Execution (Proposed) Against Raymond W. Short as Surety for Douglas R. Short
08-13-2019	04:03:00 PM	2271	Writ of Execution Against Raymond W. Short as Surety for Douglas R. Short
08-13-2019	10:23:10 AM	2268	Utah Court of Appeals Notice - (Case assigned to the Court of Appeals - Case remain the same)
08-13-2019	01:18:00 AM	2267	Return of Electronic Notification
08-13-2019	01:16:00 AM	2266	Affidavit/Declaration of John H. Bogart in Support of Motion for OSC re Why Douglas Short Should Not Be Found In Contempt
08-13-2019	01:16:00 AM	2265	Motion to Strike and Enter an OSC re Why Douglas Short Should Not Be Found in Contempt of Court
08-12-2019	06:48:00 PM	2264	Return of Electronic Notification
08-12-2019	06:43:00 PM	2263	Notice of Appeal - Civil (not Interlocutory) Rule 83 Vexatious Order and Failure to Recuse
08-12-2019	04:58:00 PM	2262	Return of Electronic Notification
08-12-2019	04:57:00 PM	2258	Application for Writ of Execution Against Raymond W. Short as Surety for Douglas R. Short
08-12-2019	04:57:00 PM	2259	Other - Not Signed Writ of Execution (Proposed) Against Raymond W. Short as Surety for Douglas R. Short
08-12-2019	04:57:00 PM	2261	Writ of Execution (Proposed) Against Raymond W. Short as Surety for Douglas R. Short
08-12-2019	04:57:00 PM	2260	Writ of Execution Against Raymond W. Short - Exhibit A
08-12-2019	12:43:00 PM	2257	Return of Electronic Notification
08-12-2019	12:38:00 PM	2253	Application for Writ of Execution Against Raymond W. Short, as Surety for Douglas R. Short
08-12-2019	12:38:00 PM	2254	Other - Not Signed Writ of Execution (Proposed) Against Raymond W. Short as Surety for Douglas R. Short
08-12-2019	12:38:00 PM	2256	Writ of Execution (Proposed) Against Raymond W. Short as Surety for Douglas R. Short
08-12-2019	12:38:00 PM	2255	Writ of Execution - Exhibit A
08-02-2019	10:06:10 AM	2252	Supreme Court of Utah Order dated 8-2-2019 - (Pursuant to rule 42(a) AND Checklist for Appellate Jurisdiction)
08-02-2019	10:05:10 AM	2251	Supreme Court of Utah Letter dated 8-2-2019 to Douglas R. Short - (Appeal filed - Case 20190638 should be indicated on future filings - rules/info etal)
08-02-2019	08:17:00 AM	2250	Return of Electronic Notification
08-02-2019	08:15:00 AM	2249	Request/Notice to Submit re Request That The Court Take Judicial Notice
07-31-2019	02:02:00 PM	2248	Return of Electronic Notification
07-31-2019	01:57:00 PM	2247	Motion to Strtike Notice of Appeal
07-31-2019	10:39:10 AM	2246	Memorandum Decision and Order (a) Granting Mr. Short's Motion for Extension in Order for Him to Obtain Counsel, (b) Denying Request for Case Management Conference, and (c) Requiring Compliance with Vexatious Litigant Order
07-31-2019	09:37:00 AM	2245	Return of Electronic Notification
07-31-2019	09:32:00 AM	2244	Opposition to Motion for Extension re Motion for Sanctions
07-31-2019	09:32:00 AM	2243	Request/Notice to Submit re Motion for Sanctions
07-31-2019	12:03:00 AM	2242	Return of Electronic Notification

07-31-2019	12:03:00 AM	2241	Return of Electronic Notification
07-31-2019	12:01:00 AM	2240	Motion (Hearing Requested) For Extension re Motion for Sanctions and REquest for Case Managtement Conference AMENDED
07-30-2019	11:58:00 PM	2239	Motion (Hearing Requested) For Extension re Motion for Sanctions and Request for Case Management Conference
07-30-2019	05:08:00 PM	2238	Return of Electronic Notification
07-30-2019	05:04:00 PM	2237	Notice of Appeal - Civil (not Interlocutory) May 22nd Judgment and related rulings
07-16-2019	08:20:00 PM	2236	Return of Electronic Notification
07-16-2019	08:18:00 PM	2235	Motion for Sanctions Against Short
07-16-2019	02:24:10 PM	2234	Memorandum Decision and Order Denying Mr. Short's Rule 52 Motion to Amend Findings Related to May 22 Judgment
07-16-2019	01:56:10 PM	2233	Memorandum Decision and Order Denying Mr. Short's 59(a) Motion for a New Trial
07-16-2019	11:53:10 AM	2231	Memorandum Decision and Order Denying Mr. Short's Rule 59(e) Motion to Alter Judgment
07-16-2019	11:52:10 AM	2232	Supreme Court of Utah Order dated 7-16-2019 - (Pursuant to rule 42(a) AND Checklist for Appellate Jurisdiction)
07-16-2019	11:50:10 AM	2230	Supreme Court of Utah Letter dated 7-16-2019 to Douglas R. Short - (Appeal filed - Case 20190580 should be indicated on future filings - rules/info etal AND 300.00 cost bond is due)
07-14-2019	02:50:00 AM	2229	Return of Electronic Notification
07-14-2019	02:49:00 AM	2226	Request/Notice to Submit re Rule 59(e) Motion
07-14-2019	02:49:00 AM	2227	Request/Notice to Submit re Rule 52 Motion
07-14-2019	02:49:00 AM	2228	Request/Notice to Submit re Rule 59(a) Motion
07-13-2019	12:00:00 AM	2225	Return of Electronic Notification
07-12-2019	11:55:00 PM	2223	Reply re Rule 59(e) Motion to Alter May 22nd Judgment
07-12-2019	11:55:00 PM	2224	Return of Electronic Notification
07-12-2019	11:51:00 PM	2222	Reply re Rule 52 Motion to Amend Findings related to May 22nd Judgment
07-12-2019	04:36:10 PM	2221	Memorandum Decision and Order on Denying Motion to Correct Untrue Record Contained in the June 19, 2019 Minute Entry Re: Compliance with Utah R. Civ. P. 63
07-12-2019	04:34:10 PM	2220	Memorandum Decision and Order Finding Douglas Short a Vexatious Litigant Under Utah R. Civ. P. 83
07-11-2019	08:40:00 PM	2219	Return of Electronic Notification
07-11-2019	08:39:00 PM	2218	Notice of Appeal - Civil (not Interlocutory) re Rule 60(b)(4) Motion to Vacate void Order re Fees and Rule 59 Motion related thereto to Vacate
07-09-2019	10:18:10 AM	2217	Return of US Mail
07-02-2019	07:00:00 PM	2216	Return of Electronic Notification
07-02-2019	06:59:00 PM	2215	Motion to Corrrect Untrue Record contained in the June 19, 2019 Minute Entry re Compliance with Rule 63
07-02-2019	02:55:10 PM	2214	Final Exhibit List
07-02-2019	08:19:10 AM	2213	TRANSCRIPT for Hearing of 06-04-2019
07-02-2019	08:18:39 AM	2212	TRANSCRIPT for Hearing of 06-14-2019
07-01-2019	07:30:00 PM	2211	Return of Electronic Notification
07-01-2019	07:29:00 PM	2210	Request to Take Judicial Notice
07-01-2019	07:25:00 PM	2209	Return of Electronic Notification
07-01-2019	07:23:00 PM	2208	Other - Not Signed Order (Proposed) re Plaintiffs Request for Costs and Fees and Shorts Pending Motions
06-28-2019	02:05:00 PM	2207	Return of Electronic Notification
06-28-2019	02:00:00 PM	2206	Short Proffer re July 1st Hearing
06-26-2019	03:49:10 PM	2205	Minute Entry
06-26-2019	01:02:00 PM	2204	Return of Electronic Notification
06-26-2019	01:00:00 PM	2202	Objection to Plaintiffs Request for Expedited Decision re Motion to Disqualify Judge Kelly
06-26-2019	01:00:00 PM	2203	Request/Notice to Submit Objection to Plaintiffs Request for Expedited Decision re Motion to Disqualify Judge Kelly
06-26-2019	10:46:10 AM	2201	Certification to Reviewing Judge Pursuant to Utah R. Civ. P. 63(c)(1)
06-26-2019	07:22:00 AM	2200	Return of Electronic Notification
06-26-2019	07:17:00 AM	2199	Request/Notice to Submit Request for Expedited Determination and Request to Submit re Shorts Motion to Disqualify Judge Kelly
06-26-2019	04:30:00 AM	2198	Return of Electronic Notification
06-25-2019	11:58:00 PM	2197	Affidavit/Declaration and Certificate of Good Faith re Motion to Disqualify
06-25-2019	11:58:00 PM	2196	Motion to Disqualify/Recuse Judge Kelly
06-25-2019	09:59:00 AM	2195	Return of Electronic Notification
06-25-2019	09:56:00 AM	2194	Request/Notice to Submit Advance Notice of Evidence re Motion to Hold Short a Vexatious Litigant
06-25-2019	12:34:00 AM	2193	Return of Electronic Notification
06-25-2019	12:33:00 AM	2192	Advance Notice of Evidence for Hearing on Vexatious Motion
06-24-2019	11:54:00 AM	2191	Return of Electronic Notification
06-24-2019	11:48:00 AM	2188	Opposition to Rul 59(e) Motion to Alter Judgment
06-24-2019	11:48:00 AM	2189	Opposition to Rule 52 Motion to Amend Findings Related to May 22 Judgment
06-24-2019	11:48:00 AM	2190	Opposition to Rule 59(a) Motion for a New Trial
06-24-2019	01:24:00 AM	2187	Return of Electronic Notification
06-24-2019	01:18:00 AM	2186	Exhibit 28 (Opening Brief) to Proffer
06-24-2019	01:18:00 AM	2184	Proffer re Motion to Hold Douglas Short a Vexatious Litigant
06-24-2019	01:18:00 AM	2185	Table of Conents of Exhibits to Proffer
06-19-2019	11:58:00 PM	2183	Return of Electronic Notification
06-19-2019	11:57:00 PM	2182	Motion (Hearing Requested) Rule 59(e) to Alter Rule 33 Judgment By Vacating It For Lack of Jurisdiction

URCP 7. AMEND.

REDLINE VERSION 11/22/22

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) a reply to an answer if ordered by the court.

(b) Motions. A request for an order must be made by motion. The motion must be in writing unless made during a hearing or trial, must state the relief requested, and must state the grounds for the relief requested. Except for the following, a motion must be made in accordance with this rule.

(1) A motion, other than a motion described in paragraphs (b)(2), (b)(3) or (b)(4), made in proceedings before a court commissioner must follow Rule 101.

(2) A request under Rule 26 for extraordinary discovery must follow Rule 37(a).

(3) A request under Rule 37 for a protective order or for an order compelling disclosure or discovery—but not a motion for sanctions—must follow Rule 37(a).

(4) A request under Rule 45 to quash a subpoena must follow Rule 37(a).

(5) A motion for summary judgment must follow the procedures of this rule as supplemented by the requirements of Rule 56.

(c) Name and content of motion.

(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(2) **Caution language.** For all dispositive motions, the motion must include the following caution language at the top right corner of the first page, in bold type: **This motion requires you to respond. Please see the Notice to Responding Party.**

(3) **Bilingual notice.** All motions must include or attach the bilingual Notice to Responding Party approved by the Judicial Council.

(4) **Failure to include caution language and notice**. Failure to include the caution language in paragraph (c)(2) or the bilingual notice in paragraph (c)(3) may be grounds to continue the hearing on the motion, or may provide the non-moving party with a basis under Rule 60(b) for excusable neglect to set aside the order resulting from the motion. Parties may opt out of receiving the notices set forth in paragraphs (c)(2) and (c)(3) while represented by counsel.

(5) **Title of motion.** The moving party must title the motion substantially as: "Motion [short phrase describing the relief requested]."

(6) **Contents of motion.** The motion must include the supporting memorandum. The motion must include under appropriate headings and in the following order:

(A) a concise statement of the relief requested and the grounds for the relief requested; and

(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.

(7) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the motion.

(8) **Length of motion.** If the motion is for relief authorized by Rule 12(b) or 12(c), Rule56 or Rule 65A, the motion may not exceed 25 pages, not counting the attachments, unless a longer motion is permitted by the court. Other motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the court.

(d) Name and content of memorandum opposing the motion.

(1) A nonmoving party may file a memorandum opposing the motion within 14 days after the motion is filed. The nonmoving party must title the memorandum substantially as: "Memorandum opposing motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(A) a concise statement of the party's preferred disposition of the motion and the grounds supporting that disposition;

(B) one or more sections that include a concise statement of the relevant facts claimed by the nonmoving party and argument citing authority for that disposition; and

(C) objections to evidence in the motion, citing authority for the objection.

(2) If the non-moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the memorandum opposing the motion may not exceed 25 pages, not counting the attachments,

unless a longer memorandum is permitted by the court. Other opposing memoranda may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

(e) Name and content of reply memorandum.

(1) Within 7 days after the memorandum opposing the motion is filed, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion. The moving party must title the memorandum substantially as "Reply memorandum supporting motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(A) a concise statement of the new matter raised in the memorandum opposing the motion;

(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party not previously set forth that respond to the opposing party's statement of facts and argument citing authority rebutting the new matter;

(C) objections to evidence in the memorandum opposing the motion, citing authority for the objection; and

(D) response to objections made in the memorandum opposing the motion, citing authority for the response.

(2) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the reply memorandum may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other reply memoranda may not exceed 10 pages, ot counting the attachments, unless a longer memorandum is permitted by the court.

(f) Objection to evidence in the reply memorandum; response. If the reply memorandum includes an objection to evidence, the nonmoving party may file a response to the objection no later than 7 days after the reply memorandum is filed. If the reply memorandum includes evidence not previously set forth, the nonmoving party may file an objection to the evidence no later than 7 days after the reply memorandum is filed, and the moving party may file a response to the objection no later than 7 days after the objection is filed. The objection or response may not be more than 3 pages.

(g) Request to submit for decision. When briefing is complete or the time for briefing has expired, either party may file a "Request to Submit for Decision," but, if no party files a request, the motion will not be submitted for decision. The request to submit for decision must state whether a hearing has been requested and the dates on which the following documents were filed:

(1) the motion;

(2) the memorandum opposing the motion, if any;

(3) the reply memorandum, if any; and

(g)(4) the response to objections in the reply memorandum, if any.

(h) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing must be

separately identified in the caption of the document containing the request. The court must grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided. A motion hearing may be held remotely, consistent with the safeguards in Rule 43(b).

(i) Notice of supplemental authority. A party may file notice of citation to significant authority that comes to the party's attention after the party's motion or memorandum has been filed or after oral argument but before decision. The notice may not exceed 2 pages. The notice must state the citation to the authority, the page of the motion or memorandum or the point orally argued to which the authority applies, and the reason the authority is relevant. Any other party may promptly file a response, but the court may act on the motion without waiting for a response. The response may not exceed 2 pages.

(j) Orders.

(1) Decision complete when signed; entered when recorded. However designated, the court's decision on a motion is complete when signed by the judge. The decision is entered when recorded in the docket.

(2) Preparing and serving a proposed order. Within 14 days of being directed by the court to prepare a proposed order confirming the court's decision, a party must serve the proposed order on the other parties for review and approval as to form. If the party directed to prepare a proposed order fails to timely serve the order, any other party may prepare a proposed order confirming the court's decision and serve the proposed order on the other parties for review and approval as to form.

(3) Effect of approval as to form. A party's approval as to form of a proposed order certifies that the proposed order accurately reflects the court's decision. Approval as to form does not waive objections to the substance of the order.

(4) Objecting to a proposed order. A party may object to the form of the proposed order by filing an objection within 7 days after the order is served.

(5) Filing proposed order. The party preparing a proposed order must file it:

(A) after all other parties have approved the form of the order (The party preparing the proposed order must indicate the means by which approval was received: in person; by telephone; by signature; by email; etc.);

(B) after the time to object to the form of the order has expired (The party preparing the proposed order must also file a certificate of service of the proposed order.); or

(C) within 7 days after a party has objected to the form of the order (The party preparing the proposed order may also file a response to the objection.).

(6) Proposed order before decision prohibited; exceptions. A party may not file a proposed order concurrently with a motion or a memorandum or a request to submit for decision, but a proposed order must be filed with:

(A) a stipulated motion;

(B) a motion that can be acted on without waiting for a response;

(C) an ex parte motion;

(D) a statement of discovery issues under Rule 37(a); and

(E) the request to submit for decision a motion in which a memorandum opposing the motion has not been filed.

(7) Orders entered without a response; ex parte orders. An order entered on a motion under paragraph (l) or (m) can be vacated or modified by the judge who made it with or without notice.

(8) Order to pay money. An order to pay money can be enforced in the same manner as if it were a judgment.

(k) Stipulated motions. A party seeking relief that has been agreed to by the other parties may file a stipulated motion which must:

(1) be titled substantially as: "Stipulated motion [short phrase describing the relief requested]";

(2) include a concise statement of the relief requested and the grounds for the relief requested;

(3) include a signed stipulation in or attached to the motion and;

(4) be accompanied by a request to submit for decision and a proposed order that has been approved by the other parties.

(l) Motions that may be acted on without waiting for a response.

(1) The court may act on the following motions without waiting for a response:

(A) motion to permit an over-length motion or memorandum;

(B) motion for an extension of time if filed before the expiration of time;

(C) motion to appear pro hac vice;

(D) motion to strike a document filed by a vexatious litigant in violation of Rule 83(d); and

~~(D)~~(E) other similar motions.

(2) A motion that can be acted on without waiting for a response must:

(A) be titled as a regular motion;

(B) include a concise statement of the relief requested and the grounds for the relief requested;

(C) cite the statute or rule authorizing the motion to be acted on without waiting for a response; and

(D) be accompanied by a request to submit for decision and a proposed order.

(m) Ex parte motions. If a statute or rule permits a motion to be filed without serving the motion on the other parties, the party seeking relief may file an ex parte motion which must:

(1) be titled substantially as: "Ex parte motion [short phrase describing the relief requested]";

(2) include a concise statement of the relief requested and the grounds for the relief requested;

(3) cite the statute or rule authorizing the ex parte motion;

(4) be accompanied by a request to submit for decision and a proposed order.

(n) Motion in opposing memorandum or reply memorandum prohibited. A party may not make a motion in a memorandum opposing a motion or in a reply memorandum. A party who objects to evidence in another party's motion or memorandum may not move to strike that evidence. Instead, the party must include in the subsequent memorandum an objection to the evidence.

(o) Overlength motion or memorandum. The court may permit a party to file an overlength motion or memorandum upon a showing of good cause. An overlength motion or memorandum must include a table of contents and a table of authorities with page references.

(p) Limited statement of facts and authority. No statement of facts and legal authorities beyond the concise statement of the relief requested and the grounds for the relief requested required in paragraph (c) is required for the following motions:

(1) motion to allow an over-length motion or memorandum;

(2) motion to extend the time to perform an act, if the motion is filed before the time to perform the act has expired;

(3) motion to continue a hearing;

(4) motion to appoint a guardian ad litem;

(5) motion to substitute parties;

(6) motion to refer the action to or withdraw it from alternative dispute resolution under Rule 4-510.05;

(7) motion for a conference under Rule 16; and

(8) motion to approve a stipulation of the parties.

Rule 7A. Motion to enforce order and for sanctions.

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, including in supplemental proceedings under Rule 64, a party must file an ex parte motion to enforce order and for sanctions (if requested), pursuant to this rule and Rule 7. The motion must be filed in the same case in which that order was entered. The timeframes set forth in this rule, rather than those set forth in Rule 7, govern motions to enforce orders and for sanctions.

(b) Affidavit. The motion must state the title and date of entry of the order that the moving party seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting affidavit or declaration that is based on personal knowledge and shows that the affiant or declarant is competent to testify on the matters set forth. The verified motion, affidavit, or declaration must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

(c) Proposed order. The motion must be accompanied by a request to submit for decision and a proposed order to attend hearing, which must:

(1) state the title and date of entry of the order that the motion seeks to enforce;

(2) state the relief sought in the motion;

(3) state whether the motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(4) order the other party to appear personally or through counsel at a specific place (the court's address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving party has violated the order; and

(5) state that no written response to the motion is required but is permitted if filed within 14 days of service of the order, unless the court sets a different time, and that any written response must follow the requirements of Rule 7.

(d) Service of the order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting affidavits served on the nonmoving party at least 28 days before the hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28 day period if:

(1) the motion requests an earlier date; and

(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

(e) Opposition. A written opposition is not required, but if filed, must be filed within 14 days of service of the order, unless the court sets a different time, and must follow the requirements of Rule 7.

(f) Reply. If the nonmoving party files a written opposition, the moving party may file a reply within 7 days of the filing of the opposition to the motion, unless the court sets a different time. Any reply must follow the requirements of Rule 7.

(g) Hearing. At the hearing the court may receive evidence, hear argument, and rule upon the motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all claims made in the motion. At the court's discretion, the court may convene a telephone conference before the hearing to preliminarily address any issues related to the motion, including whether the court would like to order a briefing schedule other than as set forth in this rule.

(h) Limitations. This rule does not apply to an order that is issued by the court on its own initiative. This rule does not apply in criminal cases or motions filed under Rule 37. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket, or to limit the authority of the court to hold a party in contempt for failure to appear pursuant to a court order.

(i) Orders to show cause. The process set forth in this rule replaces and supersedes the prior order to show cause procedure. An order to attend hearing serves as an order to show cause as that term is used in Utah law.

Rule 83. Vexatious litigants.

(a) Definitions.

(1) The court may find a person to be a "vexatious litigant" if the person, with or without legal representation, including an attorney acting pro se, does any of the following:

(A) In the immediately preceding seven years, the person has filed at least five claims for relief, other than small claims actions, that have been finally determined against the person, and the person does not have within that time at least two claims, other than small claims actions, that have been finally determined in that person’s favor.

(B) After a claim for relief or an issue of fact or law in the claim has been finally determined, the person two or more additional times re-litigates or attempts to re-litigate the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined.

(C) In any action, the person three or more times does any one or any combination of the following:

(i) files unmeritorious pleadings or other papers,

(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

(D) The person purports to represent or to use the procedures of a court other than a court of the United States, a court created by the Constitution of the United States or by Congress under the authority of the Constitution of the United States, a tribal court recognized by the United States, a court created by a state or territory of the United States, or a court created by a foreign nation recognized by the United States.

(2) "Claim" and "claim for relief" mean a petition, complaint, counterclaim, cross claim or third-party complaint.

(b) Vexatious litigant orders. The court may, on its own motion or on the motion of any party, enter an order requiring a vexatious litigant to:

(1) furnish security to assure payment of the moving party's reasonable expenses, costs and, if authorized, attorney fees incurred in a pending action;

(2) obtain legal counsel before proceeding in a pending action;

(3) obtain legal counsel before filing any future claim for relief;

(4) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any paper, pleading, or motion in a pending action;

(5) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any future claim for relief in any court; or

(6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct.

(c) Necessary findings and security.

(1) Before entering an order under subparagraph (b), the court must find by clear and convincing evidence that:

(A) the party subject to the order is a vexatious litigant; and

(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

(2) A preliminary finding that there is no reasonable probability that the vexatious litigant will prevail is not a decision on the ultimate merits of the vexatious litigant's claim.

(3) The court shall identify the amount of the security and the time within which it is to be furnished. If the security is not furnished as ordered, the court shall dismiss the vexatious litigant's claim with prejudice.

(d) Prefiling orders in a pending action.

(1) If a vexatious litigant is subject to a prefiling order in a pending action requiring leave of the court to file any paper, pleading, or motion, the vexatious litigant shall submit any proposed paper, pleading, or motion to the judge assigned to the case and must:

(A) demonstrate that the paper, pleading, or motion is based on a good faith dispute of the facts;

(B) demonstrate that the paper, pleading, or motion is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(C) include an oath, affirmation or declaration under criminal penalty that the proposed paper, pleading or motion is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(2) A prefiling order in a pending action shall be effective until a final determination of the action on appeal, unless otherwise ordered by the court.

(3) After a prefiling order has been effective in a pending action for one year, the person subject to the prefiling order may move to have the order vacated. The motion shall be decided by the judge to whom the pending action is assigned. In granting the motion, the judge may impose any other vexatious litigant orders permitted in paragraph (b).

(4) All papers, pleadings, and motions filed by a vexatious litigant subject to a prefiling order under this paragraph (d) shall include a judicial order authorizing the filing and any required security. If the order or security is not included, the clerk or court shall reject the paper, pleading, or motion.

(e) Prefiling orders as to future claims.

(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims shall submit an application seeking an order before filing. The presiding judge of the judicial district in which the claim is to be filed shall decide the application. The presiding judge may consult with the judge who entered the vexatious litigant order in deciding the application. In granting an application, the presiding judge may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

(2) To obtain an order under paragraph (e)(1), the vexatious litigant's application must:

(A) demonstrate that the claim is based on a good faith dispute of the facts;

(B) demonstrate that the claim is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(C) include an oath, affirmation, or declaration under criminal penalty that the proposed claim is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(D) include a copy of the proposed petition, complaint, counterclaim, cross-claim, or third party complaint; and

(E) include the court name and case number of all claims that the applicant has filed against each party within the preceding seven years and the disposition of each claim.

(3) A prefiling order limiting the filing of future claims is effective indefinitely unless the court orders a shorter period.

(4) After five years a person subject to a pre-filing order limiting the filing of future claims may file a motion to vacate the order. The motion shall be filed in the same judicial district from which the order entered and be decided by the presiding judge of that district.

(5) A claim filed by a vexatious litigant subject to a prefiling order under this paragraph (e) shall include an order authorizing the filing and any required security. If the order or security is not included, the clerk of court shall reject the filing.

(f) Notice of vexatious litigant orders.

(1) The clerks of court shall notify the Administrative Office of the Courts that a pre-filing order has been entered or vacated.

(2) The Administrative Office of the Courts shall disseminate to the clerks of court a list of vexatious litigants subject to a prefiling order.

(g) Statute of limitations or time for filing tolled. Any applicable statute of limitations or time in which the person is required to take any action is tolled until 7 days after notice of the decision on the motion or application for authorization to file.

(h) Contempt sanctions. Disobedience by a vexatious litigant of a pre-filing order may be punished as contempt of court.

(i) Other authority. This rule does not affect the authority of the court under other statutes and rules or the inherent authority of the court.

(j) Applicability of vexatious litigant order to other courts. After a court has issued a vexatious litigant order, any other court may rely upon that court's findings and order its own restrictions against the litigant as provided in paragraph (b).

TAB 4

rom: Jim Hunnicutt <jim@dolowitzhunnicutt.com>
Sent: Friday, November 25, 2022 8:56 AM
To: DiFrancesco, Lauren E. (Shld-SLC-LT) <Lauren.DiFrancesco@gtlaw.com>
Subject: Fw: URCP 100A

EXTERNAL TO GT

Hi Lauren,

Can we please get the below on the agenda for the next meeting? The below email is from an assistant AG who represents the Office of Recovery Services, the child support agency. Thank you.

Sincerely,

Jim

From: Karla Block <kblock@agutah.gov>
Sent: Friday, November 25, 2022 8:43 AM
To: Jim Hunnicutt <jim@dolowitzhunnicutt.com>
Subject: URCP 100A

Good morning Jim,

Thank you for considering an update to Rule 100A in light of the situation we discussed the other day. Most actions initiated by my client, the Office of Recovery Services (ORS), involve serving two parties with the possibility of two answers. What my office is encountering is that one party answers and based upon the rule a case management conference is automatically scheduled. For our cases the conference is almost always premature since we frequently still have to service out on the other party or the other party has not yet responded. We are also seeing cases where the answering party agrees to what our office has pled which would make a conference unnecessary. In those cases, we would simply resolve the pending action by a motion for judgment on the pleadings.

We have drafted some language for your consideration to hopefully resolve the issues we are experiencing with Rule 100A. I am happy to work through any suggestions or changes that you may have based upon your knowledge and experience on the committee prior to it going to the bigger group. Please just let me know your thoughts on each option.

Option 1:

(a) **Case management tracks.** All domestic relations actions, as defined in Rule 26.1, will be set for a case management conference before the court, or a case manager assigned by the court, after an answer to the action is filed. At the case management conference, the court or a case

manager assigned by the court must determine into which of the following tracks the case will be placed: . . .

(c) **Exemption.** Actions initiated by the Office of Recovery Services are exempt from case management conferences.

Although parentage, child support and modifications are included in the Scope of Rule 26.1, ORS is exempt from the requirements. Rule 26.1(e)(1). Since ORS is exempt from the provisions in Rule 26.1 it doesn't seem like it would be too big of a stretch to create a similar exemption in Rule 100A. ORS cases will almost always fall in Track 1 and be certified for trial. Many ORS cases are quickly resolved by motion practice and rarely go to trial. If ORS cases were exempt from the case management conferences it would free up more time for cases that these case management conferences were really intended to benefit. Option 1 is what we would prefer to see implemented but another alternative is Option 2.

Option 2:

(a) Case management tracks. All domestic relations actions, as defined in Rule 26.1, will be set for a case management conference before the court, or a case manager assigned by the court, after an answer to the action is filed. If there are more than two parties to the action a case management conference will not be scheduled until proof of service has been filed for each responding party and at least one party has timely filed an answer. At the case management conference, the court or a case manager assigned by the court must determine into which of the following tracks the case will be placed: . . . .

This option accounts for situations where there are more than two parties and makes sure that a case management conference is not prematurely scheduled. By not scheduling the conference until all parties are served the court's time will be more efficiently used since a prematurely scheduled conference will most certainly need to be rescheduled. It is a better use of the court's precious time to wait for a conference until all those relevant to the action have been properly served and at least one party has responded.
--

It may be appropriate to consider combining Option 1 and Option 2. ORS cases are not the only ones where there may be multiple parties (i.e. grandparents, legal father and bio father, etc.).

My office certainly appreciates the consideration given to see if there is a resolution to an unforeseen consequence of the current Rule 100A. Thank you in advance for your assistance towards a resolution.

Karla Block

Assistant Attorney General

Rule 100A. Case Management of Domestic Relations Actions.

Effective: 11/1/2022

(a) **Case management tracks.** All domestic relations actions, as defined in Rule 26.1, will be set for a case management conference before the court, or a case manager assigned by the court, after an answer to the action is filed. If there are more than two parties to the action a case management conference will not be scheduled until proof of service has been filed for each responding party and at least one party has timely filed an answer. At the case management conference, the court or a case manager assigned by the court must determine into which of the following tracks the case will be placed:

Commented [JW1]: Option 2

(1) Track 1: Standard Track. This category includes all cases that do not require expert witnesses or complex discovery. The court will certify a Track 1 case directly for trial. If the parties have not yet mediated, the court will order the parties to participate in good faith mediation before the trial takes place.

(2) Track 2: Complex Discovery Track. This category includes cases with complex issues that require extraordinary discovery, such as valuation of a business. For a Track 2 case, at the case management conference the court will set a discovery schedule with input from the parties and schedule the case for a pretrial hearing.

(3) Track 3: Significant Custody Dispute Track. This category includes cases with significant custody disputes, including custody disputes involving allegations of child abuse or domestic violence. For a Track 3 case, at the case management conference the court and parties will address: 1) whether a custody evaluation is

necessary, and, if so, the form of the evaluation and appointment considerations; and 2) whether appointment of a private guardian ad litem is necessary, and if so, the scope of the appointment and apportionment of costs. The court will prepare and issue any resulting orders appointing a custody evaluator or guardian ad litem and schedule the case for either a pretrial hearing or a custody evaluation settlement conference.

(b) The court may set additional hearings as necessary under Rules 16 or 101. Nothing in this rule prohibits a court from assigning a case to more than one track, at the court's discretion, or otherwise managing a case differently from the above guidelines for good cause.

(c) **Exemption.** Actions initiated by the Office of Recovery Services are exempt from case management conferences.

Commented [JW2]: Option 1

TAB 5

Aug 22, 2022

Fact sheet on Attorney-Conducted Voir Dire:

Utah is in the minority

As of 2007, Utah was one of only 10 states in which judges predominantly conducted voir dire.[1]

Table 21: Who Conducts Voir Dire in State Courts?	
Predominantly or Exclusively Judge-Conducted Voir Dire	AZ, DC, DE, MA, MD, ME, NH, NJ, SC, UT
Judge and Attorney Conduct Voir Dire Equally	CA, CO, HI, ID, IL, KY, MI, MN, MS, NM, NV, NY, OH, OK, PA, VA, WI, WV
Predominantly or Exclusively Attorney-Conducted Voir Dire	AK, AL, AR, CT, FL, GA, IA, IN, KS, LA, MO, MT, NC, ND, NE, OR, RI, SD, TN, TX, VT, WA, WY

That number has decreased at least by one though since Massachusetts adopted attorney-conducted voir dire in 2015 (see article and rule below).

Length of Attorney-Conducted Voir Dire

The Center for Jury Studies conducted a study on how much time attorney-conducted voir dire adds to a trial. As a reference point, they calculated that the average 12 person civil jury trial with equal time between judge and attorney-conducted questioning and three peremptoriness takes 114 minutes, or approximately 2 hours to complete.[2]

When voir dire is conducted predominantly by attorneys the average times increase by 70 minutes.[4] This additional time, little more than an hour, is a relatively small price to pay in the grand scheme of the importance impartial jurors play to the process. Since the attorneys on the case are more likely to know the finite details of their case, which the Judge may not be aware of, it makes sense that questions the attorneys have are not always the same as those a judge may ask.

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[1] Center for Jury Studies, *State of the States Survey of Jury Improvement Efforts*, 27, available at https://www.ncsc-jurystudies.org/state-of-the-states/state-of-states-survey?SQ_VARIATION_5888=0.
[2] See *Id.* at 30 showing a table of how different variables increase or decrease the average time for voir dire when compared to the reference.
[3] *Id.*
[4] *Id.* Using the table, when judges conduct voir dire exclusively, it saves 47 minutes compared to the reference, and when attorneys predominantly conduct voir dire, it adds 25 minutes. By comparison, when attorneys exclusively conduct voir dire, it adds 105 minutes instead of 25.

The Benefit of Attorney Conducted Voir Dire

Repeated studies show that attorney-conducted voir dire elicit far more truthfulness about juror biases than judge-conducted voir dire.[5]

Jurors are twice as honest when attorneys ask them questions than with judges ask the identical questions.[6]

Jurors are significantly more likely to face the pressure of "evaluation anxiety" when asked questions by judges as well as an "expectancy effect" that when they are asked by a judge if they can be impartial that the judge is implicitly encouraging them to answer "yes."[7]

Attorney-conducted Voir Dire is encouraged in Utah[8] but rarely permitted by courts outside of a few jurisdictions.

In *State v. Williams*, the Utah Court of Appeals has given guidance on how Utah courts should oversee attorney-conducted voir dire, with details about what should, and shouldn't, be allowed based on how other jurisdictions handle attorney-conducted voir dire.[9] Although criminal in nature, this case and its guidelines can be equally as informative to the use of attorney-conducted voir dire in civil cases.

The proposed rule change adopts guidance by *Williams* while also looking to other jurisdictions as supplemental guidance to construct a comprehensive rule.

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[5] John Campbell et. al., *An Empirical Examination of Civil Voir Dire: Implications for Meeting Constitutional Guarantees and Suggested Best Practices,* U DENVER LEGAL STUDIES RESEARCH PAPER NO. 20-11 (April 24, 2020), available at SSRN: https://ssrn.com/abstract=3584582 or http://dx.doi.org/10.2139/ssrn.3584582; Susan E. Jones, *Judge-Versus Attorney-Conducted Voir Dire An Empirical Investiga**tion** of Juror Candor,* 11 LAW AND HUMAN BEHAVIOR, 131 (1987); Richard Seltzer, et. al. *Juror Honesty During the Voir Dire,* JOURNAL OF CRIMINAL JUSTICE 451, 453 (1991); Roger W. Shuy, *How a Judge's Voir Dire can Teach a Jury What to Say,* 6 DISCOURSE & SOCIETY, 207 *(1995).*

[6] Susan E. Jones, *Judge-Versus Attorney-Conducted Voir Dire An Empirical Investiga**tion** of Juror Candor,* 11 LAW AND HUMAN BEHAVIOR, 131 (1987).

[7] *Id.*

[8] *State v. Williams,* 2018 UT App 96, ¶ 37, n. 14 ("In Utah's trial courts, the days of perfunctory — and often insufficient — judge-only-conducted juror examination are gone. Indeed, our rules now expressly provide for attorney-conducted juror examination, *see* Utah R. Crim. P. 18(b), and many judges and attorneys wisely embrace the conscientious use of a well-drafted questionnaire.").

[9] *State v. Williams,* 2018 UT App 96,

Rule 47. Jurors.

(a) Examination of jurors. Upon a motion by either party, t~~T~~he court ~~shall~~ shall ~~may~~ permit the parties or their attorneys to conduct the examination of prospective jurors. If such a motion is made, the court shall permit the parties or their attorneys to make a preliminary statement of the case and notify the parties in advance of trial. If no motion is made, the court ~~or~~ may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as is material and proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as is material and proper. Prior to examining the jurors, the court may make a preliminary statement of the case. ~~The court may permit the parties or their attorneys to make a preliminary statement of the case and notify the parties in advance of trial.~~

(b) Procedure for Attorney-Conducted Jury Selection.

(b)(1) The Court may impose reasonable restrictions on attorney-conducted jury selection; including, a reasonable time limited allotted to each side. In determining a reasonable time limit, the court should consider the complexity of the issues in the case, the length of the overall trial, and any stipulations of the parties.

(b)(2) A party may give a preliminary statement of the case to the entire panel. The statement should orient the panel to the questions that will be asked without commenting on specific facts to be presented during trial. The statement may not be used as a tool to persuade members of the panel to adopt a position or predisposition to the evidence, or bolster an anticipated witness's credibility. The party may inform the panel about a relevant law, such as an anticipated defense, if needed to inquire into any bias on following that law. The party may make additional statements during the time allotted for questioning as needed to orient the panel to new topics.

(b)(3) Questions should be targeted to reveal prospective jurors' biases or prejudices. The court may not prohibit a questions simply because the bias or prejudice of concern is not related to a for-cause strike or because the questions relates to a sensitive topic. Either by objection from opposing counsel, or by the court acting sua sponte, the court may prohibit a question that:

(b)(3)(A) may confuse the person asked;

(b)(3)(B) is rhetorical or waits for no answer;

(b)(3)(C) may harass, embarrass, inflame, or ask highly personal information about a juror;

(b)(3)(D) makes repetitive inquires of a juror;

Commented [KN1]: State v. Purdy, 491 N.W.2d 402 (N.D. 1992):

Rule 24(a), N.D.R.Crim.P., provides that "[t]he court shall permit the defendant or the defendant's attorney and the prosecuting attorney to participate in the examination of prospective jurors." However, the right to voir dire is not without limitations. It is properly within a trial court's discretion to impose reasonable restrictions on the exercise of voir dire, such as placing reasonable time limits on the voir dire examination and preventing the propounding of vexatious or repetitious questions. *See, e.g., Hatchett v. State,* 503 N.E.2d 398, 402 (Ind.1987); *People v. Jean,* 75 N.Y.2d 744, 551 N.Y.S.2d 889, 890, 551 N.E.2d 90, 91 (1989); *Maddux v. State,* 825 S.W.2d 511, 514 (Tex.Ct.App.1992). Nevertheless, because the purpose of voir dire is to obtain a fair and impartial jury [*see State v. Gross,* 351 N.W.2d 428, 433 (N.D.1984); Explanatory Note to Rule 24, N.D.R.Crim.P.], placing arbitrary and unreasonable time limits on voir dire can result in reversible error. *See, e.g., State v. Petersen,* 368 N.W.2d 320, 322 (Minn.Ct.App.1985); *State v. Evans,* 352 N.W.2d 824, 826 (Minn.Ct.App.1984). We agree with those jurisdictions which hold that to establish prejudi ... [1]

Commented [KN2]: Mass. Rule 6(4)(e)

"i. If the parties have obtained approval to ask voir dire questions about the law, the trial judge shall take appropriate measures to ensure that the jury is accurately and effectively instructed on the law. Such measures may include, but are not limited to: a brief precharge; requiring the questioner to use the words specifically approved by the judge; stating the law in a ... [2]

Commented [KN3]: Michael J. Ahlen, Voir Dire: What Can I Ask and What Can I Say?, 72 N.D.L.Rev. 631.

"Some judges allow attorneys to discuss the law of the case in voir dire, particularly in criminal cases in which the entire defense rests upon burden of proof or presumption of innocence. Nationally, there is a trend toward restricting attorneys' discussion of law. . . A growing number of North Dakota courts have avoided or minimized the problem ... [3]

Commented [KN4]: *State v. Ball,* 685 P.2d 1055, 1059 (Utah 1984).

"[T]he peremptory challenge performs a valuable function in our jury system. . .". The peremptory challenge is meant to give parties opportunity to strike jurors "on a broad spectrum of evidence suggestive of juror partiality." *Id.* But "[i]ts efficacy is necessarily vitiated when a party is not permitted to gather enough information from prospec ... [4]

Commented [KN5]: State v. Williams, 2018 UT App 96, ¶ 27

Commented [KN6]: Michael J. Ahlen, Voir Dire: What Can I Ask and What Can I Say?, 72 N.D.L.Rev. 631

(b)(3)(E) was already asked in a questionnaire, except to have the juror explain an answer;

(b)(3)(F) has no apparent link to uncovering a potential bias;

(b)(3)(G) seeks to influence how a juror may decide the case by doing any of the following:

(b)(3)(G)(i) raises a hypothetical that closely approximates the facts of the case;
(b)(3)(G)(ii) invites the juror to predict how he or she may ultimately decide the case;
(b)(3)(G)(iii) asks the juror to judge the weight to be given to an operative face; or
(b)(3)(G)(iv) seeks to have a juror commit to, pledge, or otherwise maintain a particular position in advance of the actual presentation of the evidence, unless that position is to follow the judge's instructions, or to be fair and impartial during the trial.

(b)(4) A question about how a particular piece of evidence may affect a juror's predisposition to one side is not equivalent to asking the juror to indicate how much weight that evidence would have in deciding the outcome of the case.

(b)(5) If a party asks a question that requests highly personal information from a juror, may embarrass a juror, or may cause a bias or prejudice to form in the minds of other jurors, the court may instruct that the juror be questioned outside of the presence of the panel. The court may require that the juror answer the question if the question is highly relevant to the issue of bias. The court should not impose time restrictions on questions to individuals outside the presence of the jury. The party's presence is not required if the answer may relate to information that the juror does not wish a party to hear.

(b)(6) The plaintiff goes first in attorney-conducted voir dire.

(b)(7) The court may sanction a party for violating this subsection by prohibiting the question, admonishing the party, giving a curative instruction, declaring a mistrial, or any other sanction as appropriate or required under the circumstances.

(c) Procedures for use of a supplemental jury questionnaire

(c)(1) Upon timely request, the court may permit a party to submit a questionnaire to aid in the discovery of bias or prejudices. The court may set reasonable limits on the length of the questionnaire or number of questions in considering the complexity of the issues in the case, the length of the overall trial, the seriousness of the offense, and any stipulation of the parties.

Commented [KN7]: Wyo R. Crim P. 24

Commented [KN8]: *State v. Saunders*, 1999 UT 59, ¶ 43

"As a general rule, trial judges have some discretion in limiting voir dire inquiry. *See, e.g., Worthen*, 765 P.2d at 845. That discretion is most broad when it is exercised with respect to questions that have no apparent link to any potential bias. However, the trial judge's discretion narrows to the extent that questions do have some possible link to possible bias, and when proposed voir dire questions go directly to the existence of an actual bias, that discretion disappears."

Commented [KN9]: State v. Janis, 880 NW 2d 76, 82-83 (SD 2016) -this case is cited with approval in State v. Williams.

"Prospective jurors may not be questioned about hypothetical facts to be proved at trial, but may be questioned about their mental attitudes regarding certain types of evidence. "

Commented [KN10]: Haarhuis v. Cheek, 805 SE 2d 720, 726 (NC App 2017) - this case is reference with approval in State v. Williams

Commented [KN11]: Hyundai Motor Co. v. Vasquez,189 S.W.3d 743, 753 (2006) - this case is referenced with approval in State v. Williams

Commented [KN12]: *State v. Broyhill,* 803 S.E.2d 832, 841 (N.C. App 2017) - this case is cited with approval in State v. Williams.

See also John T. Bibb, *Voir Dire: What Constitutes an Impermissible Attempt to Commit A Prospective Juror to A Particular Result*, 48 Baylor L. Rev. 857, 874 (1996)

"Texas lawyers will exceed the scope of permissible voir dire examination by asking questions that tend to elicit a pledge from a prospective juror as to how much weight the juror will give to such evidence in the determination of the final verdict. Texas courts generally prohibit any voir dire questions which ask prospective jurors to indicate their views on certain facts, and thereby commit themselves to certain views or conclusions.84 The rule denying committal inquiries on the weight of evidence supports the underlying policy of voir dire: to obtain a fair trial from an unbiased jury by preventing jurors from determining critical issues based on a previous commitment as to the weight of particular evidence."

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(c)(2) Before issuing the questionnaire, the court may strike any question that follows one of the prohibited questions described in subsection (b). The court should not modify, or require that a party modify, a question unless doing so is necessary to avoid asking a prohibited question. The court may not strike a question simply because that questions serves only the function of a peremptory challenge.

(c)(3) The Court must allow the parties a reasonable opportunity to review the answers to the questionnaires in advance of making questions to the panel.

(d) Rehabilitation prohibited. When a juror admits to a bias, further inquiry may be made to allow the juror to elaborate or clarify the answer without an attempt to commit the juror to impartiality.

(eb) Alternate jurors. The court may direct that alternate jurors be impaneled. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be selected at the same time and in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, and privileges as principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict unless the parties stipulate otherwise and the court approves the stipulation. The court may withhold from the jurors the identity of the alternate jurors until the jurors begin deliberations.

(fc) Challenge defined; by whom made. A challenge is an objection made to the trial jurors and may be directed (1) to the panel or (2) to an individual juror.

(gd) Challenge to panel; time and manner of taking; proceedings. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury, or on the intentional omission of the proper officer to summon one or more of the jurors drawn. It must be taken before a juror is sworn. It must be in writing or be stated on the record, and must specifically set forth the facts constituting the ground of challenge. If the challenge is allowed, the court must discharge the jury so far as the trial in question is concerned.

(he) Challenges to individual jurors; number of peremptory challenges. The challenges to individual jurors are either peremptory or for cause. Each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs shall be considered as a single party for the purposes of making peremptory challenges unless there is a substantial controversy between them, in which case the court shall allow as many additional peremptory challenges as is just. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed.

Commented [KN13]: Barrett v. Peterson, 868 P.2d 96 (Utah Ct. App. 1993) (assigning error when a court changed the wording of proposed questions when the changes to wording changed the bias that the litigant intended to uncover).

Commented [KN14]: Current advisory committee notes:

"Although thorough questioning of a juror to determine the existence, nature and extent of a bias is appropriate, it is not the judge's duty to extract the "right" answer from or to "rehabilitate" a juror."

However, see *State v. Fletcher*, 2015 UT App 167, ¶ 23

"When an inference of bias is raised, the inference is generally not rebutted simply by a subsequent general statement by the juror that he or she can be fair and impartial," but instead, "[t]he level of investigation necessary once voir dire reveals potential juror bias will vary from case to case and is necessarily dependent on the juror's responses to the questions asked." *State v. Woolley, 810 P.2d 440, 445 (Utah Ct. App. 1991), overruled on other grounds as recognized by Robertson, 2005 UT App 419, 122 P.3d 895.*

Also see discussion in State v. Jonas, 904 N.W.2d 566 (Iowa 2017).

"As noted in People v. Merrow, answers to the trial judge's generalized and leading questions "may suggest overt acquiescence in the trial court's efforts to elicit a commitment to neutrality" but are unreliable."

(if) Challenges for cause. A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. The juror challenged and any other person may be examined as a witness on the hearing of such challenge. A challenge for cause may be taken on one or more of the following grounds. On its own motion the court may remove a juror upon the same grounds.

(if)(1) A want of any of the qualifications prescribed by law to render a person competent as a juror.

(if)(2) Consanguinity or affinity within the fourth degree to either party, or to an officer of a corporation that is a party.

(fi)(3) Standing in the relation of debtor and creditor, guardian and ward, master and servant, employer and employee or principal and agent, to either party, or united in business with either party, or being on any bond or obligation for either party; provided, that the relationship of debtor and creditor shall be deemed not to exist between a municipality and a resident thereof indebted to such municipality by reason of a tax, license fee, or service charge for water, power, light or other services rendered to such resident.

(if)(4) Having served as a juror, or having been a witness, on a previous trial between the same parties for the same cause of action, or being then a witness therein.

(if)(5) Pecuniary interest on the part of the juror in the result of the action, or in the main question involved in the action, except interest as a member or citizen of a municipal corporation.

(if)(6) Conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror is not likely to act impartially. No person may serve as a juror, if challenged, unless the judge is convinced the juror can and will act impartially and fairly.

(ig) Selection of jury. The judge shall determine the method of selecting the jury and notify the parties at a pretrial conference or otherwise prior to trial. The following methods for selection are not exclusive.

(ig)(1) Strike and replace method. The court shall summon the number of jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted, and for all challenges for cause that may be granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. After each challenge for cause sustained, another juror shall be called to fill the vacancy , and any such new juror may be challenged for cause. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the plaintiff, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

(ig)(2) Struck method. The court shall summon the number of jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted and for all challenges for cause that may be granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the plaintiff, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

(ig)(3) In courts using lists of prospective jurors generated in random order by computer, the clerk may call the jurors in that random order.

(h) Oath of jury. As soon as the jury is selected an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between the parties, and render a true verdict according to the evidence and the instructions of the court.

(i) Proceedings when juror discharged. If, after impaneling the jury and before verdict, a juror becomes unable or disqualified to perform the duties of a juror and there is no alternate juror, the parties may agree to proceed with the other jurors, or to swear a new juror and commence the trial anew. If the parties do not so agree the court shall discharge the jury and the case shall be tried with a new jury.

(j) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.

(j)(1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

(j)(2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.

(j)(3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

(k) View by jury. When in the opinion of the court it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any

material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent no person other than the person so appointed shall speak to them on any subject connected with the trial.

(l) Communication with jurors. There shall be no off-the-record communication between jurors and lawyers, parties, witnesses or persons acting on their behalf. Jurors shall not communicate with any person regarding a subject of the trial. Jurors may communicate with court personnel and among themselves about topics other than a subject of the trial. It is the duty of jurors not to form or express an opinion regarding a subject of the trial except during deliberation. The judge shall so admonish the jury at the beginning of trial and remind them as appropriate.

(m) Deliberation of jury. When the case is finally submitted to the jury they may decide in court or retire for deliberation. If they retire they must be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Unless by order of the court, the officer having charge of them must not make or allow to be made any communication to them with respect to the action, except to ask them if they have agreed upon their verdict, and the officer must not, before the verdict is rendered, communicate to any person the state of deliberations or the verdict agreed upon.

(n) Exhibits taken by jury; notes. Upon retiring for deliberation the jury may take with them the instructions of the court and all exhibits which have been received as evidence in the cause, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

(o) Additional instructions of jury. After the jury have retired for deliberation, if there is a disagreement among them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court the information required must be given in the presence of, or after notice to, the parties or counsel. Such information must be given in writing or stated on the record.

(p) New trial when no verdict given. If a jury is discharged or prevented from giving a verdict for any reason, the action shall be tried anew.

(q) Court deemed in session pending verdict; verdict may be sealed. While the jury is absent the court may be adjourned from time to time in respect to other business, but it shall be open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day.

(r) Declaration of verdict. When the jury or three-fourths of them, or such other number as may have been agreed upon by the parties pursuant to Rule 48, have agreed upon a verdict they must be conducted into court, their names called by the clerk, and

the verdict rendered by their foreperson; the verdict must be in writing, signed by the foreperson, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which shall be done by the court or clerk asking each juror if it is the juror's verdict. If, upon such inquiry or polling there is an insufficient number of jurors agreeing therewith, the jury must be sent out again; otherwise the verdict is complete and the jury shall be discharged from the cause.
(s) Correction of verdict. If the verdict rendered is informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

Rule 47. Jurors.

(a) Examination of jurors. Upon a motion by either party, t~~T~~he court ~~shall~~ shall ~~may~~ permit the parties or their attorneys to conduct the examination of prospective jurors. If such a motion is made, the court shall permit the parties or their attorneys to make a preliminary statement of the case and notify the parties in advance of trial. If no motion is made, the court ~~or~~ may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as is material and proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as is material and proper. Prior to examining the jurors, the court may make a preliminary statement of the case. ~~The court may permit the parties or their attorneys to make a preliminary statement of the case and notify the parties in advance of trial.~~

(b) Procedure for Attorney-Conducted Jury Selection.

(b)(1) The Court may impose reasonable restrictions on attorney-conducted jury selection; including, a reasonable time limited allotted to each side. In determining a reasonable time limit, the court should consider the complexity of the issues in the case, the length of the overall trial, and any stipulations of the parties.

(b)(2) A party may give a preliminary statement of the case to the entire panel. The statement should orient the panel to the questions that will be asked without commenting on specific facts to be presented during trial. The statement may not be used as a tool to persuade members of the panel to adopt a position or predisposition to the evidence, or bolster an anticipated witness's credibility. The party may inform the panel about a relevant law, such as an anticipated defense, if needed to inquire into any bias on following that law. The party may make additional statements during the time allotted for questioning as needed to orient the panel to new topics.

(b)(3) Questions should be targeted to reveal prospective jurors' biases or prejudices. The court may not prohibit a questions simply because the bias or prejudice of concern is not related to a for-cause strike or because the questions relates to a sensitive topic. Either by objection from opposing counsel, or by the court acting sua sponte, the court may prohibit a question that:

(b)(3)(A) may confuse the person asked;

(b)(3)(B) is rhetorical or waits for no answer;

(b)(3)(C) may harass, embarrass, inflame, or ask highly personal information about a juror;

(b)(3)(D) makes repetitive inquires of a juror;

Commented [KN1]: State v. Purdy, 491 N.W.2d 402 (N.D. 1992):

Rule 24(a), N.D.R.Crim.P., provides that "[t]he court shall permit the defendant or the defendant's attorney and the prosecuting attorney to participate in the examination of prospective jurors." However, the right to voir dire is not without limitations. It is properly within a trial court's discretion to impose reasonable restrictions on the exercise of voir dire, such as placing reasonable time limits on the voir dire examination and preventing the propounding of vexatious or repetitious questions. *See, e.g., Hatchett v. State,* 503 N.E.2d 398, 402 (Ind.1987); *People v. Jean,* 75 N.Y.2d 744, 551 N.Y.S.2d 889, 890, 551 N.E.2d 90, 91 (1989); *Maddux v. State,* 825 S.W.2d 511, 514 (Tex.Ct.App.1992). Nevertheless, because the purpose of voir dire is to obtain a fair and impartial jury [*see State v. Gross,* 351 N.W.2d 428, 433 (N.D.1984); Explanatory Note to Rule 24, N.D.R.Crim.P.], placing arbitrary and unreasonable time limits on voir dire can result in reversible error. *See, e.g., State v. Petersen,* 368 N.W.2d 320, 322 (Minn.Ct.App.1985); *State v. Evans,* 352 N.W.2d 824, 826 (Minn.Ct.App.1984). We agree with those jurisdictions which hold that to establish prejudicial ...

Commented [KN2]: Mass. Rule 6(4)(e)

"i. If the parties have obtained approval to ask voir dire questions about the law, the trial judge shall take appropriate measures to ensure that the jury is accurately and effectively instructed on the law. Such measures may include, but are not limited to: a brief precharge; requiring the questioner to use the words specifically approved by the judge; stating the law in a ...

Commented [KN3]: Michael J. Ahlen, Voir Dire: What Can I Ask and What Can I Say?, 72 N.D.L.Rev. 631.

"Some judges allow attorneys to discuss the law of the case in voir dire, particularly in criminal cases in which the entire defense rests upon burden of proof or presumption of innocence. Nationally, there is a trend toward restricting attorneys' discussion of law. . . A growing number of North Dakota courts have avoided or minimized the problem of ...

Commented [KN4]: *State v. Ball*, 685 P.2d 1055, 1059 (Utah 1984).

"[T]he peremptory challenge performs a valuable function in our jury system. . .". The peremptory challenge is meant to give parties opportunity to strike jurors "on a broad spectrum of evidence suggestive of juror partiality." *Id*. But "[i]ts efficacy is necessarily vitiated when a party is not permitted to gather enough information from prospective ...

Commented [KN5]: State v. Williams, 2018 UT App 96, ¶ 27

Commented [KN6]: Michael J. Ahlen, Voir Dire: What Can I Ask and What Can I Say?, 72 N.D.L.Rev. 631

(b)(3)(E) was already asked in a questionnaire, except to have the juror explain an answer;

(b)(3)(F) has no apparent link to uncovering a potential bias;

(b)(3)(G) seeks to influence how a juror may decide the case by doing any of the following:

(b)(3)(G)(i) raises a hypothetical that closely approximates the facts of the case;
(b)(3)(G)(ii) invites the juror to predict how he or she may ultimately decide the case;
(b)(3)(G)(iii) asks the juror to judge the weight to be given to an operative face; or
(b)(3)(G)(iv) seeks to have a juror commit to, pledge, or otherwise maintain a particular position in advance of the actual presentation of the evidence, unless that position is to follow the judge's instructions, or to be fair and impartial during the trial.

(b)(4) A question about how a particular piece of evidence may affect a juror's predisposition to one side is not equivalent to asking the juror to indicate how much weight that evidence would have in deciding the outcome of the case.

(b)(5) If a party asks a question that requests highly personal information from a juror, may embarrass a juror, or may cause a bias or prejudice to form in the minds of other jurors, the court may instruct that the juror be questioned outside of the presence of the panel. The court may require that the juror answer the question if the question is highly relevant to the issue of bias. The court should not impose time restrictions on questions to individuals outside the presence of the jury. The party's presence is not required if the answer may relate to information that the juror does not wish a party to hear.

(b)(6) The plaintiff goes first in attorney-conducted voir dire.

(b)(7) The court may sanction a party for violating this subsection by prohibiting the question, admonishing the party, giving a curative instruction, declaring a mistrial, or any other sanction as appropriate or required under the circumstances.

(c) Procedures for use of a supplemental jury questionnaire

(c)(1) Upon timely request, the court may permit a party to submit a questionnaire to aid in the discovery of bias or prejudices. The court may set reasonable limits on the length of the questionnaire or number of questions in considering the complexity of the issues in the case, the length of the overall trial, the seriousness of the offense, and any stipulation of the parties.

Commented [KN7]: Wyo R. Crim P. 24

Commented [KN8]: *State v. Saunders*, 1999 UT 59, ¶ 43

"As a general rule, trial judges have some discretion in limiting voir dire inquiry. *See, e.g., Worthen,* 765 P.2d at 845. That discretion is most broad when it is exercised with respect to questions that have no apparent link to any potential bias. However, the trial judge's discretion narrows to the extent that questions do have some possible link to possible bias, and when proposed voir dire questions go directly to the existence of an actual bias, that discretion disappears."

Commented [KN9]: State v. Janis, 880 NW 2d 76, 82-83 (SD 2016) -this case is cited with approval in State v. Williams.

"Prospective jurors may not be questioned about hypothetical facts to be proved at trial, but may be questioned about their mental attitudes regarding certain types of evidence. "

Commented [KN10]: Haarhuis v. Cheek, 805 SE 2d 720, 726 (NC App 2017) - this case is reference with approval in State v. Williams

Commented [KN11]: Hyundai Motor Co. v. Vasquez,189 S.W.3d 743, 753 (2006) - this case is referenced with approval in State v. Williams

Commented [KN12]: *State v. Broyhill,* 803 S.E.2d 832, 841 (N.C. App 2017) - this case is cited with approval in State v. Williams.

See also John T. Bibb, *Voir Dire: What Constitutes an Impermissible Attempt to Commit A Prospective Juror to A Particular Result*, 48 Baylor L. Rev. 857, 874 (1996)

"Texas lawyers will exceed the scope of permissible voir dire examination by asking questions that tend to elicit a pledge from a prospective juror as to how much weight the juror will give to such evidence in the determination of the final verdict. Texas courts generally prohibit any voir dire questions which ask prospective jurors to indicate their views on certain facts, and thereby commit themselves to certain views or conclusions.84 The rule denying committal inquiries on the weight of evidence supports the underlying policy of voir dire: to obtain a fair trial from an unbiased jury by preventing jurors from determining critical issues based on a previous commitment as to the weight of particular evidence."

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(c)(2) Before issuing the questionnaire, the court may strike any question that follows one of the prohibited questions described in subsection (b). The court should not modify, or require that a party modify, a question unless doing so is necessary to avoid asking a prohibited question. The court may not strike a question simply because that questions serves only the function of a peremptory challenge.

(c)(3) The Court must allow the parties a reasonable opportunity to review the answers to the questionnaires in advance of making questions to the panel.

(d) Rehabilitation prohibited. When a juror admits to a bias, further inquiry may be made to allow the juror to elaborate or clarify the answer without an attempt to commit the juror to impartiality.

Commented [KN13]: Barrett v. Peterson, 868 P.2d 96 (Utah Ct. App. 1993) (assigning error when a court changed the wording of proposed questions when the changes to wording changed the bias that the litigant intended to uncover).

Commented [KN14]: Current advisory committee notes:

"Although thorough questioning of a juror to determine the existence, nature and extent of a bias is appropriate, it is not the judge's duty to extract the "right" answer from or to "rehabilitate" a juror."

However, see *State v. Fletcher*, 2015 UT App 167, ¶ 23

"When an inference of bias is raised, the inference is generally not rebutted simply by a subsequent general statement by the juror that he or she can be fair and impartial," but instead, "[t]he level of investigation necessary once voir dire reveals potential juror bias will vary from case to case and is necessarily dependent on the juror's responses to the questions asked." *State v. Woolley, 810 P.2d 440, 445 (Utah Ct. App. 1991), overruled on other grounds as recognized by Robertson, 2005 UT App 419, 122 P.3d 895.*

Also see discussion in State v. Jonas, 904 N.W.2d 566 (Iowa 2017).

"As noted in People v. Merrow, answers to the trial judge's generalized and leading questions "may suggest overt acquiescence in the trial court's efforts to elicit a commitment to neutrality" but are unreliable."

(eb) Alternate jurors. The court may direct that alternate jurors be impaneled. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be selected at the same time and in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, and privileges as principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict unless the parties stipulate otherwise and the court approves the stipulation. The court may withhold from the jurors the identity of the alternate jurors until the jurors begin deliberations.

(fc) Challenge defined; by whom made. A challenge is an objection made to the trial jurors and may be directed (1) to the panel or (2) to an individual juror.

(gd) Challenge to panel; time and manner of taking; proceedings. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury, or on the intentional omission of the proper officer to summon one or more of the jurors drawn. It must be taken before a juror is sworn. It must be in writing or be stated on the record, and must specifically set forth the facts constituting the ground of challenge. If the challenge is allowed, the court must discharge the jury so far as the trial in question is concerned.

(he) Challenges to individual jurors; number of peremptory challenges. The challenges to individual jurors are either peremptory or for cause. Each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs shall be considered as a single party for the purposes of making peremptory challenges unless there is a substantial controversy between them, in which case the court shall allow as many additional peremptory challenges as is just. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed.

(if) Challenges for cause. A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. The juror challenged and any other person may be examined as a witness on the hearing of such challenge. A challenge for cause may be taken on one or more of the following grounds. On its own motion the court may remove a juror upon the same grounds.

(if)(1) A want of any of the qualifications prescribed by law to render a person competent as a juror.

(if)(2) Consanguinity or affinity within the fourth degree to either party, or to an officer of a corporation that is a party.

(f~~i~~)(3) Standing in the relation of debtor and creditor, guardian and ward, master and servant, employer and employee or principal and agent, to either party, or united in business with either party, or being on any bond or obligation for either party; provided, that the relationship of debtor and creditor shall be deemed not to exist between a municipality and a resident thereof indebted to such municipality by reason of a tax, license fee, or service charge for water, power, light or other services rendered to such resident.

(if)(4) Having served as a juror, or having been a witness, on a previous trial between the same parties for the same cause of action, or being then a witness therein.

(if)(5) Pecuniary interest on the part of the juror in the result of the action, or in the main question involved in the action, except interest as a member or citizen of a municipal corporation.

(if)(6) Conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror is not likely to act impartially. No person may serve as a juror, if challenged, unless the judge is convinced the juror can and will act impartially and fairly.

(ig) Selection of jury. The judge shall determine the method of selecting the jury and notify the parties at a pretrial conference or otherwise prior to trial. The following methods for selection are not exclusive.

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I. INTRODUCTION

The jury trial is sacrosanct in the United States. While other countries place restrictions or eliminate it altogether, trial by jury is a bedrock form of democracy in America. The United States Constitution guarantees the right in both criminal and civil trials.[1] Indeed, early architects of the American judicial system point to the foundational nature of the jury trial. Advocating for the fundamental necessity of jury trials, Thomas Jefferson stated, "I consider [trial by jury] as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution."[2]

Though the Seventh Amendment is not binding on the states, every states, with the exception of three, provide civil litigants the right to a jury trial equivalent to the Seventh

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[1] In criminal cases, the Constitutional protection extends to the states via the Fourteenth Amendment. But currently this same type of sweeping extension has not been enforced in civil cases. New jurisprudence from the United States Supreme Court has changed the analysis relating to how to determine whether a guarantee within the Bill of Rights is incorporated via the Fourteenth Amendment in order to apply to the states. *McDonald v. City of Chi.*, 561 U.S. 742, 761–65, 130 S. Ct. 3020, 3032-35, 177 L. Ed. 2d 894 (2010). Existing precedent holds that the Seventh Amendment is not incorporated, and at least one federal court has reaffirmed such precedent in recent years. *Gonzalez-Oyarzun v. Caribbean City Builders, Inc.*, 798 F.3d 26, 29 (1st Cir. 2015). However, there are some who believe that changes in the composition of the Supreme Court and changes to the test it uses to decide incorporation could shift this result.

[2] *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343 (1979) (Rehnquist, J., dissenting) (*quoting* 3 *The Writings of Thomas Jefferson* 71 (Washington ed., 1861)).

Amendment guarantee through respective state constitutional provisions, case law, or state statutes.[3] And even in states that do not guarantee a civil jury trial in all settings, the practice is still reasonably common, as it is typically provided through rules of civil procedure, case precedent, statutes, or some combination of all three.[4]

The founders, legislatures, and judges all sense, however, that a bare guarantee of a jury trial is insufficient. The right to an unbiased and impartial jury is essential to the American trial guarantee.[5] This belief is common at the state and federal level.[6]

But if a fair jury is the real goal, how do we ensure we have one? Which jurors should be seated, and which excluded? And how do we achieve the goal of finding the biases that could

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[3] Eric J. Hamilton, *Federalism and the State Civil Jury Rights*, 65 Stan. L. Rev. 851, 858 (2013) ("Trial by jury is not a constitutional right in Colorado, Louisiana, or Wyoming."); Ted A. Donner & Richard K. Gabriel, *Jury Selection Strategy and Science* § 35:2 (3d ed.) (2016).

[4] For example, Colorado has held there is no constitutionally guaranteed right to a jury trial in civil proceedings. *Colo. Coffee Bean, LLC v. Peaberry Coffee Inc.*, 251 P.3d 9, 27 (Colo. App. 2010). Rather, such right is derived from Colorado Rules of Civil Procedure strictly for actions at law, in contrast to those brought in equity, which lack a right to a jury trial. *See Worchester v. State Farm Mut. Auto. Ins. Co.*, 172 Colo. 352, 473 P.2d 711 (1970).

[5] *Thiel v. S. Pac. Co.*, 328 U.S. 217, 220, 66 S. Ct. 984, 985, 90 L. Ed. 1181 (1946) ("The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community.").

[6] When the right to a jury trial exists, regardless of the source, the language used to describe the composition and the unbiased, impartial role of a jury is similar. *See, e.g., Kendall v. Prudential Ins. Co. of Am.*, 327 S.W.2d 174, 177 (Mo. 1959) ("The right to unbiased and unprejudiced jurors is an inseparable and inalienable part of the right to a trial by jury guaranteed by the Constitution."). For example, in Colorado, where there is no constitutional guarantee to a civil jury trial, courts have nonetheless embraced the right to a fair and impartial jury as "of fundamental importance." *Whaley v. Keystone Life Ins. Co.*, 811 P.2d 404, 404-05 (Colo. App. 1989) ("Although not a protected right under the Colorado Constitution, the right to a jury trial in civil cases has been an essential part of Colorado's justice system almost from its inception.") (citations omitted). *See also Blades v. DaFoe*, 704 P.2d 317, 320 (Colo. 1985) ("[I]t is axiomatic that all litigants who are entitled to a jury trial in a proceeding, whether civil or criminal, are entitled to fair and impartial jurors."), *overruled on other grounds by, Laura A. Newman, LLC v. Roberts*, 2016 CO 9, 365 P.3d 972; *Halliburton v. Cty. Ct.*, 672 P.2d 1006, 1011 (Colo. 1983) (holding that limited judicial resources and oppressive caseloads were not compelling reasons to burden plaintiff's substantial right to a jury trial). This mirrors language the United States Supreme Court has used. *Thiel*, 328 U.S. at 220 ("The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community."). *See also Parklane Hosiery*, 439 U.S. at 351 (Rehnquist, J., dissenting) ("The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen, whether guaranteed by the Constitution or provided by statute, should be jealously guarded by the courts.").

pervert the jury system? These questions point directly at jury selection. Yet despite the soaring language applied to the good of juries, we know little in the civil setting about how jury selection (*voir dire*) impacts the aspirations of our founders and the guarantees of our courts. Indeed, there is a spectrum of views on how much *voir dire* is necessary or whether it is even necessary at all.[7] Some courts conclude that little *voir dire* is crucial because too much questioning could taint a jury or "unduly invade jurors' privacy by asking questions that are only tangentially related to the issues likely to arise at trial."[8] Other courts diametrically oppose this limiting sentiment and stress the exigency for extensive *voir dire* to reveal and exclude juror biases.[9] Beyond these initial divides, there are others. Some courts reason that even if jurors enter with predispositions, and even if those predispositions may relate to civil lawsuits generally or topics specific to a case, these views can be cured by instructions from a judge to follow the law and a commitment from the juror to do the same.[10] Other courts presume that biases are stubborn and that even strongly worded instructions, written and from the judge, cannot cage the biases.[11] These courts exclude such jurors "for cause."

These clashing perspectives result in the seating of starkly dissimilar juries. One can imagine that in a court where *voir dire* is conducted only by the judge and touches on only

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7 Hon. Gregory E. Mize, et al., *The State-Of-The-States Survey of Jury Improvement Efforts: A Compendium Report,* Nat'l Ctr. St. Cts., at 30 (2007) www.ncsc-jurystudies.org/~/media/Microsites/Files/CJS/SOS/SOSCompendium Final.ashx.

8 *Id*.

9 Am. Bar Ass'n, *Principles for Juries and Jury Trials*, Am. Jury Project, at 72 (2005) ("[V]oir dire by the judge, augmented by attorney-conducted questioning, is significantly fairer to the parties and more likely to lead to the impaneling of an unbiased jury than is *voir dire* conducted by the judge alone. A simple, perfunctory examination by a judge does not 'reveal preconceptions or unconscious bias.' ").

10 Crocker, C. B. & Kovera, M. B. "The Effects of Rehabilitative *Voir dire* on Juror Bias and Decision Making." *L. & Hum. Behav.*, 212 (2010) ("In many jurisdictions, judges will question venirepersons who have admitted bias and ask if they will be able to put aside their biases during the trial and decide the case based upon the evidence. Acquiescence to this request is legally sufficient in many jurisdictions to deem the venireperson unbiased and fit to serve on the jury." (Internal citations omitted)).

11 *Montgomery v. Com*., 819 S.W.2d 713, 718 (Ky. 1991) ("[O]bjective bias renders a juror legally partial, despite his claim of impartiality.").

general topics, most jurors are deemed competent. In those courts, jurors are often asked basic questions such as, "Do you have any biases or prejudices that might impact your decision?" The onus is on the juror to search their life views, identify any "biases," and report them. Courts may ask jurors to make such revelations after having heard only a condensed summary of the case. In this scenario, few jurors are excluded for cause. The result might be that the parties exercise peremptory strikes, and then seat a jury that is, for the most part, a random draw of the panel.[12]

In another court, a judge might allow attorneys to question prospective jurors for a day or more, and the law may allow the attorneys to ask detailed questions about the general views of the jurors, as they relate to the subject matter of the case. Rather than a general *voir dire* that may take 30 minutes, attorneys guide the discussion where some jurors may talk for several minutes each or longer. For example, if a case involves a doctor alleged to have committed malpractice on a young child, besides questions about the burden of proof, noneconomic damages and the like, the attorneys could also inquire further into the viewpoints of jurors regarding their opinions of doctors, whether they have young children, how they would feel about awarding large sums of money if the evidence supported it, and whether they have experienced medical malpractice. This court may also favor allowing jurors to be excused for cause if they express biases such as "I don't trust doctors at all" or "I think doctors do the most important work on earth and should be immune from liability." There, the seated jury would look far different than if there were no *voir dire*. Those who express strong views on a variety of subjects, perceived as favorable to one side or the other, are excluded. The result is often a panel

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[12] It is beyond this paper to discuss whether the panel that appears in court is representative of the community. But it is worth noting that there is reason to believe it is not. For example, some juries are drawn from a voter registration list. This may disproportionately exclude some community groups, who for a variety of reasons, are less likely to register to vote. The same can occur if a court pulls from those with driver's licenses.

of jurors who have expressed no strong views about the specific dispute or particularly strong views about lawsuits generally.

Finding clear answers to how best to seat a fair jury is made all the more important by existing Federal Rules of Evidence[13], corresponding state rules[14], and appellate deference to jury decisions[15], which make it, by and large, impossible to question the decision of a jury once it is reached. Some courts do not let attorneys talk to juries after trial.[16] In that case, the jury is literally a black box. In other courts, attorneys may talk with jurors, but talking with jurors to learn how they reached their decision, including what evidence they considered and how they resolved disputes, differs greatly from presenting any problems with that reasoning to a court. Courts typically will not even entertain an affidavit from a juror unless it proves there was (A) "extraneous prejudicial information was improperly brought to the jury's attention"; (B) "any outside influence improperly brought to bear upon any juror"; or (C) "whether the verdict reported was the result of a clerical mistake."[17] And even then, such evidence does not guarantee a new trial. A proponent for a new trial would have to show that this information substantially

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13 Fed. R. Evid. 606(b). *See also Pena-Rodriguez v. Colo.*, 137 S. Ct. 855, 861, 197 L. Ed. 2d 107 (2017) (holding that the no-impeachment rule "give[s] substantial protection to verdict finality and to assure jurors that, once their verdict has been entered, it will not later be called into question based on the comments or conclusions they expressed during deliberations.").
14 Colo. R. Evid. 606(b).
15 *See Mata-Medina v. People*, 71 P.3d 973, 983 (Colo. 2003) ("jury verdicts deserve deference and a presumption of validity…"); *Goodman v. OS Rest. Servs., LLC,* No. A-1-CA-35971, 2019 WL 3492240, at *7 (N.M. Ct. App. July 31, 2019) (holding that the court reviews "jury verdicts deferentially because appellate reversal of jury verdicts must be done cautiously and only under a strict standard of review in order to safeguard a litigant's constitutional right to a jury trial." (internal quotation marks omitted)).
16 U.S. Dist. Ct. Rules D. Conn., L.Civ.R. 83.5 (2017) ("Unless explicitly authorized by the Court, no party, and no attorney or person acting on behalf of a party or attorney, shall question a juror concerning the deliberations of the jury, votes of the jury or the actions or comments of any other juror.").
17 Fed. R. Evid. 606(b)(2).

impacted the result.[18] Similarly, even if a jury's decision seems to disregard the evidence in a case, it will be difficult to disturb such a decision on appeal. Courts defer to jury fact-finding in most instance, largely due to the standard of review.[19]

All of these factors mean that once a verdict is returned, it is likely to stick. The permanence of verdicts and their virtual impregnability from review, demands seating the fairest jury possible in order to conform with constitutional customs, case precedent, and public expectation.

But which of the existing approaches recognizes the normative purpose of juries and complies with the positive law mirroring that purpose? Research can answer the various empirical questions that trickle down from this overarching issue. It is surprising, then that these questions are seldom explored in the civil setting, while the role of bias receives significant attention in the criminal literature. To begin to fill this void, we designed a study that contributes to our understanding of bias in civil juries, and the role jury selection plays in guaranteeing, or potentially interfering with, "a fair trial." We attempted to answer a variety of core questions, including:

1. Do minimal versions of *voir dire* that rely on jurors identifying their own biases pinpoint biases that predict jurors' decisions?

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[18] *See Lorusso v. Members Mut. Ins. Co*., 603 S.W.2d 818 (Tex.1980) (aggrieved party must establish that the jury's conduct resulted in a materially unjust trial); *Santilli v. Pueblo*, 184 Colo. 432, 521 P.2d 170 (1974) (holding jury misconduct that requires an inquiry into the mental processes of the jury during deliberations is not proper grounds for new trial).

[19] *See e.g. People, in Interest of M.C.*, 844 P.2d 1313 (Colo. App. 1992) (reversing the judgment notwithstanding the verdict and demonstrating the strong deference appellate courts give to the fact-finding function of a jury). *See also,* Kevin Casey, et al., *Standards of Appellate Review in the Federal Circuit: Substance and Semantics*, 11 Fed. Cir. B.J. 279, 286 (2001) ("An even more deferential standard of review is reserved for jury fact-findings, which are reviewed for substantial evidence."); Joseph A. Parr, *Berry v. Risdall: When Can We Amend the Verdict?*, 44 S.D. L. Rev. 147 (1999) ("The American legal system places 'great emphasis on the weight and finality of a jury verdict, and courts tend to defer to a jury's judgment.' ").

2. How common are various predispositions (referred to as biases in this paper) that could be identified with more extended *voir dire*? Specifically, how common are general biases towards civil litigation? These could develop from concerns with the burden of proof (believing it is too high or too low), concerns about the nature of lawsuits, beliefs about noneconomic damages, views of lawyers, etc. We also wondered, how common are specific biases – biases related to specific issues in the case (views of doctors, insurance companies, social issues implicated in the dispute, etc.)?
3. If general and/or specific biases exist in jurors, do such biases impact how jurors decide cases?
4. Do those biases favor the plaintiff, favor the defendant, or cut both ways?
5. Can bias be cured by merely calling jurors' awareness to their potential biases during *voir dire* before they evaluate a case?
6. Can a judge cure bias using rehabilitation?
7. Can jurors recognize when their bias influenced their decision?

To answer these questions, we gathered massive amounts of data, both nationally and in Colorado (the research was conducted under the auspices of the Denver Empirical Justice Institute at the University of Denver Sturm College of Law). The result was a sample of 2,041 jurors. We exposed each juror to one of three different cases. Each "case" was based on a real case so that there was significant, detailed evidence, real argument from both sides, and so that the case bore significant verisimilitude to situations that occur in court. We experimentally manipulated whether jurors underwent *voir dire*, the extent of that *voir dire*, and whether jurors encountered rehabilitation from a judge.

To our knowledge, the descriptive measures of the prevalence of partiality in the jury pool are the first of their kind. Further, the data reveal whether biases impact jury behavior, how significantly they impact it, whether rehabilitation can cure biases, and whether jurors can self-diagnose, which can inform best practices for jury selection to ultimately impanel impartial jurors. The data raise serious concerns of the risks associated with seating juries that fail to meet constitutional, statutory, and precedential guarantees of impartiality when juries are formed without meaningful *voir dire* to eliminate biases.

II. VOIR DIRE

For the uninitiated, jury selection is often referred to as *voir dire,* defined as the preliminary questioning of the venire panel—the group of jurors called to serve.[20] Following examination, prospective jurors are seated unless excluded.[21] The court excludes jurors for logistical reasons, including plans conflicting with the trial (i.e. a college student with scheduled exams, a person with a nonrefundable ticket, etc.).[22] The court will also exclude a potential juror who doesn't speak English well enough to understand the case, a person who is ill and may struggle to participate, or a juror who doesn't receive paid leave from work and can't afford to miss the time anticipated for trial.[23]

Beyond these exclusions, there are two other principle means to exclude jurors. First, attorneys may exclude jurors for cause.[24] This occurs when one party moves to exclude the

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20 6 *Colo. Prac., Civil Trial Practice* § 10.5 (2d ed.), Westlaw (database updated August 2019). *See also People v. Cerrone*, 854 P.2d 178, 183 n.7 (Colo. 1993) (defining "venire" as a group of citizens from whom a jury is chosen from the original jury pool in a case).
21 *Id.*
22 Colo. Rev. Stat. § 13-71-119 (2019).
23 *See* Colo. Rev. Stat. § 13-71-105(2)(b) (disqualified as juror for inability to read, speak, and understand the English language); Colo. Rev. Stat. § 13-71-127 (financial hardship of employer or self-employed juror); Colo. Rev. Stat. § 13-71-119.5(2)(a)(I) (excused as juror if service would cause undue or extreme physical hardship).
24 12 *Colo. Prac., Civil Procedure Forms & Commentary* § 47:8 (3d ed.), Westlaw (database updated August 2019).

juror, arguing that the answers provided suggest the juror holds views that will prevent them from being completely impartial.[25] The court retains discretion in deciding these requests to "strike for cause," and courts differ significantly on what is sufficient to justify a prospective juror's partiality.[26] Once jurors are excluded for the logistical reasons mentioned above, and for cause, attorneys exercise peremptory challenges.[27] The number of challenges varies by state but is often three or four in civil trials.[28] These strikes do not require justification but cannot be based on race or gender.[29]

The actual mechanism for this entire process to occur can vary greatly, ranging from a 10-minute, judge-conducted *voir dire* to a multi-day *voir dire* in which the judge is absent.[30] A judge or attorney conducting *voir dire* may question jurors in groups, individually, or even in chambers.[31] Jurors are sometimes excluded for cause at the end of questioning, or sometimes they are excluded throughout the attorney's questioning.[32] Some courts have both sides submit peremptory strikes to the court simultaneously.[33] Other courts require the plaintiff to go first.[34]

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25 *Id.*
26 *Id.*
27 12 *Colo. Prac., Civil Procedure Forms & Commentary* § 47:9 (3d ed.), Westlaw (database updated August 2019).
28 *Id.* (Colorado allows for four peremptory challenges per "side" in litigation).
29 *Id.* (discussing a peremptory challenge is permitted if it is based upon a juror characteristic other than race or gender).
30 Nat'l Ctr. St. Cts., *Civil Action*, Vol. 6, No. 1, (2007), available at http://www.ncsc-jurystudies.org/~/media/Microsites/Files/CJS/SOS/CivilAction-Summer2007-Vol6No1-v4_000.ashx.
31 *Id.*
32 *Compare* "White's method"—peremptory challenges are utilized throughout various "rounds" of questioning—*with* the "struck method"—peremptory challenges exercised after questioning and challenges for cause have concluded. 22 N.Y.C.R.R. § 202.33, Appendix E (2019) (discussed in note 61 and note 62).
33 *See, e.g.*, Tenn. R. Civ. P. 47.03.
34 *See* 22 N.Y.C.R.R. § 202.33, Appendix E (discussing peremptory challenges under the "Struck Method" begin with counsel for the plaintiff).

Regardless of the process, ultimately the court seats a jury ranging from 6-12 jurors, often with at least one alternate (in case a juror is later excluded for improper behavior, becomes ill, etc.).[35]

A. Evaluation of Various Approaches to *Voir dire*: State and Federal Systems

Due to competing intuitions from courts about how prevalent bias might be, whether it influences decisions, and whether it can be cured by rehabilitation, the law regarding jury selection varies significantly across venues. Some states seem to prioritize speed, presumably operating under the assumption that *voir dire* is a waste of time or, perhaps worse, a means to manipulate outcomes. As Crocker and Kovera explain,

> In many jurisdictions, judges will question venirepersons who have admitted bias and ask if they will be able to put aside their biases during the trial and decide the case based upon the evidence. Acquiescence to this request is legally sufficient in many jurisdictions to deem the venireperson unbiased and fit to serve on the jury. Courts rely on rehabilitation to increase the general efficiency of *voir dire*. Concerns abound over the time spent on *voir dire*.[36]

Other states take a diametrically different approach, presuming *voir dire* is essential and courts should give attorneys significant latitude.[37]

What follows are the positions of a few states that allow longer *voir dire*, on a broader range of topics. An effort was made to sample both "progressive" states and states that trend "conservative," as there is a common belief that such perspectives may impact views on juries

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[35] *See* Colo. Constitution. Art. 2, § 23 (providing civil juries may consist of less than twelve persons); C.R.C.P. 48 ("jury shall consist of six persons"); 12 *Colo. Prac., Civil Procedure Forms & Commentary* § 47:10 (alternate jurors).
[36] Crocker, *supra* note 10, at 212 (internal citations and quotations omitted).
[37] *See, e.g.*, *Littell v. Bi-State Transit Dev. Agency*, 423 S.W.2d 34, 36–37 (Mo. App. 1967) ("A wide latitude is allowed counsel in examining jurors on their *voir dire* . . . to gain knowledge as to their mental attitude toward the issues to be tried.").

and jury selection.[38] These states are spread across the country and include Missouri, New York, and California. We note each state's approach to rehabilitation when appropriate. We also include Florida, specifically focusing on its view of juror rehabilitation. As one might anticipate, rehabilitation is most commonly litigated and discussed in appellate decisions in states with more extensive *voir dire*. Motions to strike for cause require information, so in courts with limited *voir dire*, both motions to strike and efforts to rehabilitate are slightly less common.

We have also summarized some views of federal courts, drawn in part from their local rules, in part from discussion with attorneys, and in part from reported decisions.

The section after turns to Colorado, a state that traditionally allows less time for *voir dire* and, based on the experience of one of the authors and conversations with other attorneys, often allows some rehabilitation by judges or attorneys seeking to "save" a juror from a strike for cause.

B. *Voir dire* in Missouri

Article I, § 22(a) of the Missouri Constitution provides that "the right of trial by jury as heretofore enjoyed shall remain inviolate." This provision guarantees the right to a jury only insofar as such a right existed at common law.[39] Although the right is constitutionally

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[38] The reality is far more complex. For example, Missouri allows lengthy and detailed *voir dire* due to state courts' belief that bias is prevalent, case specific, and must be rooted out. Florida allows similar *voir dire* and rejects most rehabilitation of jurors, despite the fact that Florida is, on net, moderate to conservative. Meanwhile, California, a state that has voted for the Democratic presidential candidate since 1992, allows extensive *voir dire*. Meanwhile, Colorado—which recently elected a Democratic governor, attorney general, senate and house of representatives at the state level—allows rehabilitation in many situations and has, in many courts, a presumption of very brief *voir dire*. This perspective aligns with many federal courts, who, regardless of location, tend to disfavor lengthy *voir dire* (with some notable exceptions).

[39] *Plaza Exp. Co. v. Galloway*, 365 Mo. 166, 176, 280 S.W.2d 17, 24 (1955).

embedded, it functions similarly to the right to trial by jury in some states that established the right by statute, rules of civil procedure, or through case precedent.

In Missouri, *voir dire* is used to promote the constitutional right to a fair and impartial jury. "The constitutional right to a trial by jury would be a mockery of justice if it did not guarantee a jury with minds free of bias."[40] Courts require an elimination of bias – though the term is not necessarily defined.

Purpose of Voir dire. The purpose of jury selection in Missouri is "to discover bias or prejudice in order to select a fair and impartial jury."[41] This goal is achieved "through questions which permit the intelligent development of facts which may form the basis of challenges for cause, and to learn such facts as might be useful in intelligently executing peremptory challenges."[42]

Balancing Discretion and Latitude. Missouri trial courts are vested with broad discretion to control *voir dire*, but such discretion is exercised with the understanding that counsel should be afforded "wide latitude in examining prospective jurors for possible bias and their state of mind regarding the matter at hand."[43] Evaluating whether prospective jurors can be impartial to enable a fair and impartial trial is impossible without the investigation of the attitudes and thoughts embedded within the jurors. Correspondingly, "[g]reat liberality is allowed in inquiring into attitudes and experiences of the jury panel."[44] However, the trial court

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40 *Littell*, 423 S.W.2d at 36.
41 *State v. Skelton*, 851 S.W.2d 33, 35 (Mo. App. 1993).
42 *Pollard v. Whitener*, 965 S.W.2d 281, 286 (Mo. Ct. App. 1998). *See also Kendall v. Prudential Ins. Co. of Am.*, 327 S.W.2d 174, 177 (Mo. 1959) ("The right to unbiased and unprejudiced jurors is an inseparable and inalienable part of the right to a trial by jury guaranteed by the Constitution.").
43 *Blanks v. Fluor Corp*., 450 S.W.3d 308, 385 (Mo. Ct. App. 2014).
44 *State v. Coleman*, 553 S.W.2d 885 (Mo. App. 1977).

may exercise discretion in "limiting the number of questions and imposing other curbs on the nature of the examination."[45] In doing so, the court must remember that the *voir dire* process "is also one of the highest duties of courts, in the administration of the law concerning selection of jurors and juries, to seek to accomplish that purpose [of an impartial jury]."[46]

Time Restrictions. In Missouri, time restrictions "cannot be set without regard to the variable latitude which is reasonably necessary to accomplish the purpose of *voir dire*."[47] Trial courts may not arbitrarily limit *voir dire* questioning.[48] "While the efficient administration of jury resources is to be encouraged, it cannot be accomplished at the price of an arbitrarily limited *voir dire* examination."[49] "Since bias often lies deep within the minds of prospective jurors, counsel should be allowed a wide latitude to expose that bias."[50] While Missouri gives trial courts the discretion to place time limitations on *voir dire*, judges do not set such limits at the outset of trial "without regard to the variable latitude which is reasonably necessary to accomplish the purpose of *voir dire*."[51] It is customary for *voir dire* to last approximately one to two days.[52]

In *Pollard*, the appellate court affirmed the lower court's judgment limiting plaintiff's *voir dire* examination to one hour and forty-five minutes after the court had conducted its own questioning for one hour, and stating, "the restriction, under the circumstances described, was

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45 *Gooch v. Avsco, Inc.*, 340 S.W.2d 665, 667 (Mo. 1960).
46 *Littell*, 423 S.W.2d at 38.
47 *Pollard*, 965 S.W.2d at 288.
48 *Id*.
49 *Id*.
50 *Littell*, 423 S.W.2d at 36.
51 *Pollard*, 965 S.W.2d at 288.
52 *See* Br. for Appellants at 159, *Blanks, v. Fluor Corp*., 2012 WL 3207128 (Mo. App. E.D.) (No. ED97810) ("The next day, while *voir dire* was still underway…"); Appellants' Amend. Br. at *4, *Terpstra v. Mo. Dep't of Lab. & Indus. Rel.*, 2018 MO App. Ct. Briefs LEXIS 2050 (WD80967) (August 28, 2018) (" . . . during almost two days of *voir dire* . . . ").

not an abuse of discretion."[53] Despite this conclusion, the court emphasized that it does "not encourage fixed time limitations on counsel's examination" and recognized "the dangers of arbitrary, unyielding time limits."[54] Setting time limits ahead of trial fails to consider "the unpredictability of the panel member responses."[55]

Based on discussions with attorneys in Missouri, time limits are rare.[56] Instead, it is common for *voir dire* to last a day or more in complex civil trials. Similarly, most judges, based on the precedent, allow questions dealing with both general bias and biases specific to the case.

C. *Voir dire* in New York

In New York, the purpose of *voir dire* is twofold: (1) it ensures that a fair and impartial jury tries the case and (2) it exposes grounds for counsel to exercise challenges.[57] Section 202.33 of the Uniform Civil Rules for the Supreme Court and the County Court (hereafter "Uniform Civil Rules") provides the guidelines for lower courts in conducting *voir dire*.[58] If the case cannot be resolved, the trial judge:

1. discusses the logistics of jury selection with the parties.
2. directs the method of jury selection used for *voir dire*, which could involve:

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53 *Pollard*, 965 S.W.2d at 288.
54 *Id*.
55 *Id*.
56 One of the authors of this paper is licensed in Missouri, practiced there for years, and picked juries there. Courts in some of the largest venues routinely provide a full day for selection.
57 Hon. Cheryl E. Chambers, *The statutory framework—Conduct of voir dire*, 4 N.Y. Prac., Com. Litig. N.Y St. Cts. § 37:21 (4th ed.), Westlaw (database updated September 2019) ("The principal purpose of jury selection is to insure that the case is tried by a fair and impartial jury chosen from a fair cross-section of the community."). *See also* Thomas Muskus, *Purpose of voir dire*, 35 Carmody-Wait 2d § 191:22, Westlaw (database updated November 2019).
58 *See* 22 N.Y.C.R.R. § 202.33.

a) "White's method";[59]

b) "struck method";[60]

c) "strike and replace method";[61]

d) or other methods approved by the Chief Administrator.

3. establishes time limitations for the question of prospective jurors, including:

a) a general period for completing *voir dire*, after which counsel must report back to the judge on the progress of the *voir dire*; and

b) specific time periods for counsel's questioning of panels of jurors or individual jurors.[62]

Under the Uniform Civil Rules, a trial judge must supervise the commencement of *voir dire* and open the jury selection proceedings "to ensure an efficient and dignified selection process."[63]

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[59] *See* 22 N.Y.C.R.R. § 202.33, Appendix E (Under "White's method", counsel ask general questions to the venire as a group to determine whether any of the potential jurors have knowledge of the subject matter, the parties involved, their attorneys, or the prospective witnesses. Counsel is allowed to ask follow-up questions to individual potential jurors. The prospective jurors are questioned in small groups with rounds dedicated to each group. Following questions and challenges for cause during each round, peremptory challenges are exercised. At the end of each round, jurors who remain unchallenged are sworn and excused from the room. A new round is commenced until all the necessary seats on the jury are filled and alternatives are selected).

[60] *Id*. (The "struck method" involves questioning an entire pool of potential jurors summoned at once, where no initial panel is selected. This method allows counsel to gain familiarity with all the prospective jurors before peremptory challenges are used. Before exercising any challenges, each side is able to determine the pros and cons of each juror with an eye to the composition of the overall pool of jurors. The attorneys then exercise peremptory challenges by alternately striking names from the juror list until a jury is paneled along with alternates. If there happens to be too many jurors remaining after the parties have made challenges, names are selected at random to sit on the jury).

[61] *See* Colleen McMahon & David L. Kornblau, *Chief Judge Judith S. Kaye's Program of Jury Selection Reform in New York*, 10 St. John's J. Legal Comment. 263, 278 (1995) (Under the "strike and replace" method, an initial panel of prospective jurors is randomly chosen from the pool of prospective jurors. These selected prospective jurors are seated in the jury box and questioned. Challenges for cause are exercised, and those excused are replaced from the remaining juror pool. The replacement jurors are questioned and challenged for cause. Replacement venirepersons are added as necessary until there are no challenges for cause to be made. Counsels then use peremptory challenges, additional venire are added to fill vacancies, and the procedure continues until no challenges for cause for either party to make and the parties have exercised all of peremptory challenges. The alternate jurors are selected using the same approach).

[62] 22 N.Y.C.R.R. § 202.33.

[63] 22 N.Y.C.R.R. § 202.33(e).

Counsel generally leads the remainder of *voir dire* outside the immediate supervision of the judge, who retains discretion to remain during parts or all of the examination.[64] Rule 4107 of the Civil Practice Law and Rules provides, "[o]n the application of any party, a judge shall be present at an examination of the jurors."[65] In practice, based on discussion with counsel, this can mean that in a complex case, counsel spends the better part of a week talking with jurors, largely outside the presence of a judge. A judge is occasionally brought in to resolve disputes between counsel.

Counsel for plaintiff and defendant may "state generally the contentions of his or her client and the identity of the parties, attorneys and witnesses."[66] Counsel interrogates the prospective jurors to determine bias and other grounds for disqualification, and subsequently, each side will make necessary challenges to the qualifications of a juror. "An objection to the qualifications of a juror must be made by a challenge unless the parties stipulate to excuse him."[67] A non-exhaustive list of the statutory grounds for exercising a valid challenge for cause include that a juror is: an employee or stockholder of a corporate party; a stockholder, director, officer, or employee or has an interest in any liability insurance carrier; or related to a party within sixth degree of consanguinity.[68] Both sides can exercise their three peremptory challenges plus one peremptory challenge per alternate.[69]

Time Limitations. In New York, the trial judge has discretion in setting time limits on *voir dire* provided that each side has an ample opportunity to ask relevant and material

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64 *Id.*
65 N.Y. C.P.L.R. 4107 (McKinney).
66 22 N.Y.C.R.R. § 202.33, Appendix E (A)(4) (attorneys are prohibited from reading any content found within the pleadings or discussing the amount of money at issue).
67 N.Y. C.P.L.R. 4108.
68 N.Y. C.P.L.R. 4110.
69 N.Y. C.P.L.R. 4109.

questions.[70] While the trial judge has discretion in setting time limits, *voir dire* usually ranges anywhere from a few hours to several days to ensure that counsel can properly question and determine whether each juror can arrive at a fair and impartial decision.[71]

The trial judge's discretion in limiting *voir dire* is restricted. For example, an appellate division found a trial court's 15-minute time limit for questioning in each round of *voir dire* unreasonable because the case was not simple and straightforward.[72] The case comprised of factual and medical disputes, including proof regarding four separate injuries and four surgeries, challenges to causation relating to the individual injuries, plaintiff's preexisting conditions, consideration of several experts with starkly different assessments, and proper damages to award.[73]

Instead of setting limits beforehand, the suggested practice is for the judge, based on consultation with counsel, to set only a general time period after which counsel should report the progress of *voir dire* back to the judge.[74] "In a routine case a reasonable time period to report on the progress of *voir dire* is after about two or three hours of actual *voir dire* and, if requested by the judge . . . periodically thereafter until jury selection is completed."[75]

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70 *People v. Beecham*, 74 A.D.3d 1216, 904 N.Y.S.2d 727 (2d Dep't 2010).
71 *See* Affirmation in Opposition for Defendants, *Adler v. 3M Co.*, 2014 WL 1716748 (N.Y. Sup.) (No. 1903922012) (Jan. 3, 2014) (discussing a recent trial where "jury selection process took two-plus weeks"); Motion in Limine for Defendants, *Balusu v. NYU Hosps. Ctr.*, 2013 WL 2432351 (N.Y. Sup.) (No. 3626-10) (Mar. 18, 2013) (counsel "completed (4) days of jury selection…"); Affirmation in Opposition for Plaintiff, *Perez v. 347 Lorimer LLC, et al.*, 2011 WL 8198735 (N.Y. Sup.) (No. 38841/05) (October 3, 2011) (jury selection was scheduled for one week and trial was scheduled to begin on the following week); Affirmation in Support for *McCord v. Teseo*, 2009 WL 10664249 (N.Y. Sup.) (No. 1144712005) (Nov. 9, 2009) (two days of *voir dire*).
72 *Zgrodek v. McInerney*, 61 A.D.3d 1106, 1108, 876 N.Y.S.2d 227, 228 (2009).
73 *Id*. at 1108, 876 N.Y.S.2d at 229.
74 22 N.Y.C.R.R. § 202.33(d).
75 Hon. Ann Pfau, *Implementing New York's Civil Voir dire Law and Rules, N.Y. St. Unified Ct. Sys.*, at 6 (2009) http://www.nycourts.gov/publications/pdfs/ImplementingVoirDire2009.pdf.

However, if a judge allocates a fixed period for questioning at the outset, the allocation "should be appropriate to the circumstances of the case."[76] Usually relevant considerations would include:

(1) the number of jurors and alternate jurors to be selected and the number of peremptory challenges available to the parties;

(2) the number, nature and seriousness of the pending charges;

(3) any notoriety the case may have received in the media or local community;

(4) special considerations arising from legal issues raised, including anticipated defenses such as justification or a plea of not responsible by reason of mental disease or defect;

(5) any unique concerns emanating from the identity or characteristics of the defendant, the victim, witnesses or counsel; and

(6) the extent to which the court will examine prospective jurors on relevant topics.[77]

"Because *voir dire* is a fluid process and it is not always possible to anticipate the issues that may arise during examination of the venire, it is also incumbent on counsel to advise the court if any temporal limitation imposed relating to juror questioning is proving, in practice, to be unduly restrictive and prejudicial."[78]

D. *Voir dire* in California

Rules governing jury selection in California are found in the Trial Jury Selection and Management Act.[79] The statute describes the essential purpose of *voir dire*, methods of

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[76] *People v. Steward*, 17 N.Y.3d 104, 110, 950 N.E.2d 480, 484 (2011).
[77] *Id.* at 110–11, 950 N.E.2d at 484.
[78] *Id.* at 111, 950 N.E.2d at 484.
[79] *See* Cal. Civ. Pro. Code §§ 190-237 (hereinafter "C.C.P.").

questioning by the judge and counsel, the basis for challenges for cause, and the number of peremptory challenges available to the litigants in different cases. With the different social science literature and variations in *voir dire* practices nationally in mind, California has employed comprehensive efforts to develop jury system management and trial procedures, including enhancements to the procedures for jury selection.

Trial judges in California are guided by the overriding principle that the purpose of *voir dire* is "[t]o select a fair and impartial jury."[80] Another purpose of jury selection is to support counsel in the intelligent exercise of both peremptory challenges and challenges for cause.[81] The trial court may place "reasonable limits" on questioning "that allow counsel liberal and probing examination to discover bias and prejudice within the circumstances of each case."[82]

The trial judge initiates *voir dire* with a preliminary examination to disclose grounds for excuses for cause.[83] Once the judge completes the initial examination, counsel for both parties may probe the panel to ensure the fitness of prospective jurors.[84] Throughout *voir dire*, counsel may challenge the jury panel or any individual juror for cause. Any party to the action may challenge a prospective juror for cause for general disqualification or for implied or actual bias.[85] A party must challenge an individual juror for cause before the jury is sworn, generally exerted before exercising peremptory challenges.[86] After *voir dire* concludes and prospective jurors pass for cause, each side may exercise peremptory challenges.[87] Each party may have six peremptory

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80 *See* C.C.P. § 222.5(a).
81 C.C.P. § 222.5(b)(1).
82 *Bly-Magee v. Budget Rent-A-Car Corp.*, 24 Cal. App. 4th 318, 324, 29 Cal. Rptr. 2d 330, 333 (1994).
83 C.C.P. § 222.5(a).
84 C.C.P. § 222.5(b)(1).
85 C.C.P. § 225(b)(1); C.C.P. § 227.
86 C.C.P. §§ 226(a) and (c).
87 C.C.P. § 22.5(b)(1); C.C.P. § 231.

challenges, except in cases involving over two parties.[88] In those cases, the court divides the parties into two or more sides according to their respective interests and each side may have eight peremptory challenges.[89] The court may grant additional peremptory challenges to each side in a civil case as the interests of justice require.[90]

Time Restrictions. A trial judge may not impose specific unreasonable or arbitrary time limits on, or establish an inflexible time limit policy for *voir dire*.[91] On January 1, 2017, the statute governing civil jury selection was amended to prohibit trial judges from imposing "an inflexible time limit policy," and the California Judiciary Committee, in justifying the change, reasoned:

> The selection of an unbiased jury serves all parties and is crucial to maintaining the integrity of our courts. Currently judges are setting blanket, arbitrary, and unreasonable time limits for *voir dire*. Judges use their discretion to set these limits even though CCP §222.5 specifically states not to set blanket time limits.[92]

In exercising discretion, the judge must consider the following:[93]

(a) The amount of time the attorneys have requested.

(b) Any unique or complex elements in the case, whether legal or factual.

(c) The number of parties and witnesses.

(d) Whether the case is designated as complex or a long cause.

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88 C.C.P. 231.
89 *Id.*
90 C.C.P. § 231(c).
91 C.C.P. § 222.5(b)(2).
92 2017 Cal. Senate Bill No. 658, California 2017-2018 Regular Session (Aug. 31, 2017).
93 C.C.P. § 222.5(c)(1).

As *voir dire* proceeds, the judge must permit supplemental time for questioning based on the following:[94]

> (a) Individual responses or conduct of a prospective juror that may evince attitudes inconsistent with suitability to serve as a fair and impartial juror in the case.
> (b) Composition of the jury panel.
> (c) An unusual number of challenges for cause.

Cal. Civ. Pro. Code § 222.5(b)(2) expressly requires that judges determine the reasonable time allotted for *voir dire* on a case-by-case basis by banning the use of time limit policies. The trial courts "shall not impose specific unreasonable or arbitrary time limits" on *voir dire* examination, nor shall the trial courts "establish an inflexible time limit policy."[95] Fixing arbitrary time limits is "dangerous" and "could lead to a reversal on appeal."[96]

E. Rehabilitation in *Voir dire* in Florida

Florida allows significant *voir dire*, like Missouri, New York, and California. But Florida is useful for examining a relatively conservative use of rehabilitation—one that tends to err on the side of exclusion. For example, in a criminal case, a police officer was a potential juror. When questioned by defense counsel, he suggested he would try to be fair, suggested he wanted to listen to the evidence, and that he could "reject" his preexisting opinion that the

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94 C.C.P. § 222.5(c)(2).
95 C.C.P. § 222.5(b)(2).
96 *People v. Hernandez*, 94 Cal.App.3d 715, 719, 156 Cal.Rptr. 572, 574 (Ct. App. 1979).

defendant might be guilty.[97] When questioned by the prosecution, he was asked if he "could set aside the conversations he had previously had with his friends, view the evidence on the facts, apply the law to the facts, and not prejudge the defendant."[98] He responded he could, and the court sat him as a juror, over objection of the defense, who argued he should be struck for cause.[99]

On appeal, the Florida Court of Appeals neatly summarized Florida law on rehabilitation, stating:

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97 *Carratelli v. State*, 832 So.2d 850, 852-53 (Fla. Dist. Ct. App. 2002)
(The dialog between counsel and the prospective juror is instructive, which states, in part:

> He stated that he had talked about this case with his law enforcement friends; they specifically discussed the speed of appellant's vehicle and appellant's diabetic condition. In addition, the following colloquy took place regarding any preconceived opinions Nesbitt may have had:
> Defense: In terms of your police officer relationships and the discussion and the publicity, is it a fair statement to say that the defense is not starting on an equal playing field?
> Nesbitt: As far as me?
> Defense: Yeah.
> Nesbitt: I would hope to say that you would be. But it's a little hard for me to answer that question, because I don't know if I really formed an opinion or not. I try not to. But if I had-
> Defense: If you have, what is it?
> State: I object to him giving his opinion.
> Court: Overruled.
> Nesbitt: There could be a matter of guilt there, but that's my opinion, but I can't say for sure that I can't be convinced with evidence.
> Defense: In other words, you are saying I might be able to talk you out of that?
> Nesbitt: With evidence, I've got to see the evidence. I have to see the evidence and if the evidence is there, beyond a reasonable doubt, I believe I can make the right decision but-reject my opinion, whatever it may be, but I have to go strictly by the evidence.
> Defense: You are saying the evidence could convince you to reject the opinion that you have?
> Nesbitt: Yeah, yeah. If there is a-guilty beyond a reasonable doubt, okay, I would have to go one way.
> Defense: What way?
> Nesbitt: Guilty, but if it is not there, I can't, in all honesty, vote guilty for somebody that it wasn't proven against.
> Defense: It happens. The last question for you: Is it a concern in your mind, though, that it might take more of a defense or more evidence to help convince you to find Mr. Carratelli not guilty than it might otherwise take if you weren't who you are, having discussed this case and having read what you read?
> Nesbitt: I don't think it would take more. Whatever evidence is presented in the case, I am going to have to go with that evidence and I don't think I would be coming back and say, I need more.
> Defense: Now, would you suggest might it be more difficult for Mr. Carratelli to be acquitted with you as a juror than with a juror that didn't have the preconceived opinion as it were, as you described it?
> Nesbitt: The way you put that, in all fairness to him probably it would, but that's-I don't want to sit here and say, you know, no, but-.)

98 *Id.* at 53.
99 *Id.*

> An appellate court reviews a trial judge's decision on a for-cause challenge for an abuse of discretion. The test for determining juror competency is whether the juror can lay aside any bias or prejudice and render his verdict solely upon the evidence presented and the instructions on the law given to him by the court. A juror should be excused for cause if there is any reasonable doubt about the juror's ability to render an impartial verdict. Because impartiality of the finders of fact is an absolute prerequisite to our system of justice, we have adhered to the proposition that close cases involving challenges to the impartiality of potential jurors should be resolved in favor of excusing the juror rather than leaving doubt as to impartiality.[100]

The court went further, expressing genuine confusion as to how one could express bias, but then quickly set it aside as a result of rehabilitation. It quoted the Florida Supreme Court, writing in 1929:

> It is difficult, if not impossible, to understand the reasoning which leads to the conclusion that a person stands free of bias or prejudice who having voluntarily and emphatically asserted its existence in his mind, in the next moment under skillful questioning declares his freedom from its influence. By what sort of principle is it to be determined that the last statement of the man is better and more worthy of belief than the former?[101]

F. *Voir dire* in Federal Courts

Voir dire in federal courts is governed by Rule 47 of the Federal Rules of Civil Procedure. The Rule states that a court

> may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper or must itself ask any of their additional questions it considers proper.[102]

Rule 47 is general enough to allow a judge to prohibit *voir dire,* to conduct it alone, or to involve the attorneys. Some courts have held that "the policy behind *voir dire* favors a thorough

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[100] *Id.* at 54.
[101] *Id.* (*citing Johnson v. Reynolds,* 97 Fla. 591, 599, 121 So. 793, 796 (1929)).
[102] Fed. R. Civ. P. 47(a).

examination, and the district court is therefore given wide latitude to conduct examination reasonably sufficient to test the jury for bias or partiality."[103] However, other courts have affirmed prohibiting attorney-conducted *voir dire* entirely.[104]

Federal district courts have wide discretion over both the conduct and the content of *voir dire* examination, and it is exceedingly rare that a decision is reversed on the grounds of a district court's limitation on *voir dire*.[105] In most federal courts, the presiding judge conducts *voir dire*.[106]

Among courts that allow attorney involvement, the amount of such involvement varies. For example, judges may allow each side to do all or some of the following:

- Offer a concise introductory remark to the venire;[107]
- Openly question prospective jurors following the conclusion of the court's initial *voir dire*;[108]
- Supply written questions for the judge to ask prospective jurors before *voir dire*;[109] or

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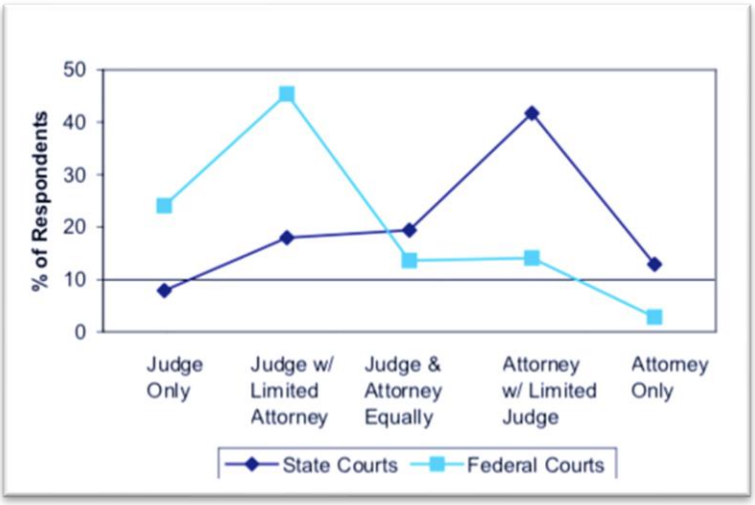
[103] *Reihanifam v. Fresenius Med. Care N. Am.*, 660 F. App'x 513, 514 (9th Cir. 2016) (internal quotation marks and citations omitted).
[104] *See* Anthony C. Vance, *Voir dire Examination of Jurors in Federal Civil Cases*, 8 Vill. L. Rev. 76 (1962). ("Those in favor of abolishing interrogation by counsel argue that the interests of fairness and trial expediency require that the court, and not counsel, propound questions to the entire panel, deviating only on occasion to query an individual panelist where the exigencies of clarification so demand.").
[105] *Sasaki v. Class*, 92 F.3d 232, 239 (4th Cir. 1996) (discussing that though a trial court's discretion is "not without limits," it is a rare case in which a reviewing court will find error in the trial court's conduct of *voir dire*). *See also U.S. v. Morris*, 623 F.2d 145, 151 (10th Cir. 1980); *James v. Cont'l Ins. Co*., 424 F.2d 1064, 1065 (3d Cir. 1970).
[106] *See Voir dire Examination—Permissible Questioning*, 2 Fed. Prac. & Proc. Crim. § 381 (4th ed.) (2019); Valerie P. Hans & Alayna Jehle, *Avoid Bald Men and People with Green Socks? Other Ways to Improve the Voir dire Process in Jury Selection*, 78 Chi.-Kent L. Rev. 1179, 1185 (2003) (discussing a survey conducted in the 1990s that determined that only "9% of the judges allowed counsel to conduct most or all of the voir dire.").
[107] Directory of Fed. Ct. Guidelines, *DISTRICT OF OR.*, 9C-546 (2019-3 Supp.) ("Counsel are requested to give a brief 'mini opening statement' to entire venire called to the courtroom to tell the jury what the case is about—usually two to three minutes.").
[108] Fed. R. Civ. P. 47(a). *See also Csiszer v. Wren*, 614 F.3d 866 (8th Cir. 2010).
[109] *Id*.

- Submit written questions for the court's screening and approval before the attorney-conducted *voir dire* begins.[110]

Some report that federal judges believe that examination of prospective jurors by the court, rather than the attorneys, is the preferable practice to ensure an impartial jury. "There can be no doubt that simplicity, fairness and speed result from the judge's examination of prospective jurors."[111]

In a survey relating to jury improvements, the National Center for State Courts revealed data showing "judge-conducted *voir dire* is the norm in federal courts."[112] The following figure was included in the study to demonstrate the statistics relating to judge- and lawyer-conducted *voir dire* in both state and federal courts.[113]



[110] *See Norman v. Textron Inc.*, No. 15-4108-CV-C-WJE, 2018 WL 3199496, at *1 (W.D. Mo. May 17, 2018).
[111] Hon. Louis E. Goodman, *The New Spirit in Federal Court Procedure*, 7 F.R.D. 449, 451 (1948).
[112] Mize, *supra* note 7, at 27.
[113] *Id.* ("Figure 1 illustrates the continuum of *voir dire* questioning from an exclusively judge-conducted *voir dire* on the left to an exclusively attorney-conducted *voir dire* on the right.").

G. *Voir dire* in Colorado

Colorado is a state with potentially paradoxical jury selection rules. On the one hand, as described below, Colorado law suggests *voir dire* is important to obtain a fair jury, yet on the other, it remains a common practice to limit *voir dire* in Colorado to 20 minutes per side in civil cases, a fact that guarantees that in a panel of 40 jurors, an attorney will have on average 30 seconds to talk to each juror.

Colorado case law instructs that *voir dire* is the vital and indispensable component to achieving a fair and impartial jury, which sets the foundation to a fair and impartial trial.[114] "The purpose of *voir dire* is to determine whether any potential juror has beliefs that would interfere with a party's right to receive a fair and impartial trial."[115] In Colorado, Rule 47 of the Colorado Rules of Civil Procedure governs the selection of jurors in civil cases and allows for a *voir dire* examination.

When prospective jurors report to the courthouse, "an orientation and examination shall be conducted to inform prospective jurors about their duties and service and to obtain information about them to facilitate an intelligent exercise of challenges for cause and peremptory challenges."[116] The summoned prospective jurors are brought into the courtroom where the judge shall explain to them in plain language:

(1) the grounds for challenge for cause;

(2) each juror's duty to volunteer information that would constitute a disqualification or give rise to a challenge for cause:

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114 *See People v. Collins*, 730 P.2d 293, 300 (Colo. 1986).
115 *Vititoe v. Rocky Mountain Pavement Maint., Inc*., 2015 COA 82, ¶ 20, 412 P.3d 767, 774.
116 C.R.C.P. 47(a).

(3) the identities of the parties and their counsel;

(4) the nature of the case (alternatively, the judge may allow counsel to make non-argumentative statements); and

(5) general legal principles applicable to the case.[117]

To acquire the suitable number of jurors based on the needs of the case, "[t]he clerk shall draw by lot and call the number of jurors that are to try the cause plus such an additional number as will allow for all peremptory challenges permitted."[118] In order to obtain a six-person jury for a civil trial, after strikes for cause, 14 prospective jurors may be called forward to the jury box.[119]

The jury venire panel sent to the jury box are then subject to *voir dire* examination where the court "shall ask prospective jurors questions concerning their qualifications to serve as jurors," and "the parties or their counsel shall be permitted to ask the prospective jurors additional questions."[120] The judge has discretion over the questions asked and the methods employed to deliver such questions, like juror questionnaires.[121]

The *voir dire* examination facilitates an "intelligent exercise of challenges for cause and peremptory challenges."[122] Challenges for cause are to be made during or immediately following the *voir dire* examination and must be made before peremptory challenges are exercised.[123] C.R.C.P. 47(e) provides seven acceptable grounds for making a challenge for cause:

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117 C.R.C.P. 47(a)(2).
118 C.R.C.P. 47(g).
119 *Safeway Stores, Inc. v. Langdon*, 532 P.2d 337, 338 (Colo. 1975), *overruled on other grounds by Laura A. Newman*, 365 P.3d 972. *See also* C.R.C.P. 47(h) (each party is allowed four peremptory challenges).
120 C.R.C.P. 47(a)(3).
121 *Id*.
122 C.R.C.P. 47(a).
123 C.R.C.P. 47(g).

(1) A want of any of the qualifications prescribed by the statute to render a person competent as a juror;

(2) Consanguinity or affinity within the third degree to any party;

(3) Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of any party; or a partner in business with any party or being security on any bond or obligation for any party;

(4) Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

(5) Interest on the part of the juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member, or citizen of a municipal corporation;

(6) Having formed or expressed an unqualified opinion or belief as to the merits of the action;

(7) The existence of a state of mind in the juror evincing enmity against or bias to either party.

One of the seven grounds of challenges for cause does not automatically disqualify a prospective juror from serving on the jury. Colorado courts have held that a decision to sustain or deny a challenge for cause is left to the trial judge's discretion and that result is not to be disturbed on appeal, absent an abuse of discretion.[124]

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[124] *People v. Wright*, 672 P.2d 518 (Colo. 1983); *Pyles-Knutzen v. Bd. of Cty. Comm'rs*, 781 P.2d 164 (Colo. App. 1989); *Kaltenbach v. Julesburg Sch. Dist. RE-1*, 603 P.2d 955 (Colo. App. 1979).

C.R.C.P. 47(h) provides that after the *voir dire* examination and the challenges for cause are finished, the parties may exercise peremptory challenges. "Each side shall be entitled to four peremptory challenges, and if there is more than one party to a side they must join in such challenges."[125] An additional peremptory challenge is allowed to each party for each alternate juror seated, "which may be exercised as to any prospective jurors."[126] A peremptory challenge "may be exercised without a reason stated, without inquiry and without being subject to the court's control" and "its purpose is to permit the rejection of a juror for a real or imagined partiality that would be difficult to designate or demonstrate."[127] If the trial judge erroneously denies a challenge for cause and forces a side to use a peremptory challenge to remove the juror, there will not be a reversal on appeal unless the error substantially influenced the outcome.[128] Once the jury selection concludes, an oath or affirmation is administered to the jurors.

Trial Court Discretion in Colorado. Voir dire examination is a vehicle through which the parties use to uncover certain biases that may cloud a juror's ability to consider evidence and render a verdict in fair and impartial manner. In evaluating whether a potential juror retains "a state of mind . . . evincing enmity against or bias to either party" within the meaning of C.R.C.P. 47(e)(7), "the trial court must consider the juror's statements during *voir dire* as a whole."[129] To intelligently apply and use both challenges for cause or peremptory challenges, the parties must

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125 C.R.C.P. 47(h).
126 Colo. Rev. Stat. § 13-71-142; *cf.* C.R.C.P. 47(b) (giving each side one additional peremptory challenge when one or two alternatives are called).
127 *People v. Fink*, 41 Colo. App. 47, 49, 579 P.2d 659, 661 (1978).
128 *Laura A. Newman*, 365 P.3d at 977-78.
129 *People v. Greenwell*, 830 P.2d 1116, 1118 (Colo. App. 1992).

extract any statements of bias or enmity that lives in the mind of each prospective juror. The parties are entitled to "considerable latitude" during good faith questioning of potential jurors.[130]

Despite the "considerable latitude" given to the parties, the *voir dire* scope and procedures are matters that fall within the trial court's discretion, and, in exercising its afforded discretion, the court may impose limits on attorney-conducted *voir dire*. The court is empowered to "limit or terminate" a *voir dire* examination if questioning is "repetitious, irrelevant, unreasonably lengthy, abusive, or otherwise improper."[131] In addition, a judge has the discretion to "limit the time available to the parties or their counsel for juror examination based on the needs of the case."[132] The use of these processes is within the discretion of each judge and seems to take different forms from one courtroom to another. Any restrictions placed on *voir dire* will not be reversed on appeal absent an abuse of discretion with a prejudicial result.[133]

Time Limitations in Colorado. C.R.C.P. 47(a) empowers the court to limit the time each side has to examine the potential jurors. Because no explicit instructions for time limitations are enforced, the trial judge has wide discretion in imposing time constraints on *voir dire* examination. In Colorado, trial judges commonly impose time limits of about twenty minutes per side at the outset of the trial.

Table 1 below shows the model language that trial courts use in their respective orders distributed to the parties before trial begins.

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130 *Oglesby v. Conger*, 507 P.2d 883, 885 (Colo. App. 1972).
131 C.R.C.P. 47(a)(3).
132 *Id*.
133 *Kaltenbach*, 43 Colo. App. at 154, 603 P.2d at 958 (trial court did not commit prejudicial error in granting a protective order to restrict plaintiff's further reference to defendant's insurance company, which prevented questioning of two jurors added thereafter).

Table 1. Standard Language for *Voir dire* Time Restrictions in Pre-Trial Orders

Language from Order Issued Before *Voir dire*	**Trial Court**	**Citation(s)**
Each side will have a maximum of 20 minutes for *voir dire*, unless additional time is requested and permitted in advance of the first day of trial. In multi-party cases, time must be divided between all parties on one side of the case.	Denver County	*Navarro v. City & Cty. of Denver*, 2018 Colo. Dist. LEXIS 5, *7 (Colo. Dist. Ct. March 6, 2018)
		Blair v. Buckey, 2017 Colo. Dist. LEXIS 57, *16 (Colo. Dist. Ct. March 29, 2017)
		Wright v. Limon, 2011 Colo. Dist. LEXIS 1820, *5 (Colo. Dist. Ct. August 31, 2011)
		Wainscott v. Centura Health Corp., 2015 Colo. Dist. LEXIS 718, *14 (Colo. Dist. Ct. August 5, 2015)
Counsel will normally be limited to 20 minutes on *voir dire* unless otherwise ordered by the Court.	Denver County	*Wright v. Limon*, 2012 Colo. Dist. LEXIS 1897, *10 (Colo. Dist. Ct. May 23, 2012)
After the court's *voir dire*, each side will be allowed twenty minutes for *voir dire*. The time limits will be strictly enforced.	Arapahoe County	*Dortch v. Reynolds*, 2017 Colo. Dist. LEXIS 1479, *1-2 (Colo. Dist. Ct. April 6, 2017)
Voir dire will be 20-30 minutes per side. Additional time will be considered on request.	Adams County	*Benson v. Molar*, 2018 Colo. Dist. LEXIS 1748, *3 (Colo. Dist. Ct. June 6, 2018)
Voir dire will be thirty minutes for each party.	Arapahoe County	*Martra Dev. Co. v. Curran*, 2018 Colo. Dist. LEXIS 3465, *1 (Colo. Dist. Ct. June 10, 2018)
Time limitations will be as follows: i. *Voir dire* - 20 minutes per side…	Jefferson County	*Haste v. Scl Front Range*, 2017 Colo. Dist. LEXIS 524, *3 (Colo. Dist. Ct. March 23, 2017)

Trial courts have discretion to implement these blanket time restrictions out of concern for judicial economy and wasting time. If twenty-four prospective jurors are initially are called to the jury box to seat a panel of 12 jurors and a twenty-minute restriction is imposed, then each

side has 50 seconds (0.833 minutes) to examine each juror to make informed challenges.[134] Likewise, if forty potential jurors are called to the jury box and each side is restricted to twenty minutes for *voir dire*, then each side has 30 seconds (0.5 minutes) to question each seated juror to elicit potential biases. In addition to information from *voir dire*, jurors provide basic demographic information in a questionnaire.[135] The topics listed include: name, sex, date of birth, age, residence, and marital status; the number and ages of children; educational level and occupation; whether the juror is regularly employed, self-employed, or unemployed; spouse's occupation; previous juror service; present or past involvement as a party or witness in a civil or criminal proceeding.[136]

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134 *See Dortch v. Reynolds*, 2017 Colo. Dist. LEXIS 1479, *1 (Colo. Dist. Ct. April 6, 2017).
135 *See* Colo. Rev. Stat. § 13-71-115 (providing that jurors shall be given questionnaires for completion and that, unless otherwise ordered by the court, counsel shall be supplied with copies of the "appropriate completed questionnaires").
136 *Id*.

III. EXISTING RESEARCH ON BIAS AND JURY SELECTION

This section summarizes the existing literature regarding bias, and more specifically, bias and jury selection.

A. Bias and Judgment

Cognitive and social psychologists have spent decades exploring various forms of cognitive, motivational, and social biases[137]. However, the term "bias," which has become a buzz word in current social discourse, is now used to refer to many different things, almost always accompanied with negative connotations. Most broadly, bias has been defined as a systematic source of influence that detracts from accuracy or truth in a non-random manner.[138]

A full list of the contributions to the literature on biases of potential interest to legal scholars would number in the thousands. Some of the most notable of these contributions would include early work on rationalization, cognitive dissonance reduction, and attributional biases, More recent contributions would include Daniel Kahneman's and Amos Tversky's work on biases in judgment and decision making (which was recognized with the 2002 Nobel Prize in Economics), Jonathan Haidt's exploration of the influence of religious and ideological influences on moral judgment. A consistent topic over many decades has been the existence and consequences of prejudice and in-group favoritism.[139][140]

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[137] Citation
[138] West, T. V., & Kenny, D. A. (2011). "The truth and bias model of judgment." *Psychol. Rev., 118*(2), 357.
[139] Brewer, M. B. (2007). "The social psychology of intergroup relations: Social categorization, ingroup bias, and outgroup prejudice"; Dovidio, J. F., Glick, P., & Rudman, L. "On the nature of prejudice: 50 years after Allport." *Maiden, MA: Blackwell*.
[140] Citation

An analysis of 83 studies revealed a consistent relationship between attitudes and behaviors, such that attitudes predicts behavior 69% of the time.[141] In fact, several studies have demonstrated that individuals' attitudes can bias how a legal case is judged. For example, participants who expressed high levels of benevolent sexism preferred male attorneys who expressed anger (relative to neutral male attorneys) and neutral female attorneys (relative to angry female attorneys)[142]; they were also more likely to blame the victim of a rape case than those who expressed low levels of benevolent sexism.[143] Indeed, analysis of 272 studies of juror decision-making in criminal cases showed that jurors' level of authoritarian attitudes and their trust in the legal system are strongly related to their decisions whether to acquit or convict.[144] Unfortunately, there is little research on the degree to which jurors' pre-existing attitudes predict their judgments in civil cases—a gap in the literature we hope to remedy with this project.

The biases of concern in this paper are systematic inclinations, preconceptions, mindsets, or beliefs (whether conscious or unconscious) that could bias jurors in a direction favorable or unfavorable to one of the litigants, to their attorneys, or to witnesses providing evidence in a civil trial. In our present research on *voir dire* procedures, the focus is on the usefulness of standard, minimal *voir dire* versus more extended and case-specific *voir dire* for attorneys, and for presiding judges, to identify jurors whose consideration of evidence, verdicts, and awarded damages might in large measure reflect their biases rather than the court's instructions and the

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141 Kraus, S. J., (1995). "Attitudes and the prediction of behavior: A meta-analysis of the empirical literature." *Personality & Soc. Psychol. Bull., 21*(1), 58-75.
142 Salerno, J. & Phalen, H. (forthcoming). "Traditional gender roles and backlash against female attorneys expressing anger in court." *J. Empirical Legal Stud*.
143 Abrams, D., et al., (2003). "Perceptions of stranger and acquaintance rape: The role of benevolent and hostile sexism in victim blame and rape proclivity." *J. Personality & Soc. Psychol., 84*(1), 111.
144 Devine, P. G., et al., (2012). "Long-term reduction in implicit race bias: A prejudice habit-breaking intervention." *J. Experimental Soc. Psychol., 48*(6), 1267-1278.

preponderance of evidence standard. We also explore the distinct possibility, given the evidence martialed by social and cognitive psychologists, that these distortions might occur despite the jurors' best intentions, and even their pledge to the court in response to "judicial rehabilitation" that they will put those biases aside as they consider the evidence presented in the case.

Our working assumption in the present research is that attitudes and views discoverable through reasonable *voir dire* procedures can bias jurors' verdicts and damages awards via confirmation bias and motivated reasoning whereby they attend to, recall, and give disproportionate weight to information that is congruent with such attitudes and beliefs.[145] For example, a juror who reveals in *voir dire* that he or she considers evidence with a pre-existing belief that plaintiffs commonly make false claims out of greed, would be inclined to accept, at face value, evidence and arguments in the specific case they are considering that seems congruent with that belief, while responding with skepticism and openness to rebuttal to evidence and arguments that are incongruent with those pre-existing beliefs. This possibility suggests that it is crucial for attorneys to be able to identify jurors who hold extreme beliefs that might influence how they process and interpret the evidence of a case and, ultimately, their verdict and damages award judgments.

B. Regulating Bias

Identifying jurors who hold pre-existing attitudes that might bias their judgment would be less necessary, however, if it were possible to break the link between jurors' pre-existing attitudes and their ultimate legal judgments. In other words, if jurors were able to control the biasing impact of their attitudes on their decision-making processes, the legal system wouldn't

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[145] Kunda, Z. (1990). "The Case for Motivated Reasoning." *Psychol. Bull.*, 108, 480-498.

have to worry about excluding them from juries. Some psychological scientists have argued that people can manage their biases if they are (1) aware of their potential biases and (2) motivated to change their biases.[146] Interestingly, these two requirements loosely delineate two aspects of the *voir dire* process. First, by questioning jurors about their potential biases before they hear evidence and evaluate the case, attorneys might call jurors' attention to their biases, which might enable them to better control their impact. Second, judges often try to call jurors' attention to their biases and motivate them to try to control them through judicial rehabilitation. It is possible that these two aspects of the *voir dire* process might negate the need for identifying and excluding biased jurors during extended *voir dire*. There is some support from basic social psychological research that these two factors hold promise for breaking the link between jurors' pre-existing attitudes and biased legal judgments (reviewed briefly next). The causal impact of questioning biases before evaluating a case and judicial rehabilitation has not been tested, however, in a civil jury context.

C. Bias awareness

There is some psychological evidence to support the idea that calling jurors' awareness to their biases during *voir dire* might prevent biases from shading their evaluation of the case. In the legal context, there is some evidence that drawing jurors' attention to potential racial bias can reduce the impact that a defendant's race has on jurors when they consider verdicts.[147] More specifically both White and Black jurors are more likely to make racially unbiased decisions

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146 Devine, *supra* note 142.
147 Sommers, S. R., & Ellsworth, P. C. (2000). "Race in the courtroom: Perceptions of guilt and dispositional attributions." *Personality & Soc. Psychol. Bull., 26*(11), 1367.

when race is salient relative to when race is not salient.[148] That is, when judging the same case, jurors were more likely to vote guilty for a Black versus White defendant when race was not salient, but when an aspect of the case had to do with race, this racial bias was eliminated. Further, both White and Black jurors were more punitive toward other-race defendants when race was not salient, but this racial difference was smaller when race was made salient.[149] A common interpretation of these finding determines that calling jurors' awareness to this potential bias helps them regulate their bias.

It is possible that *voir dire* might have a similar impact in civil cases by calling jurors' awareness to their biases. However, there is no research, to our knowledge, testing this proposition directly in the realm of civil juries. One goal of the present research is to test whether being questioned about relative pre-existing attitudes before judging a case might help jurors regulate the potential biasing impact of those attitudes on their case judgments, relative to those who are questioned about them after the case.

D. Judicial rehabilitation

Social psychological research has demonstrated that both an awareness of the bias and a motivation to reduce bias are necessary (but not always sufficient) steps to reducing bias. Critics of extended *voir dire* argue that judges can effectively prevent juror bias through rehabilitative questioning. Rehabilitative questioning includes the judge informing the juror of the law that requires them to set aside their biases and then asking if the juror is able to do so. Although

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148 Sommers, *supra* note 147, at 1367-1379; Sommers, S. R., & Ellsworth, P. C. (2001). "White juror bias: An investigation of prejudice against Black defendants in the American courtroom." *Psychol., Pub. Pol'y, & L.*, 7(1), 201.

149 Sommers, *supra* note 148 (2001).

some basic social psychology suggests that rehabilitative questioning would be effective because biases can be reduced by calling attention to the biases and providing motivation to change,[150] other research would suggest it to be a less promising intervention.[151]

Attitudes are notoriously difficult to change, and people's biases can affect their judgments and behavior outside of their awareness.[152]

Encouraging people to regulate their biases is not always effective. Attempts to make people self-regulate their biases against unattractive job candidates by expressing a desire to remain neutral and to be fair reduced, but did not eliminate, biases in hiring decisions.[153] Participants who were told *not* to rely on stereotypes wrote more stereotypic narratives than those who were not given such an instruction.[154] Similarly, participants who were told to pay attention to race *and* those who were told to suppress race made more race-based errors than those who were given no instructions.[155] Further, asking jurors to express impartiality and awareness of their potential biases might have a "credentialing" effect, or a false sense of security that they have taken care of their biases. Research has demonstrated when people are given the opportunity to act in a way that is not prejudiced, they are actually more likely to subsequently act in a prejudiced way relative to those people who are not given the

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150 Devine, *supra* note 142; Sommers, *supra* note 145 (2000); Sommers, *supra* note 146 (2001).
151 *See* Crocker, *supra* note 10, at 212-13 (discussing dishonesty arising when jurors waver between their reluctance to divulge an unwillingness to respect the law to a judge and their need to align with their beliefs and values); Arthur H. Patterson & Nancy L. Neufer, *Removing Juror Bias by Applying Psychology to Challenges for Cause*, 7 Cornell J.L. & Pub. Pol'y 97 (1997).
152 Nisbett, R. & Wilson, T. (1977). "Telling more than we can know: Verbal reports on mental processes." *Psychol. Rev.*, 231-259.
153 Axt, J. R., Nguyen, H., & Nosek, B. A. (2018). "The Judgment Bias Task: A flexible method for assessing individual differences in social judgment biases." *J. Experimental Soc. Psychol.*, 76, at 337-355.
154 Macrae, C. N., et al., (1994). "Out of mind but back in sight: Stereotypes on the rebound." *J. Personality & Soc. Psychol., 67*(5), at 808.
155 Payne, B. K., et al., (2002). "Best laid plans: Effects of goals on accessibility bias and cognitive control in race-based misperceptions of weapons." *J. Experimental Soc. Psychol., 38*(4), 384-396.

"credentialing" opportunity because that first act of impartiality provided moral cover to express prejudice later on.[156] For example, participants who were given the opportunity to endorse Barack Obama publicly were more likely to later endorse pro-White policies than those who were given the opportunity to support John Kerry.[157] Although these effects have never been tested in a civil jury setting, the studies suggest that rather than encouraging jurors to act unbiased, the awareness-motivation method of bias reduction could be ineffective (or even backfire and make jurors more biased).

Further, the rare research specific to the legal context is less than promising. Research on rehabilitative questioning by judges is mixed and entirely limited to criminal cases. One study indicated that jurors subjected to rehabilitative questioning about their attitudes toward the insanity defense are less likely to vote guilty than jurors who receive standard questioning.[158] Crocker and Kovera suggest this might be because jurors subjected to rehabilitation feel more pressure to answer the judge's questions in a socially desirable way than jurors not subjected to rehabilitation. They point out that jurors are unlikely to admit to biases when they know (and are told) they should not be biased, and people want to believe they can be fair. Although the study concluded that rehabilitation in a criminal setting caused jurors to be more receptive to insanity defense, the authors could not conclude whether jurors were actually more lenient or because the judge signaled to them that they should be more lenient—particularly given that rehabilitation reduced guilty verdicts among jurors who expressed bias, but also those who did not.[159]

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156 Effron, D. A., et al., (2009). "Endorsing Obama Licenses Favoring Whites." *J. Experimental Soc. Psychol., 45*(3), 590-93.
157 *Id*.
158 Crocker, *supra* note 10.
159 Crocker, *supra* note 10, at 225.

Further (and perhaps even more concerning) research indicates that instructing jurors to ignore their biases can ironically backfire and result in jurors relying more on biases.[160] This is consistent with classic social psychological research demonstrating that telling people to ignore something often just draws more attention to it and makes it difficult to ignore (i.e., the White Bear Effect).[161] Indeed, a specific examination of 48 studies on judicial instructions suggests that jurors cannot effectively follow instructions to disregard certain evidence.[162] A second goal of the present research is to test whether experiencing judicial rehabilitation before judging a case might help jurors regulate the potential biasing impact of those attitudes on their case judgments, relative to those who do not experience judicial rehabilitation.

In summary, vast literature in psychology strongly suggests that pre-existing attitudes will, if not eliminated or corrected, bias how jurors review evidence and render verdicts, often confirming those pre-existing attitudes. The literature on whether bias can be mitigated or corrected generally is mixed, leaving open the question of whether experiencing extensive *voir dire* questioning and/or rehabilitative instructions from a judge are likely to mitigate or eliminate juror bias. Further, even if these interventions reduce bias, those reductions might be short-lived. Lai and colleagues (2016), for example, found that nine different interventions did not reduce bias in the long-term, even when participants were motivated to reduce their bias. An analysis of 492 studies found that implicit biases can be changed, but the size of that change is relatively

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160 *See, e.g.,* Macrae, C. N., et al., (1994). "Out of mind but back in sight: Stereotypes on the rebound." *J. Personality & Soc. Psychol.*, 67(5), 808; Payne, B. K., et al., (2002). "Best laid plans: Effects of goals on accessibility bias and cognitive control in race-based misperceptions of weapons." *J. Experimental Soc. Psychol.*, 38(4), 384-96; Dale W. Broeder, *The University of Chicago Jury Project*, 38 Neb. L. Rev. 744, 754 (1959) (instructions to discount evidence of insurance tends to "sensitize the jurors to fact that defendant is insured and thereby increase the award.").

161 Wegner, D. M., & Schneider, D. J. (2003). "The white bear story." *Psychol. Inquiry, 14*(3-4), 326-29.

162 Steblay, N. et al., (2006). "The Impact on Juror Verdicts of Judicial Instruction to Disregard Inadmissible Evidence: A Meta-Analysis." *L. & Hum. Behav.*, *30*(4), 469-492.

small.[163] In many jurisdictions, the legal system places a lot of faith on the assumption that judicial rehabilitation will eliminate juror bias—to the degree that they use it as a justification to cut attorneys' ability to question, identify, and exclude biased jurors. We aim to test this assumption directly in the realm of civil juries.

E. Can *voir dire* help attorneys identify jurors with biases?

If judicial rehabilitation does not eliminate juror biases, extended *voir dire* is even more necessary for attorneys to use to identify biased jurors and exclude them from the jury. Unfortunately, and as prior noted, the small experimental literature is relevant to criminal, rather than civil, juries.[164] A rare study focusing on the impact of extended civil *voir dire* (relative to minimum *voir dire*) demonstrated that extended *voir dire* increased accuracy of predicting individual verdicts.[165] Case-specific attitude research has shown that jurors' attitudes toward civil litigation can, in fact, be modest predictors of their case-related decisions.[166]

Although conducted in the criminal setting, one study demonstrated that a non-directive *voir dire* held promise for eliciting more self-disclosing *voir dire* responses more likely to

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163 Forscher, P. et al., (2019). "A Meta-Analysis of Procedures to Change Implicit Measures." *J. Personality & Soc. Psychol., 117*(3), 522-559.

164 Cutler, B. L., Moran, G., & Narby, D. J. (1992). "Jury selection in insanity defense cases." *J. of Res. in Personality, 26*(2), 165-182; Johnson, C., & Haney, C. (1994). "Felony *voir dire*." *L. & Hum. Behav., 18*(5), 487-506; Lecci, L., & Myers, B. (2002). "Examining the construct validity of the original and revised JBS: A cross-validation of sample and method." *L. & Hum. Behav., 26*(4), 455-463; Middendorf, K., & Luginbuhl, J. (1995). "The value of a nondirective *voir dire* style in jury selection." *Crim. Just. & Behav.*, 22, 129-51; Nietzel, M. T., et al. (1999). "Juries." *Psychol. & L.*, at 23-52; Zeisel, H., & Diamond, S. S. (1978). "The effect of peremptory challenges on jury and verdict: An experiment in a federal district court." *Stan. L. Rev*., 491-531 (discussing a rare exception investigated whether jurors' personality traits made them more or less likely to be excused in criminal and civil trials); John Clark et al., (2007). "Five Factor Model Personality Traits, Jury Selection, and Case Outcomes in Criminal and Civil Cases." 34 *Crim. Just. & Behav.* 641.

165 Moran, G., et al., (1990). "Jury selection in major controlled substance trials: The need for extended *voir dire*." *Forensic Rep.*

166 Robbennolt, J.K., et al. (2006). "Evaluating and assisting jury competence in civil cases." In I. B. Weiner & A. K. Hess (Eds.), *The handbook of forensic psychology* (3rd ed., p. 392-425).

include an admission in their inability to adhere to due process guarantees, relative to a more directive *voir dire* style.[167] Further, the nondirective style of *voir dire* was more effective in uncovering grounds for challenging a juror for cause than directive style of *voir dire* because the nondirective *voir dire* established an atmosphere in which the juror felt less bound to give a socially desirable response to questions from the attorney or judge. It is important, however, to test the effectiveness of extended *voir dire* in eliciting honest admissions of potentially biasing pre-existing attitudes among civil jurors.

Further, some studies have compared the impact of judges versus attorneys conducting *voir dire* and highlighted the importance of allowing attorneys to question the potential jurors. Attorneys are more effective than judges in eliciting candid answers from potential jurors and mock jurors change their minds more often when questioned by judges than attorneys.[168] Further, jurors were more likely to change their answers on important attitude and belief measures when interviewed by a judge than an attorney during *voir dire*. A third goal of this research is to assess the degree to which jurors will admit to pre-existing biases and unwillingness to follow the law during extended *voir dire* and the degree to which those attitudes will predict their verdicts and damages award decisions.

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167 Middendorf, K., & Luginbuhl, J. (1995). "The value of a nondirective *voir dire* style in jury selection." *Crim. Just. & Behav.*, *22*, 129–51.
168 Jones, S. E. (1987). "Judge-versus attorney-conducted *voir dire*: An empirical investigation of juror candor." *L. & Hum. Behav.*, *11*(2), 131-146. https://doi.org/10.1007/BF01040446.

IV. METHOD

A. Overview of Experimental Design and Procedure

All potential participants in the study completed a pre-screening which included basic demographic information (i.e., gender, age, ethnicity, income, education level) and attention checks. Those who failed initial attention checks were routed out of the study. Participants who passed the pre-screening were asked to assume the role of "juror" and were given an overview of the case, which included brief information about the plaintiff and defendant.

Jurors in all experimental conditions read a detailed summary of evidence and arguments presented in one of three real cases, and then indicated the verdict they favored and what financial damages, if any, they would award to the plaintiff. Before offering these judgments, jurors randomly assigned to the extended *voir dire* condition completed a questionnaire containing both generic items about sources of bias that might influence jurors in any tort case and additional items pertaining to potential biases pertaining to the specific case they were considering. Jurors assigned to the minimal *voir dire* answered only the generic items before offering their judgments but answered the case-specific *voir dire* questions after offering those judgments. Jurors in the no *voir dire* condition answered both the generic and case specific bias questions only after offering their judgments. Jurors in the three experimental condition further were randomly assigned to either view or not view a "judicial rehabilitation video" before they considered the case material that essentially asked whether they could set aside their biases.

Participants in all experimental conditions also completed various attention checks and were tested about their memory about case details and their agreement or disagreement with various statements about the facts of the case and the parties to the lawsuit.

B. Participants and Data Cleansing

The three cases were considered by 2,567 participants we accessed from Amazon's Mechanical Turk, which is an online source commonly used for recruiting participants into psychological studies. Mechanical Turk samples are more demographically diverse than traditional "convenience" samples (e.g., college students or online community member samples), and are considered to be a legitimate source of quality data.[169] Data from 523 participants (20% of the sample) was excluded from the study because the participant failed at least one of the following data quality checks: (This rate, it should be noted, is typical for Mturk samples[170]),

(1) Participants failed any of four attention checks in which we requested participants choose a specific answer if they are paying attention (attention check 1: *n* = 159, 6%; attention check 2: *n* = 48, 2%; attention check 3: *n* = 166, 6.5%; attention check 4: *n* = 32, 1.2%).

(2) Participants failed to report the same gender (*n* = 25, 1%), age (*n* = 24, 1%), ethnicity (*n* = 33, 1%) or education level (*n* = 37, 1.5%) the second time the question was asked.

(3) Participants failed to correctly report whether they saw a video of the judge (*n* = 66, 2.6%)

(4) Participants failed to correctly answer at least one of the three comprehension checks after reading the trial materials (*n* = 181, 7%).

(5) Damages: we made sure that the numeric version matched the written-out version and deleted one damage award outlier (31 billion).

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169 Buhrmester, M., Kwang, T., & Gosling, S. D. (2011). "Amazon's Mechanical Turk: A new source of inexpensive, yet high-quality, data?." *Perspectives on Psych. Sci*, *6*, 3-5; Paolacci, G., Chandler, J., & Ipeirotis, P. G. (2010). "Running experiments on amazon mechanical turk." *Judgment & Decision Making, 5*(5), 411-419.
170 Goodman, J. K., Cryder, C. E., & Cheema, A. (2013). "Data collection in a flat world: The strengths and weaknesses of Mechanical Turk samples." *J. Behav. Decision Making*, *26*, 213-224. doi: 10.1002/bdm.1753

The sample remaining following these exclusions included 2,041 participants (62% white, 77% female). Detailed demographic information for the overall sample, the Colorado sample, and the samples assigned to each of the three separate cases is provided in Table 2.

Participants took, on average, 54 minutes (*SD* = 20 minutes) to complete the study (Wrongful birth *M* = 61, *SD* = 21; Aortic dissection *M* = 49, *SD* = 17; Bad Faith *M* = 54, *SD* = 18). All participants were compensated $2, along with a potential bonus of $2.50 if they correctly answered 50% of the comprehension questions (some of which were quite difficult).[171]

[171] The later comprehension questions were used for bonuses, not for exclusion. Only early attention checks were used to exclude jurors.

V. MATERIALS

A. Trial Materials

The trial stimuli in our study were based on three actual cases: (1) a bad faith case involving an insurer and claims that the insured acted improperly, (2) a tort claim asserting a doctor failed to diagnose an *en utero* defect, and (3) a medical malpractice case involving a failure to diagnose in an emergency room. The material presented for each case included a summary of factual background, opening statements, the direct questioning of witnesses, and closing statements. The length and the amount of detail and complexity of these materials allowed us both to capture some of the nuance of the relevant cases and to make the salience of the *voir dire* relative to the salience of the case materials better approximate the circumstances of an actual trial.

Bad Faith Case Summary: The plaintiff alleged that, after a car accident, her insurance company did not pay her the amount owed and acted in bad faith. The defense argued that her attorney failed to cooperate in order to create a bad faith claim. Extended *voir dire* in this case focused on jurors' personal beliefs and experiences with insurance companies.

Wrongful Birth Cystic Fibrosis Case Summary: The plaintiff alleged that a genetic testing company was liable for her son's wrongful birth after they failed to identify the risk that her child would have cystic fibrosis. She alleged that if she received the information from these tests, she would have terminated the pregnancy. Extended *voir dire* in this case focused on jurors' opinions on abortion, their attitudes towards women and motherhood, and their trust in science.

Medical Malpractice/Aortic Dissection Case Summary: The plaintiff alleged that the defendant misdiagnosed and improperly dismissed her husband's medical emergency, causing him to die at home. The plaintiff also alleged that the hospital was negligent by allowing the doctor to change and update notes in the medical charts weeks after seeing the patient. Extended *voir dire* in this case focused on jurors' trust in science.

B. *Voir dire* Questions

No Voir dire Condition: Jurors in this condition answered only basic demographic question posed in a pre-screening prior to their consideration of case materials and decisions regarding liability and any financial damages.[172]

Minimal Voir dire Condition: Before considering case materials, jurors in this condition were asked generic questions dealing primarily with their experiences with the legal system and any broad biases or prejudices they might possess. In particular, they were asked if they had served as a juror or grand juror, if they had studied law, if they or a close family member had sued or been sued, if they had testified in a lawsuit before, and also their ability to come to verdict and any beliefs that could keep them from doing so impartially. The jurors were, in essence, asked to identify any experiences or attitudes that might bias them toward a party in the case and to volunteer that information.

Extended Voir dire: The *extended voir dire* included an additional set of questions that related to several specific aspects of the case participants were to consider. The relevant items comprised four general categories, as described below.

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[172] See Appendix ?? for full wording of instructions and questions for jurors in each *voir dire* condition.

1) Pre-existing attitudes about trial participants

Burden of Proof: Jurors were asked, "In a case like this, do you think the plaintiff or defense is going to have a harder time convincing you?" on a 5-point scale ranging from (1) *The defense will have a much harder time* to (2) *The plaintiff will have a much harder time*.

Trust: Jurors were asked to indicate the degree to which they trusted doctors, lawyers, people who sue others (i.e., plaintiffs), and insurance companies, for each item using 4-point scales anchored at 1-*None* and 4-*A great deal*.

Impetus for Plaintiff's Action: Jurors were asked to respond to the following three items assessing the degree to which they thought the claims were due to the plaintiff's actions, in each case using a 7-point scale ranging from 1-*Strongly Disagree* to 7- *Strongly Agree*: (i) "If there is a trial like this it is much more likely that the plaintiffs are out for money than the doctor making a mistake;" (ii) "Most people who sue others are just trying to blame someone else for their problems;" (iii) "Most people who sue others in court have legitimate grievances" (this item was reverse scored). Averaging responses to these three items yielded a reliable scale for the Wrongful Birth Cystic Fibrosis Case, $\alpha = .65$ and for the Aortic Dissection Case, $\alpha = .72$, but not for the Bad Faith Case, $\alpha = .29$, for which we had substituted the insurance company for the doctor. Accordingly, we did not utilize this scale in our analyses.

Likelihood of Fraudulent Claims: Jurors were asked to judge the likelihood of three scenarios. Depending on whether they judged one of the medical malpractice cases (Wrongful Birth, Aortic Dissection) or the insurance case (Bad Faith), they were asked about medical professionals or insurance companies, respectively. *First*, they were asked which they thought was more likely: 1 = [medical professionals/insurance companies] deny a valid claim, 2 = both are equally likely, or 3 = a person makes a fraudulent claim against a [medical professional/

insurance company]. *Second*, they were told to suppose that a [medical professional/insurance company] denied a claim for making a mistake that caused a patient harm, and to choose which they thought was more likely: 1 = the [medical professional/insurance company] is trying to save money and avoid getting in trouble by not paying, 2 = both are equally likely, and 3 = the claim is not valid. *Third*, they were told to suppose a [medical professional/insurance company] does deny a valid claim and to choose which they thought is more likely: 1 = the [medical professional/insurance company] is denying a claim they know is valid to avoid having to pay money is more likely, 2 = both are equally likely, 3 = the [medical professional/insurance company] is making an honest mistake is more likely. Averaging responses to these three questions provided a reliable scale in all three cases (Wrongful Birth Case $\alpha = .68$; Aortic Dissection Case: $\alpha = .64$; Bad Faith Case: $\alpha = .68$).

Likelihood of Defendant Dishonesty: Jurors were asked to rate the likelihood of the following two scenarios on 6-point scales ranging from *Always* to *Never*. Depending on whether they judged one of the medical malpractice cases (Wrongful Birth, Aortic Dissection) or the insurance case (Bad Faith), they were asked about medical professionals or insurance companies, respectively. They were asked "How often do you think the following things happen? [Medical professionals/insurance companies] decline valid claims for minor injuries because they think the person making the claim will drop it rather than pursue the issue and sue for the claim. [Medical professionals/insurance companies] deny causing major injuries because they are trying to hold on to the money for as long as they can before they have to pay it." Averaging responses to these two items created a reliable scale for all three cases (Wrongful Birth Cystic Fibrosis Case $\alpha = .76$, Aortic Dissection Case: $\alpha = .75$; Bad Faith Case: $\alpha = .73$)

2) Support for litigation.

Belief that the Burden of Proof is Too Low: Jurors were given a detailed explanation (*see* Appendix for wording) of the burden of proof criterion in civil cases, and the implication of the burden of proof (e.g., "even if a plaintiff proves something is only 51% likely to be true, and it is 49% possible it is not true, the plaintiff has met their burden of proof and should win their case"). Then, they were asked to complete a sentence using a 5- point scale (anchored at 1-*Way too low* and 5- *Way too high* with a midpoint of 3-*Neither too low nor too high*) to indicate their view of that criterion.

Discomfort Relating to Non-Economic Damages: Jurors were given a detailed explanation of the difference between economic and non-economic damages and asked to indicate whether they were either "comfortable" (coded 0) or "not comfortable" (coded 1) awarding non-economic damages.

Scale of Negative Attitudes Toward Lawsuits: Jurors were asked the degree to which they thought (1) the number of personal injury lawsuits and (2) the amount of money awarded in such lawsuits has been "too low" versus "too high" using 5-point scales anchored (1-*Way too low* and 5-*Way too high*, with the midpoint of 3-*Just right*). Averaging responses to these two items provided a reliable scale in all three cases (Wrongful Birth Cystic Fibrosis Case: $\alpha = .74$; Aortic Dissection Case: $\alpha = .74$; Bad Faith Case: $\alpha = .68$).

Limit Litigation Scale: Jurors were asked the degree to which they supported three efforts to curb litigations on 4-point scales ranging from *Strongly Oppose* to *Strongly Support*: (1) Making it harder to sue any person, business, or organization that injures another person either through carelessness or intentionally; (2) Placing a limit on how much an attorney who represents an injured person in a lawsuit can charge for his or her services; and (3) Placing a

limit on how much a judge or a jury can award in a lawsuit resulting from a person being injured. We averaged these three items together, which formed a relatively reliable scale in the medical malpractice cases (Wrongful Birth Cystic Fibrosis Case: α = .58; Aortic Dissection Case: α = .57). The reliability analysis for the Bad Faith Case revealed that deleting one of the items ("Placing a limit on how much an attorney who represents an injured person in a lawsuit can charge for his or her services") allowed us to increase the reliability of the relevant scale from α =.54 to α =.64.

3) Issue-specific attitudes.

Pro-Life Abortion: Jurors considering the Wrongful Birth Case were asked to indicate their agreement with five statements concerning their attitudes about abortion, (e.g., "I am pro-life," "I believe that women have the right to decide whether or not to be pregnant") using 6-point scales (1-*Strongly Disagree*, 6-*Strongly Agree*). Averaging responses to these five items (employing reverse coding where appropriate) provided a reliable scale (α = .90).

Traditional Attitudes toward Women and Motherhood: Jurors considering the Wrongful Birth Case were also asked to report their agreement with 12 statements about gender and motherhood (e.g. "Whatever career a woman may have, her most important role in life is still that of being a mother," and "It is OK for a woman to have a career and her partner to care for their children") using 7-point scales (1-*Strongly Disagree*, *7-Strongly Agree*). Averaging responses to these five items (employing reverse coding where appropriate) provided a reliable scale, α = .84.

Trust in Science: Jurors in the Aortic Dissection Case and in the Wrongful Birth were asked to indicate their agreement with five statements concerning science (e.g. "Science and

technology are making our lives healthier, easier, and more comfortable." and "Science makes our way of life change too fast.") using 7-point scales (1-*Strongly Disagree,* 7-*Strongly Agree*). Averaging responses, with reverse coding where appropriate, provided reliable scales both for the Aortic Dissection Case, α = .78, and the Wrongful Birth Cystic Fibrosis Case, α = .75.

4) Political Ideology

Political Orientation: Jurors were asked to report their political orientation using a 7-point scale (1-*Extremely Conservative*, 7-*Extremely Liberal*).

Trump Approval Scale: Jurors were asked two yes/no questions regarding their support for President Trump (i.e., "Do you approve of the job President Trump is doing?" and "If the presidential election were today, would you vote for Trump?"). In each case we code the "yes" response as a 2 and the "no" response as a 1. Averaging responses to these two items provided a reliable scale for all three cases (Wrongful Birth Case: α =.93; Aortic Dissection Case: α = .92; Bad Faith Case: α =.96).

C. Judicial Rehabilitation Manipulation

Jurors in the rehabilitation condition saw a 24 second video of a judge in a courtroom asking that they "put aside any views or biases you might have and apply the law as written." Jurors in this condition were then asked, "Can you put aside any views or biases you might have and follow the law as it is given?" to which they replied "yes" or "no."[173] The very few jurors who responded *no* to this question (n = 11, 0.4%) were excluded from all analyses. This video

[173] *Walls v. Kim*, 250 Ga. App. 259, 260–61, 549 S.E.2d 797, 799–800 (2001), aff'd, 275 Ga. 177, 563 S.E.2d 847 (2002) ("After you hear the evidence and my charge on the law, and considering the oath you take as jurors, can you set aside your preconceptions and decide this case solely on the evidence and the law? Not so remarkably, jurors confronted with this question from the bench almost inevitably say, 'yes.' ").

was, of course, omitted in the No Rehabilitation Condition. Jurors viewed this manipulation after answering *voir dire* questions, or in the no *voir dire* scenario, after the initial consent pages of the study. All jurors who saw the rehabilitation manipulation viewed it before reviewing the case materials.

VI. DEPENDENT MEASURES

A. Judgment by Jurors

After reading the case materials, jurors were first asked for a verdict (defendant liable vs. non liable), and to indicate how certain they were about that verdict (using a scale anchored at 0% and 100%) and, if that verdict favored the plaintiff, to indicate the damage award they deemed appropriate, writing it first in numbers, and then, as a quality check, to do so in words.

Additional items followed that pertained to the jurors' beliefs about the extent to which they thought various factors might have influenced their verdicts about liability and any damages they had favored awarding to the plaintiff. These factors, which mirrored our extended *voir dire* items, included attitudes toward various actors (e.g., doctors, plaintiffs, defense and plaintiff attorneys), their views regarding the burden of proof standard and the amount of money awarded in lawsuits, and their views about science and technology, abortion, and women and motherhood using 5-point rating scales anchored at 1- *Not at all* and 5- *An extremely big impact*.

B. Data Quality Checks

At several points, as they responded to the questionnaire items, jurors in all cases and conditions were asked questions to ensure they were paying attention during the case presentation and carefully reading the survey questions. During the case presentation, jurors were given specific numbers or words they were later asked to recall during the survey to serve

as an attention check. At various points participants also read items instructing them to choose a particular answer if they were reading carefully. Additionally, jurors were asked certain demographic questions twice to confirm that they were attending and answering both consistently and correctly. Manipulation checks were employed to ensure that jurors had attended to the relevant experimental manipulations. For example, at the end of the survey they were asked to indicate whether they had viewed a video of a judge. Research participants who failed to respond correctly to one or more of these checks were excluded from the study.

VII. RESULTS

A. Sample Demographics

We collected a national sample and purposefully oversampled Colorado. Table 2 below presents basic demographic information for the participants responding to each of the three cases and for combined sample for all three cases, as well as the corresponding information separately for the Colorado sample (collapsed across all three cases).

Table 2. Percentage of Liability Judgments and Average Damage Awards

	Bad Faith (*n* = 651)	Aortic Dissection (*n* = 717)	Bad Faith (*n* = 676)	All three Cases (*n* = 2041)	Colorado (N=166)
Liable verdicts	497 (76%)	268 (38%)	479 (71%)	1244 (61%)	108 (65%)
Damage Awards	Med: $25,000,000 Mean: $20,540,364 SD: $17,112,811	Med = $0 Mean = $6,251,158 SD = $11,575,432	Med = $350,000 Mean = $464,985 SD = $2,881,534	Med = $450,000 Mean = $8,913,729 SD = $14,576,766	Med = $500,000 Mean = $9,959,783 SD = $14,596,404

B. Pervasiveness of Juror Bias

We begin our presentation of key findings by presenting some descriptive statistics regarding participants' responses to the questionnaire items pertaining to potential biases in the minimal *voir dire* and the extended *voir dire* conditions. Graphical representations of all descriptive statistics pertaining to the full set of extended *voir dire* questions, collapsed across all three cases, are presented for the entire sample in Appendix 1 and for Colorado participants in Appendix 2. We have included a few of these statistics in Figure 1 of this section to highlight a few examples of the prevalence of attitudes that are problematic to the law. We have also included means and standard deviations for all measures as a function of experimental condition

collapsed across the three cases (Table 3). Graphical representations of each extended *voir dire* measures are also presented separately for each case in Appendices 3a-3c.

As apparent in Figure 1, significant minorities of the population hold views regarding civil cases that are at odds with existing law. Within our national sample, fully 32.1% of jurors view the traditional civil burden of proof – preponderance of the evidence – as "a little too low" and an additional 14.4% view it as "way too low." The percentages are similar in Colorado with 33.9% and 9.7% respectively. Accordingly, in the case of a random jury seated without *voir dire*, one can expect 46.4% nationally and 43.6% in Colorado to have at least some resistance to the accepted burden of proof, as stipulated in the standard instructions to jury members. By contrast, only 4.2% of our national sample and 6.7% in Colorado think the burden on plaintiffs is overly difficult.

Furthermore, 15.1% nationally and 12.1% in Colorado overtly state they are opposed to awarding noneconomic damages. Yet, noneconomic damages account for roughly 50% (check stats) of the total award to plaintiffs in civil cases.[174] Thus, in terms of jurors who are inclined to disregard or at least give too little weight to burden of proof instructions and disinclined to award non-economic damages, a random jury is much more likely to skew in favor of the defense than in favor of the plaintiff.

Jurors' responses to the extended *voir dire* questions regarding caps on damages provide further evidence of a potentially distorting influence on civil tort trials. Nationally, 38.5% of jurors *somewhat* support caps and 10.8% *strongly* support them, a total of 49.3%. In Colorado,

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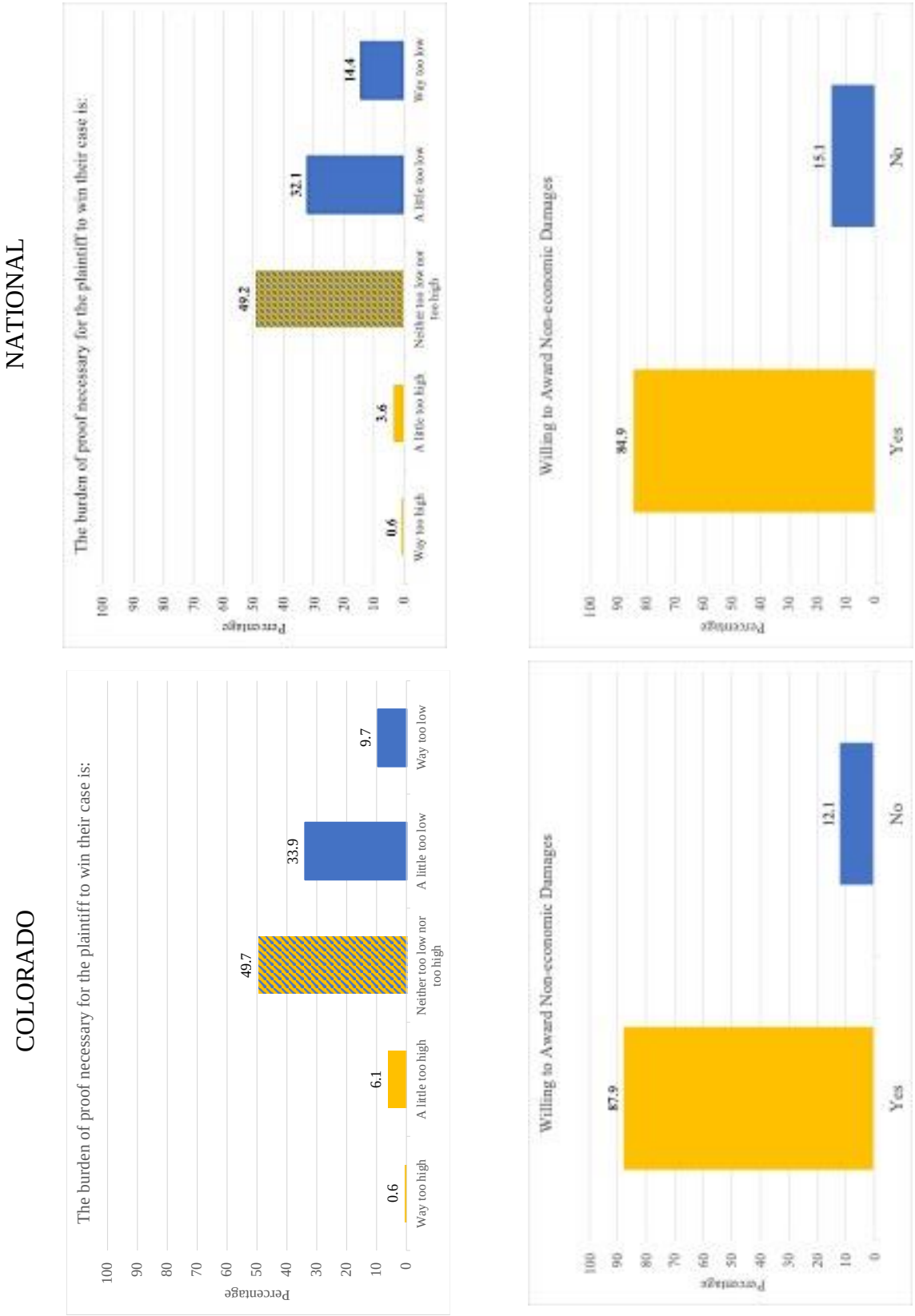
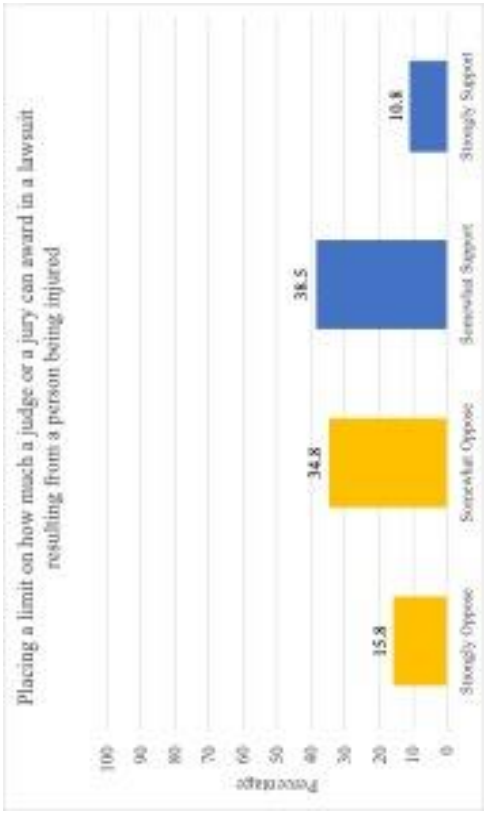
174 Neil Vidmar, Medical Malpractice and The American Jury: Confronting the Myth About Jury Incompetence, Deep Pockets and Outrageous Damage Awards, 200-01 (1995) (discussing noneconomic damages for pain and suffering constitutes more than 50% and as much as 80% of jury awards).

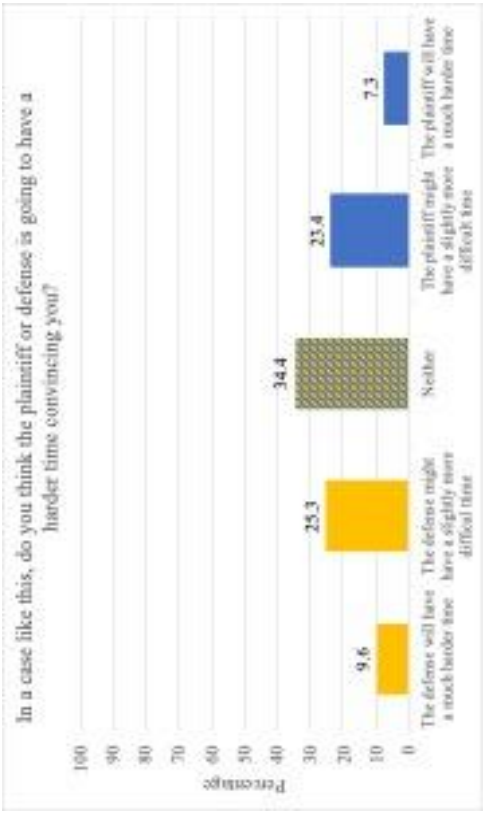
the corresponding statistics are 41.2%, 10.3% and 51.5% respectively. The prevalence of these beliefs is a further cause of concern insofar as such caps are generally to be imposed by the court rather than by jurors. At a minimum the inclusion of jurors who favor caps on awards is likely to reduce damage awards, again, to the disadvantage of the plaintiffs. This effect occurs whether or not a state actually has caps, as it is not based on knowledge about caps, but rather on a juror's views on the topic generally.

Figure 1. Selected descriptive statistics of extended *voir dire* questions in National & Colorado samples

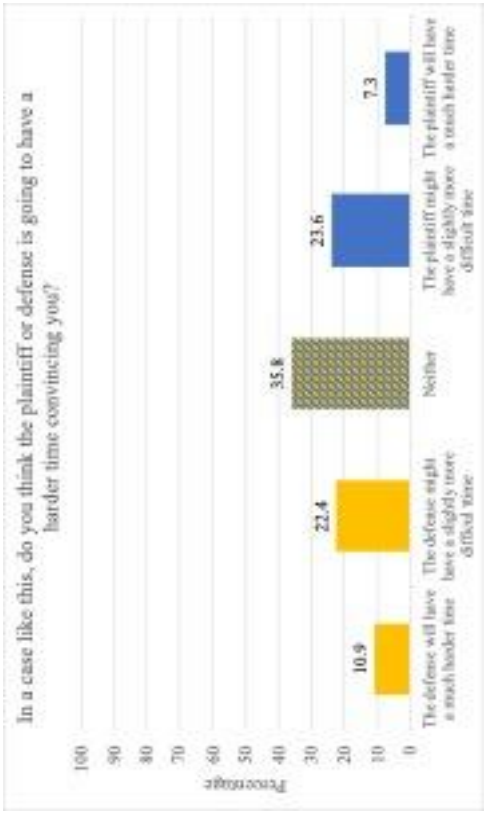


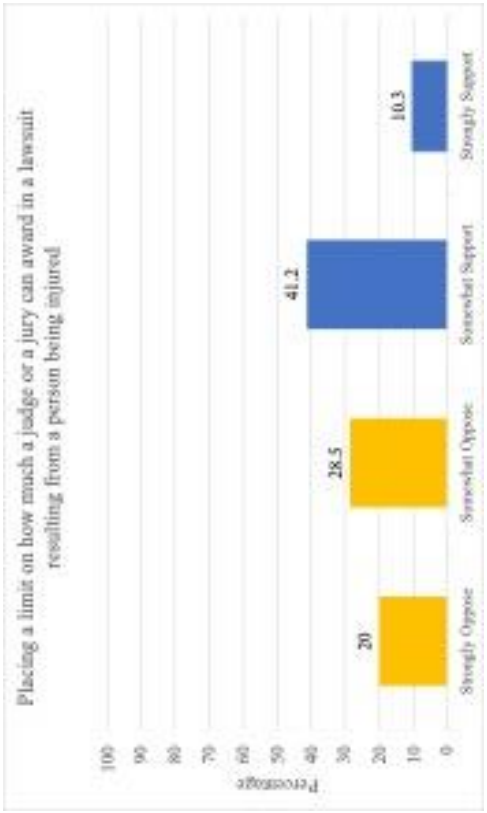
NATIONAL



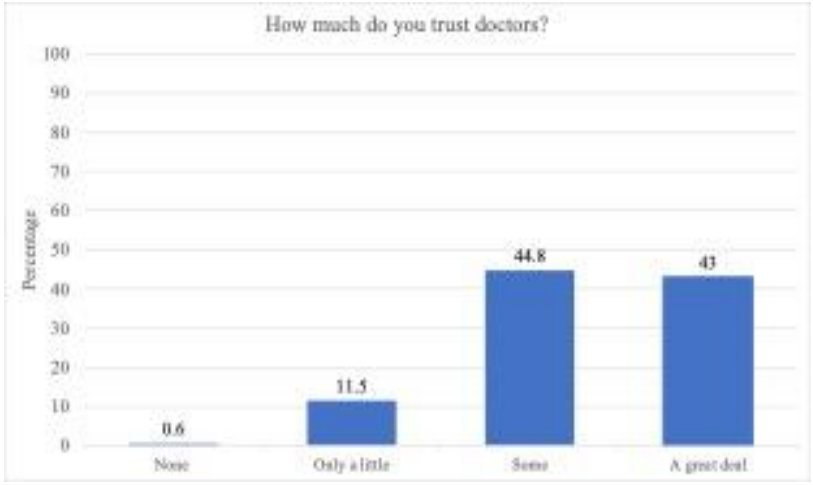


COLORADO

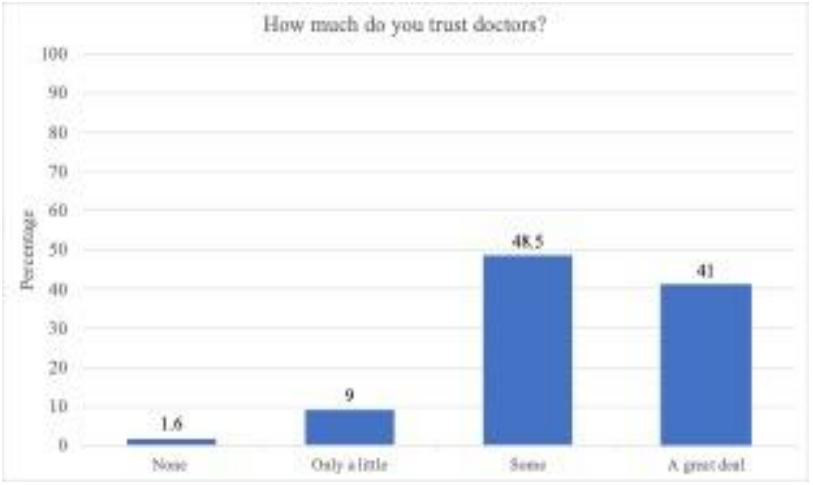


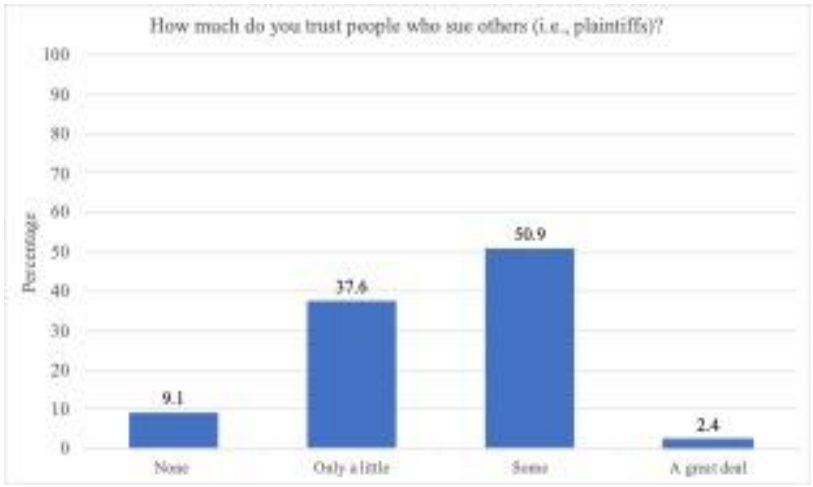


COLORADO



NATIONAL





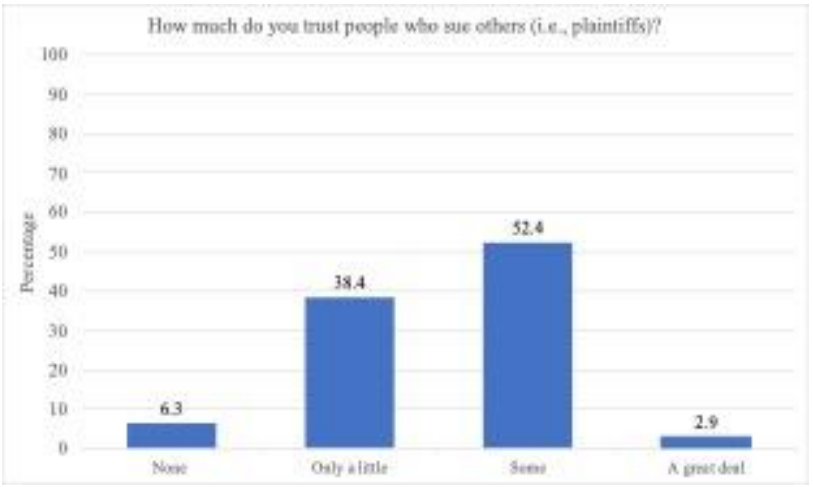


Table 3. Means and Standard Deviations for all Dependent Measures and Extended *Voir dire* Responses as a Function of Experimental Condition, Collapsed Across Cases[175]

	No Judicial Rehabilitation						Judicial Rehabilitation					
	No *Voir Dire*		Minimal *Voir Dire*		Extended *Voir Dire*		No *Voir Dire*		Minimal *Voir Dire*		Extended *Voir Dire*	
% Liable Verdicts	61%		63%		62%		62%		56%		63%	
	M	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*	*M*	*SD*
Damage Awards	$8,945,818	$14,849,456	$10,262,713	$15,729,423	$8,141,155	$14,004,916	$9,066,389	$14,405,445	$7,665,750	$12,936,043	$9,323,489	$15,246,563
Damage Awards (among those who voted liable; N = 1242)	$13,826,430	$16,778,627	$15,999,797	$17,266,173	$12,514,259	$15,805,467	$14,515,103	$16,079,010	$13,032,626	$14,852,001	$14,399,523	$17,045,340
Juror Predisposition	2.97	1.13	2.94	1.22	2.99	1.15	2.88	1.03	2.99	1.15	2.99	1.15
Trust in doctors	3.30	.64	3.27	.71	3.33	.66	3.28	.69	3.25	.73	3.31	.71
Trust in lawyers	2.52	.717	2.48	.75	2.57	.68	2.46	.77	2.50	.79	2.59	.76
Trust in plaintiffs	2.52	.64	2.45	.65	2.60	.62	2.52	.69	2.48	.68	2.55	.67
Trust in insurance companies	2.15	.76	2.11	.83	2.26	.75	2.07	.82	2.12	.79	2.25	.77
Impetus for Plaintiff's Actions Scale	3.25	1.06	3.25	1.20	3.18	.95	3.26	1.07	3.31	1.19	3.28	.94
Likelihood of Fraudulent Claims Scale	1.94	.51	1.97	.55	1.93	.46	1.95	.51	1.97	.56	1.98	.47
Likelihood of Defendant Dishonesty Scale	3.16	.917	3.17	1.03	3.21	.88	3.24	.99	3.28	.95	3.28	.93
Burden of proof	3.52	.82	3.53	.79	3.62	.78	3.48	.76	3.56	.85	3.61	.81
Unwillingness to give non-econ $	1.15	.35	1.19	.40	1.09	.29	1.16	.37	1.22	.41	1.10	.30
Negative Attitudes toward Lawsuits Scale	3.60	.75	3.6	.84	3.58	.77	3.62	.77	3.7	.76	3.63	.78
Limit Litigation Scale	2.34	.66	2.4	.71	2.30	.66	2.38	.69	2.40	.70	2.36	.67
Political Orientation (higher #s = liberal)	3.80	1.37	3.94	1.34	3.75	1.40	3.85	1.32	3.81	1.39	3.86	1.28
Trump Approval Scale (1 =pro, 2 = anti) (14)	1.69	.45	1.71	.44	1.66	.46	1.71	.44	1.70	.44	1.7	.45

[175] *Note*: The Impetus for Plaintiff's Actions Scale was not reliable in the Bad Faith Case—this analysis was limited to only the other two cases (n = 1364).

Beyond these responses, other self-reported biases are worth considering. For example, when asked to identify the party who would have a harder time convincing a juror of their case, only about 35% of jurors (nationally and locally in Colorado) indicate that neither side would have greater difficulty, with roughly equal percentages placing the greater weight on the plaintiff and the defendant. This distribution of views may seem relatively unproblematic, in that it does not systematically favor defendants over plaintiffs, or vice versa. But the distribution raises the possibility that, by chance, many juries will be disposed to expect more from one party or the other, rather than follow the instruction of the court that they are to weigh the evidence impartially. It may also interact with how jurors receive the burden of proof. It also bears directly on a question that is often asked in courts that allow *voir dire* relating to whether either party is starting, even a little bit, behind.

The critical question that must be addressed, therefore, is whether the biases discoverable through more extensive *voir dire* proceeding do, in fact, predict, and presumably influence, jurors' consideration and weighing of evidence, and as a result the verdicts and damage awards they favor. Furthermore, do the data we analyzed pertaining to the full range of potential biases that could be discovered by giving attorneys more time and latitude in conducting *voir dire* systematically tilt the playing field toward either the defendant or the plaintiff in tort cases?

C. Association between Juror Bias and Juror Decision-Making.

Statistical analyses were employed to test the extent to which jurors' responses to both minimal and extended *voir dire* questions predict their liability decisions and damage awards. These analyses further allowed us to determine the potentially mitigating impact of the judicial rehabilitation message we introduced for half of our participants. They also allowed us to determine whether the particular *voir dire* experience jurors had before considering evidence and

offering their judgments exerted a systematic and significant effect of their judgments. Because we conducted a very large number of statistical tests, we adopted a stringent significance level of $p = .01$[176] (i.e., the likelihood of such a chance finding to be less than 1%) in order for us to deem a finding to be statistically significant.

In the tables that follow regarding verdicts, *B* values indicated are regression coefficients. Positive values represent an increased likelihood of finding the defendant liable whereas negative *B* values represent a decreased likelihood of finding the defendant liable, the Odds Ratio (OR) values reported translate the *B* values into more readily interpretable Odds Ratios. An OR of 1.00 reflects equal likelihood. An OR of 2.00 means that jurors were twice as likely to find for the plaintiff for each step up the predictor scale (which will be different for each specific scale, e.g., going from a 2 to a 3 on a 7-point response scale, going from a 1 to a 2 on a 5-point response scale, going from a 0 to a 1 on a 2-point response scale). An OR of .5 would mean jurors are half as likely to find for the plaintiff for each step up the predictor scale.

1. *Do demographic factors or generic minimal voir dire questions predict case judgments?*

We first tested whether any basic demographic characteristics predicted mock jurors' verdicts or raw damage awards. For the damage award analyses, we excluded the one identified outlier participant's award (31 billion), as well as any participants whose numerical damage award spelled-out damage award that were a nonsensical combination.[177] As seen in Table 4, virtually none of the demographic factors we had included in our pre-screening questionnaire predicted verdicts or damage awards to a statistically significant degree. The only exception was

[176] Benjamin, D. J., et. al., (2018). "Redefine statistical significance." *Nature Human Behaviour, 2*, 6.
[177] Our damage award distribution had a skewness value of 1.76 (SD = .05) and kurtosis value of 3.61 (SD = .11).

that widowed status predicted higher damage award (*M* non-widowed = $8,633,787, SD = $14,440,852; *M* widowed = $16,313,042, SD =$16,210,191). When we considered demographic variables for each case separately, the only additional significant predictor proved to be parental status for jurors in the Bad Faith Case. Being a parent made participants significantly more likely (76%) to find the defendant liable than nonparents (66%) , *B* = .58, *SE* = .22, Wald = 7.05, *p* =.008, *OR* = 1.78. No other demographic variables predicted verdicts or damages in any of the three individual cases. This lack of predictive power, which some might find surprising, is consistent with findings from previous research.[178]

When we sought to determine whether any responses to generic, minimal *voir dire* questions predicted jurors' decisions, we found that only very small percentages of mock jurors acknowledged biases that might prevent them from being impartial. Moreover, the few participants who said yes to the relevant questionnaire items offered liability verdict rates and damage awards that did not differ significantly from the judgments offered by the large numbers who claimed to be free of any such biases (*see* Table 5). In short, the information provided by generic minimal *voir dire* questions did not prove useful in predicting jurors' judgments, and thus is of no value in informing decisions about whether to exclude such individuals from a jury.

[178] Norton, M. I., (2007). "Bias in Jury Selection: Justifying Prohibited Peremptory Challenges." *J. Behav. Decision Making*, *20*:467–479.

Table 4. Association between demographic factor[179]

	Effect on Verdicts					Effect on Damages			
	B	*SE*	Wald	*p*	*OR*	*B*	*SE*	*t*	*p*
Age	.01	.004	1.94	.164	1.01	-24.22	29162.78	.01	.999
Gender	-.17	.10	3.14	.076	.84	-1,183,875.00	690251.99	-1.71	.086
Hispanic	.13	.20	.46	.499	1.14	-837,812.99	1399774.50	-.599	.550
Asian	.02	.19	.01	.913	1.02	1,260,577.46	1381413.52	.91	.362
Black	.30	.17	3.26	.071	1.36	-254,507.18	1157479.76	-.22	.826
Parent	.004	.10	.002	.969	1.00	13,451.87	731279.42	.018	.985
Married	.08	.10	.55	.458	1.08	-509,814.90	746129.09	-.68	.495
Divorced/ Separated	.07	.16	.17	.676	1.07	490,568.59	1154629.30	.42	.671
Widowed	.49	.28	3.09	.079	1.63	6,752,224.71	1830624.81	3.69	<.0001
Partnered	.002	.24	<.001	.994	1.00	-3,887,148.90	1681938.19	-2.31	.021
Yearly Income	<.001	< .001	.07	.798	1.00	-9.95	8.21	1.21	.226
Education	-.02	.03	.76	.383	.97	-319,415.95	201809.64	-1.58	.114

[179] Note: The racial minority variables (Hispanic, Asian, Black) are all dummy codes relative to the White reference group, and all marital status variables (Married, Divorced/Separated, Widowed, Partnered) are dummy codes relative to people who have never been married.

Table 5. Predictive power of answers to generic minimal *voir dire* questions with respect to verdicts and damage awards

		Effect on Verdicts		Effect on Damages	
	Yes	χ^2	*p*	*t*	*p*
Have you previously served as a juror either in a criminal or civil case?	316 (15.5%)	.16	.687	-.05	.957
Have you served as either a state or federal grand juror?	66 (3%)	.92	.338	-.17	.863
Do you know of any reason you may be prejudiced for or against the plaintiffs or defendants because of the nature of the case, or otherwise?	40 (2%)	.72	.395	-.77	.443
Are you a lawyer, married to a lawyer, or in a substantial relationship with a lawyer?	37 (2%)	.23	.628	-1.76	.079
Have you studied law or worked in a law office?	129 (6%)	.18	.668	-1.18	.238
Have you or a close family member sued or been sued by someone?	316 (15.5%)	.36	.548	-1.55	.120
Have you or a close family member ever testified in a lawsuit?	184 (9%)	.46	.500	-.80	.422
You may be called upon in this case to decide liability and/or award money damages. Do any of you have any religious, philosophical, or other belief that prevents you from acting as an impartial juror in this case?	23 (1%)	1.70	.192	-.57	.571
Do you have any qualms about attempting to come to a verdict at the end of the case?	36 (2%)	1.10	.295	1.62	.106
Have you, any member of your family, or any very close personal friend ever engaged in investigating or otherwise acting upon claims for damages?	82 (4%)	.49	.484	-1.18	.236
Do you know of any reason that would prevent you from sitting in this case with complete fairness and impartiality and decide the case based only on the evidence presented in court and the law as given at the conclusion of the trial?	28 (1.4%)	3.93	.047	-1.25	.213

2. *Do extended voir dire questions predict verdicts?*

In contrast to our findings regarding generic minimal *voir dire* questions, we found that responses to the nine extended *voir dire* questions below significantly predicted jurors' verdicts (*see* Table 6). That is, such responses predicted a statistically significant decrease in the likelihood of the juror finding the defendant liable:

- being more pro-life [collected only in the wrongful birth case]
- supporting limiting litigation
- thinking lawsuit rates and awards are too high
- being unwilling to award non-economic damages
- thinking the plaintiff's burden of proof is too low
- thinking fraudulent claims are more likely
- thinking plaintiffs are more likely to be dishonest than medical professionals in the medical malpractice cases or insurance companies in the bad faith case
- trusting doctors more than plaintiffs
- thinking the plaintiff needs to work harder than the defense does to convince them

Two responses significantly predicted *increased* likelihood of finding the defendant liable:

- being more liberal
- trusting plaintiffs more than defendants

When we separately examined responses for the Colorado sample (column 7 in Table 6), we found that the direction and magnitude of the effects for these items in the extended *voir dire* questionnaire were generally similar for Colorado and for the national sample. For some items, the relevant *B* values and *OR* values were somewhat higher for the Colorado sample than for the national sample, while for some items those values were lower (and, given the smaller sample size for Colorado, we also found that similar *B* values sometimes yielded less significant *p* values).

Furthermore, when we considered the predictive value of these items for the three cases separately, although again the relevant B values varied somewhat, we generally see a similar pattern of results across cases. Unfortunately, when we consider cases separately, we no longer had sufficient statistical power to compare Colorado jurors with the national sample.

To determine what percentage of variation in jurors' verdicts could be explained by the minimal versus extended *voir dire* questions, we conducted a stepwise regression analysis. This

analysis revealed that the first step of the model that included all basic demographic information (Table 4) explained only 0.7% of the variation in verdicts, an amount that was not statistically significant, χ^2 (df = 12, N = 2038) = 14.74, p = .256. The second step of the model which added the generic minimal *voir dire* variables (Table 5) explained only 1% of the variation in verdicts, which was still not statistically significant, χ^2 (df = 23, N = 2038) = 11.75, p = .382. However, the third step of the model, which included the extended *voir dire* questions (Table 6) and now explained 28% of the variance in verdicts, was significant χ^2 (35, N = 2038) = 646.18, p < .0001.[180]

This stepwise regression analysis includes all predictors at once, predicting verdicts simultaneously, which controls for overlapping variance among all of the questions. In other words, it takes into account the degree to which all of the questions are correlated and reports how much *unique* variance each one explains in verdicts, above and beyond what all the others can explain. That is, we could identify how many questions explained verdicts in a way that is not redundant with the other questions. This allowed us to determine which *voir dire* items predicted a significant amount of unique variance in verdicts, above and beyond what all of the other *voir dire* questions could explain:

(1) Plaintiffs must work harder [or something like that], B = -.72, SE = .06, p <.0001, OR = .49;
(2) Trust in plaintiffs, B = .29, SE = .10, p = .004, OR = 1.34;
(3) Likelihood of Fraudulent Claims Scale, B = -.88, SE = .14, p < .0001, OR = .41;
(4) Likelihood of Defendant Dishonesty Scale, B = -.39, SE = .07, p < .0001, OR = .68;
(5) Negative Attitudes toward Lawsuits Scale, B = -.37, SE = .09, p < .0001, OR = .69;

[180] The only extended *voir dire* response not included in the model was the Claims are due to plaintiff's actions Scale, because it was not reliable in the Bad Faith case.

(6) Unwillingness to award non-economic damages, $B = -.71$, $SE = .16$, $p < .0001$, $OR = .49$.

This suggests that attorneys cannot just ask one of these questions to be able to explain jurors' likelihood of choosing a given verdict. Instead, each of these factors uniquely explained verdicts to a statistically significant degree even when controlling for all of the other questions. Therefore, this is not a set of redundant questions such that an attorney could pick one of these questions and be able to predict who might be biased against his or her side. This is further evidence that attorneys need time to ask many questions (noting that several of these six predictors are scales that encompass several questions) to effectively identify those who might be biased against their side.

Put simply, how jurors respond to *voir dire* questions that get at general biases (views of lawsuits, the parties, noneconomic damages, burden of proof, etc.) and questions that get at specific biases (views of doctors or abortion or whatever issues exist in the case) predict how jurors will vote. The general bias questions are predictive across the case types, meaning that in any civil case, these predispositions are likely to impact verdicts. The specific biases are unique to the case and can and will alter outcomes.

Table 6. Extended *voir dire* questions predicting verdicts (0 = not liable; 1 = liable).

	B	*SE*	Wald	*p*	Odds Ratio	Colorado Results
Attitudes Towards Parties						
Juror Predisposition (who must work harder)	-.86	.05	272.48	<.0001	.42	*B* = -.81, *SE* = .18, *p* < .0001, *OR* = .44.
Trust in doctors	-.27	.07	16.06	<.0001	.76	*B* = -.76, *SE* = .26, *p* = .004, *OR* = .47,
Trust in lawyers	.002	.06	.001	.978	1.00	*B* = -.03, *SE* = .22, *p* = .886, *OR* = 1.03.
Trust in plaintiffs	.47	.07	45.74	<.0001	1.61	,*B* =.68, *SE* = .24, *p* = .005, *OR* = 1.97
Trust in insurance companies	-.09	.06	2.24	.135	.92	*B* = -.14, *SE* = .21, *p* = .481, *OR* = .86.
Claims Due to Plaintiff's Actions Scale (lower #s = due to doctor's actions)[181]	-.81	.06	168.21	<.0001	.44	*B* = -.59, *SE* = .21, *p* = .005, *OR* = .55,
Likelihood of Fraudulent Claims Scale	-1.71	.11	242.74	<.0001	.18	*B* = -1.04, *SE* = .72, *p* = .003, *OR* = .35, but suggests the effect might be somewhat weaker in Colorado.
Likelihood of Defendant Dishonesty Scale (Medical Professionals or Insurance Companies, depending on the case) (higher #s = never)	-.73	.05	178.89	<.0001	.48	*B* = -.63, *SE* = .19, *p* = .001, *OR* = .53.

[181] This scale was not reliable in the Bad Faith Case, so this analysis was limited to only the other two cases (*n* = 1364)

Burden of proof (higher #s = BOP too low)	-.52	.22	77.85	<.0001	.59	*B* = -.61, *SE* = .22, *p* = .006, *OR* = .54.
Unwillingness to give non-econ $	-1.19	.13	85.27	<.0001	.30	*B* = -.93, *SE* = .48, *p* = .053
Negative Attitudes toward Lawsuits Scale	-.72	.06	127.45	<.0001	.49	*B* = -.46, *SE* = .80, *p* = .033, *OR* = .63,
Limit Litigation Scale	-.68	.07	91.28	<.0001	.51	*B* = -.48, *SE* = .23, *p* = .034, *OR* = .62
Political Orientation (higher #s = liberal)	.11	.03	10.02	.002	1.11	.522, *OR* = .92.
Trump Approval Scale (1 =pro, 2 = anti)	.25	.18	6.27	.012	1.29	*B*= -.31, *SE* = .38, *p* = .414, *OR* = .73.
Pro-Life Abortion Attitudes Scale (Wrongful birth case only)	-.20	.06	9.92	.002	.82	Individual case samples too small to test statistical significance.
Traditional Attitudes toward Women & Motherhood Scale (Wrongful birth case only)	-.05	.11	.20	.652	.95	Individual case samples in Colorado are too small to test statistical significance.
Trust in Science Scale (Wrongful birth and Aortic case)	-.03	.05	.37	.543	.97	Individual case samples in Colorado are too small to test statistical significance.

3. *Do extended voir dire questions predict damage awards?*

Eight of the responses to extended *voir dire* questions significantly predicted jurors' damage awards. The *B*s value indicated in Table 5 (which reflect the slope of the relevant regression line) again indicate the increase in damages that can be expected for every increase in a scale point on the relevant self-rating scale (e.g., for each point on the burden of proof scale,

suggesting the feeling that the plaintiff needs to work harder than the defendant to prevail, the prediction is a mean decrease in the damage award of $3,158,168). All but the first of these items, it is worth recalling, also predicted the jurors' verdicts:

- thinking lawsuit rates and awards are too high (all three cases)
- being unwilling to give non-economic damages (all three cases)
- thinking the plaintiff's burden of proof is too low (all three cases)
- thinking fraudulent claims are more likely (all three cases)
- thinking defendants likely to be dishonest than medical providers(the two medical cases)
- trusting insurance companies more (the insurance case)
- trusting doctors more (the two medical cases),
- Plaintiff having to work harder

Only trust in the plaintiff was a significant predictor of *increased* damage awards in all three cases.

In summary, the extended *voir dire* questions were helpful, whereas the minimal *voir dire* questions were unhelpful, in predicting jurors' verdicts and damage awards. (See Appendix 6 for more detailed comparisons of verdict and damage awards in the separate cases). With respect to damage awards it is particularly noteworthy that jurors who were opposed to noneconomic damages were more than twice as likely to also offer a verdict favoring the defendant, even though views relating to the appropriateness of such damages logically should not impact verdicts on liability.

Table 7. Extended *voir dire* questions predicting raw damage awards.

	B	*SE*	*T*	*p*	Colorado Results
Jurors Attitudes					
Who needs to work harder to convince you? (higher #s = plaintiff has to work harder)	-3,158,168	291,856	-10.82	<.0001	*B* = -1,975,160, *SE* = 1,037,758, *p* = .059,
Trust in doctors	-1,520,709	466,741	-3.26	.001	*B* = -5,281,068, *SE* = 1,599,823, *p* = .059,
Trust in lawyers	-21,722	433,494	-.05	.960	*B* = -1,529,134, *SE* = 1,570,618, *p* = .332.
Trust in plaintiffs	2,914,687	485,703	6.00	<.0001	*B* = 3,269,740, *SE* = 1,632,406, *p* = .047.
Trust in Insurance companies	-1,688,333	409,082	-4.13	<.0001	, *B* = -3,009,302, *SE* = 1,450,319, *p* = .040.
Claims Due to Plaintiff's Actions Scale (Lower #s = to doctor's actions)[182]	-5,515,988	380,305	-14.50	<.0001	*B* = -5,218,342, *SE* = 1,338,859, *p* < .0001.
Likelihood Fraudulent Claims Scale	-3,628,494	624,689	-5.82	<.0001	*B* = -4,151,538, *SE* = 2,220,583, *p* = .063
Likelihood of Dishonest Defendants Scale (Referring to medical professionals or insurance companies, depending on the case)	-1,342,581	338,654	-3.96	<.0001	*B* = -1,210,623, *SE* = 1,200,226,
Burden of proof (higher #s = BOP too low)	-1.813,380	400,382	10.52	<.0001	Highly similar effect size to national sample, *B* = -2,510,341, *SE* = 1,462,516, but the effect did not reach statistical significance, *p* = .088 (likely due to the sample size being much smaller).
Willingness to give non-econ $	-5,406,949	892,691	-6.06	<.0001	Highly similar effect size to national sample, *B* = -3,584,596, *SE* = 3,488,712, but the effect did not reach statistical significance, *p* = .306 (likely due to the

[182] This scale was not reliable in the Bad Faith Case, so this analysis was limited to only the other two cases (*n* = 1358)

					sample size being much smaller).
Negative Attitudes toward Lawsuits Scale	-3,481,875	408,022	-8.53	<.0001	Highly similar to national sample, *B* = -3,547,514, *SE* = 1,378,281, *p* = .011.
Limit Litigation Scale	479,621	472,856	1.01	.311	The effect was stronger in the Colorado sample, *B* = -3,641,505, *SE* = 1,519,965, *p* = .018, but it did not reach our conservative threshold for statistical significance.
Political Orientation (higher #s = liberal)	221,094	239,197	.92	.355	Highly similar to national sample, *B* = -747,759, *SE* = 867,582, *p* = .390.
Trump Approval Scale (1 =pro, 2 = anti)	150,125	723,959	.21	.836	*B* = -1,709,161, *SE* = 2,610,197, *p* = .514.
Pro-Life Abortion Attitudes Scale (Wrongful Birth Case Only)	-1,222,280	484,295	-2.52	.012	
Traditional Attitudes toward Women & Motherhood Scale (Wrongful Birth Case Only)	-1,881,333	825,094	-2.28	.023	
Trust in Science Scale (Wrongful Birth and Aortic Dissection Case Only)	308453.741	421480.282	.73	.464	

We again conducted regression analyses to determine what percentage of variation in jurors' damage awards could be explained by the minimal and extended *voir dire* questions. A stepwise regression revealed that the first step of the model that included all basic demographic variables explained only 1.7% of variation in damage awards, which proved to be a significant amount, F (12, 1964) = 2.82, p = .001, due to one significant predictor, widow status. The addition of the minimal *voir dire* variables as predictors in the second step of the model increased the percentage of variance in damages explained only 2%, a non-significant increase, R^2_{change} = .005, F_{change} = .82, p = .618. Adding the *voir dire* questions in the third step of the model, by contrast, increased 15% of variance in damage awards explained to 15%, a highly significant increase , R^2_{change} = .13, F_{change} = 22.73, p < .0001. As in the case of verdicts, the inclusion of the extended *voir dire* questions proved to be the key to a more accurate prediction of juror decision making.

This analysis again revealed which responses to extended *voir dire* items, seven in number, predicted unique variance in damage awards, above and beyond what the other predictors accounted for. The list of variables, along with the relevant *B* values, appears below:

(1) Being widowed, (vs. never having been married), *B* = 5,563,230, *SE* = 1,726,649, *p* = .001;
(2) Burden of proof on plaintiff, *B* = -2,598,641, *SE* = 307,444. *p* <.0001;
(3) Trust in insurance companies, *B* = -2,269,851, *SE* = 464,279, *p* < .0001;
(4) Trust in plaintiffs, *B* = 2,952,046. *SE* = 556,074, *p* < .0001;
(5) Unwillingness to award non-economic damages, *B* = -3,675,298, *SE* = 900,118, *p* < .0001;
(6) Negative Attitudes toward Lawsuits Scale, *B* = -3,474,585, *SE* = 486,082, *p* < .0001;
(7) Support for Limiting Litigation Scale, *B* = 3,931,814 *SE* = 517,319, *p* < .0001.

These findings add weight to our contention that allowing attorneys to ask a series of case-relevant questions instead of relying on the information provided by minimal standard *voir*

dire would allow them to better exclude jurors likely to be biased in favor of the other party in the lawsuit.

4. *Does experiencing voir dire and/or judicial rehabilitation affect verdicts or damage awards overall?*

Given our experimental design, it is worth examining whether the verdicts and damages awards offered by jurors differed depending on the experimental condition to which they had originally been assigned in our study (See Table 3 for Means and *SD*). That is, did it make a difference whether jurors were exposed to minimal *voir dire* or extended *voir dire* questions before, or only after rendering their judgments? Also, did it matter whether or not they heard and responded to a judge attempt judicial rehabilitation? The answer to both questions is clear. Neither factor, nor any combination of them, significantly influenced mock jurors' verdicts, all *B*s < | .08|, *p*s > .495, or their damage awards, all *F*s < 3.05, all *p*s > .048.

5. *Does voir dire and/or judicial rehabilitation alter the degree to which jurors' predispositions bias their judgments?*

The legal system assumes that, even if jurors are biased, their pre-dispositions will not bias their ultimate judgments if they go through *voir dire* and judicial rehabilitation. That is, that having their awareness drawn to their potential biases during *voir dire* and/or having a judge motivate them to try and control their biases might diminish the link between their predispositions and final judgments. Some would predict that, for example, even if a juror has a pro-defense pre-disposition that normally predicts fewer liability verdicts and lower damage awards, this relationship would be reduced or eliminated if they experience *voir dire* and judicial rehabilitation. We predicted, however, that judicial rehabilitation and *voir dire* would be

insufficient in successfully reducing the relationship between jurors' pre-dispositions and ultimate legal judgments.

More specifically, we tested whether the relationship that we saw between the responses to our set of extended *voir dire* questions and mock jurors' legal decisions could be reduced either by (a) having their awareness drawn to their biases during *voir dire*, and/or (b) being motivated by the judicial rehabilitation video and asking them to commit to putting their biases aside and follow the law. We tested this by conducting analyses to determine whether there was a statistically significant ($p<.01$) "interaction" between our extended *voir dire* response predictors and our *voir dire* and judicial rehabilitation manipulations. A statistical interaction would indicate that the effect of the predictor (e.g., trust in plaintiffs) on verdicts/damage awards was different or "depends" on what condition they were in regarding the other variable (e.g., whether they got judicial rehab or not). If we found a statistically significant interaction between mock jurors' level of trust in plaintiffs and the judicial rehabilitation variable on verdicts, that would mean that the effect of trusting plaintiffs on verdicts is somehow different for mock jurors in the no judicial rehabilitation condition compared to the effect of trusting plaintiffs on verdicts among mock jurors who were exposed to the judicial rehabilitation. For example, perhaps the mock jurors' trust in plaintiffs increases their likelihood of a liable verdict—but only for those in the control condition, whereas that relationship is reduced when they tell the judge they will set their biases aside.

A set of regression analyses each included one of the extended *voir dire* questions, a set of dummy codes representing the *voir dire* condition, a dummy code representing the judicial rehabilitation condition, and all interactions predicting verdicts, and another set predicting damage awards. Neither experiencing *voir dire* condition, nor judicial rehabilitation prior to

offering verdict and damage award decisions had an effect on jurors' decisions. Further, there were no significant interactions with the extended *voir dire* questions—except for one, described next. This means that for all but one of the extended *voir dire* questions, the degree to which their extended *voir dire* responses predicted verdicts and damages was not reduced by experiencing *voir dire* or judicial rehabilitation. There was only one interaction effect involving whether they answered extended *voir dire* questions before or after their judgments (*see* Tables 5 and 6) was revealed. The strength of the association between jurors' predisposition to make the plaintiff work harder and liability verdicts depended on whether they got extended voir dire before judging the case, $B = .56$, SE = .19, $p = .003$. More specifically, the relationship between this predisposition and verdicts was significantly reduced when this extended *voir dire* item was answered prior to the jurors' verdict and damage award decisions relative to when it was answered after judging the case (Appendices 4-5 provide more detailed information regarding these analyses).

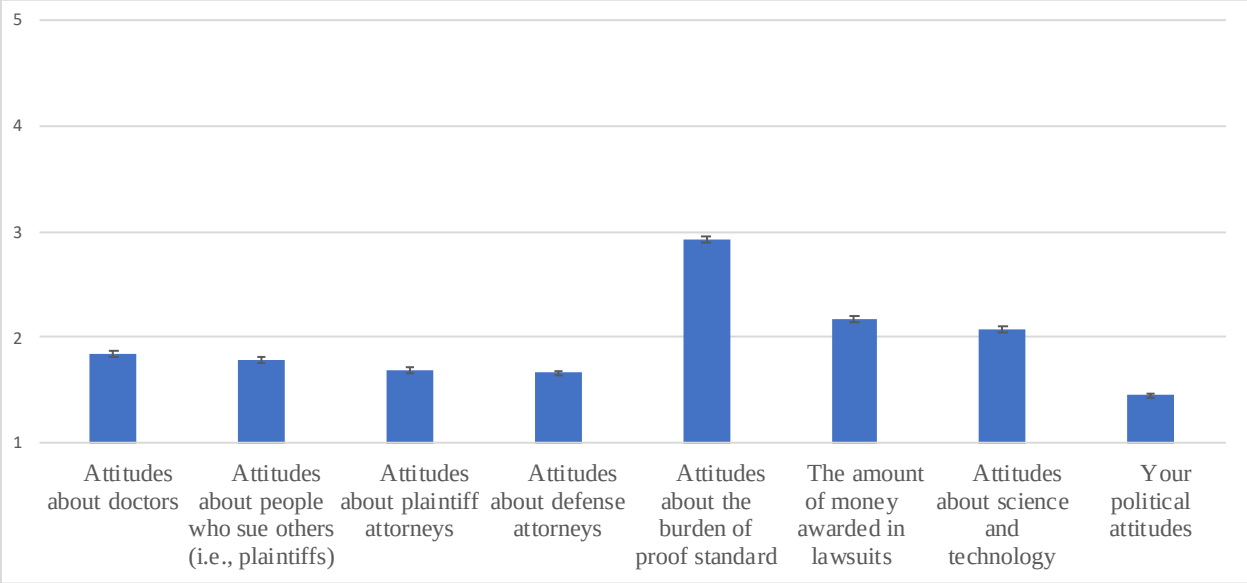
6. *How aware are jurors of the influence of their voir dire views on the judgments?*

Final items on our questionnaire in all experimental conditions probed the participants' beliefs regarding the influence of the views they revealed in *voir dire* on the judgments they offered. In other words, we assessed their degree of "bias awareness." Our findings (Figure 2) suggest that for the most part, and regardless of experimental condition, jurors claimed that no such link between those views and the judgments they had rendered. Only one extended *voir dire* item produced a level of acknowledgment that even approached the midpoint of the relevant rating scale. That item pertained to burden of proof.

Paradoxically, jurors who were exposed to judicial rehabilitation reported significantly *less* bias awareness when they were exposed to judicial rehabilitation ($M = 1.50$, $SD = .96$) than

when they were not subjected to such rehabilitation procedures (*M* =1.41, *SD* = .85), *F*(1, 2035) = 8.33, *p* =.004, *d* =.10. This relatively small effect suggests that if rehabilitation has any impact at all, it blinds jurors further to the role that their biases are playing in their decision-making. This may occur because the rehabilitation procedure provides jurors with a false sense that whatever biases they acknowledged and promised to put aside is no longer tainting their considerations of the merits of the case before them. In other words, this procedure might have a "false credentialing" effect.

Figure 2. How much participants thought their decisions were influenced by each factor.



1 = Not at all, 5 = extremely

D. Comparing the Full Sample to a Subsample that Excluded Biased Jurors

Next, we tested how the liability verdict rate and average damage awards would change if we excluded jurors whose responses to extended *voir dire* questions revealed biased attitudes that would have given either the plaintiff's or defense attorney cause to strike them from serving on the jury. The "excludable" criteria for exclusion were as follows:

(a) Juror predisposition: jurors who reported that the defense would have a much harder time convincing them (9.6%) or that the plaintiff would have a much harder time convincing them (7.3%).

(b) Attitudes toward burden of proof: Reporting that they thought that they burden of proof was either way too low (14.4%) or way to high (0.6%).

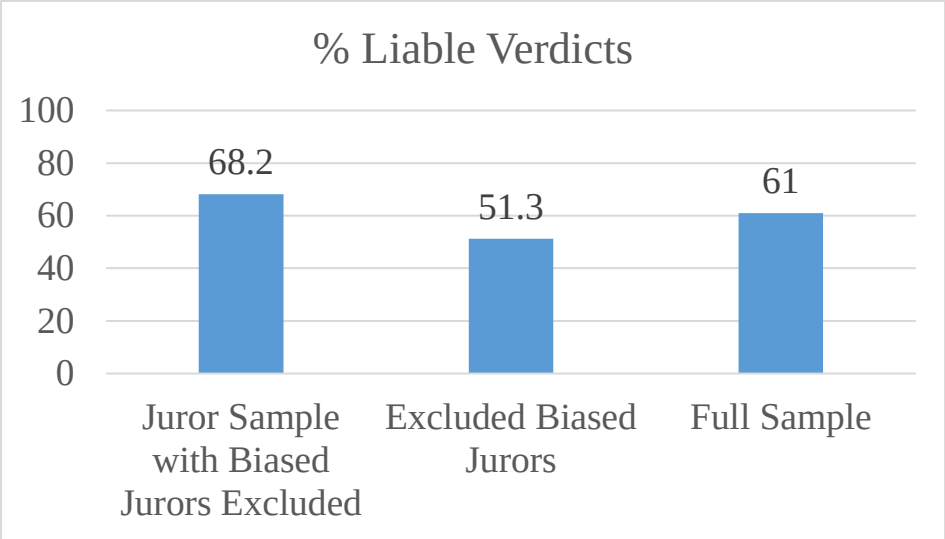
(c) Support for limiting litigation: Reporting that they strongly support making it harder to sue any person, business, or organization that injures another person either through carelessness or intentionally (3.6%) and/or placing a limit on how much a judge or jury can award in a lawsuit (10.8%).

(d) Willingness to award non-economic damages: Juror who reported that they were not (15.1%).

We compared the full sample to a subsample of jurors who did not meet any of the above exclusion criteria. In other words, any juror who fell into at least one of the above criteria were considered jurors that either the plaintiff or defense could have argued to exclude based on their extended *voir dire* responses. There were a surprisingly high number of jurors whose responses revealed that they might have trouble following the law (n = 860, 42%). These are jurors who would not have been identified and struck from the jury based only on the minimal *voir dire* questions that required jurors to self-identify biases.

Verdicts: We found that liability verdicts for the full-sample jury pool were higher than for the jury that excluded jurors whose extended *voir dire* responses revealed that they were less likely to follow the law (*see* Figure 3). If the attorneys were not able to ask the questions that identified the high percentage of jurors who expressed problematic views about the law, this would result in roughly 7% fewer liability verdicts relatively to what the jury pool would have been when both plaintiff and defense attorneys were able to strike problematic jurors.

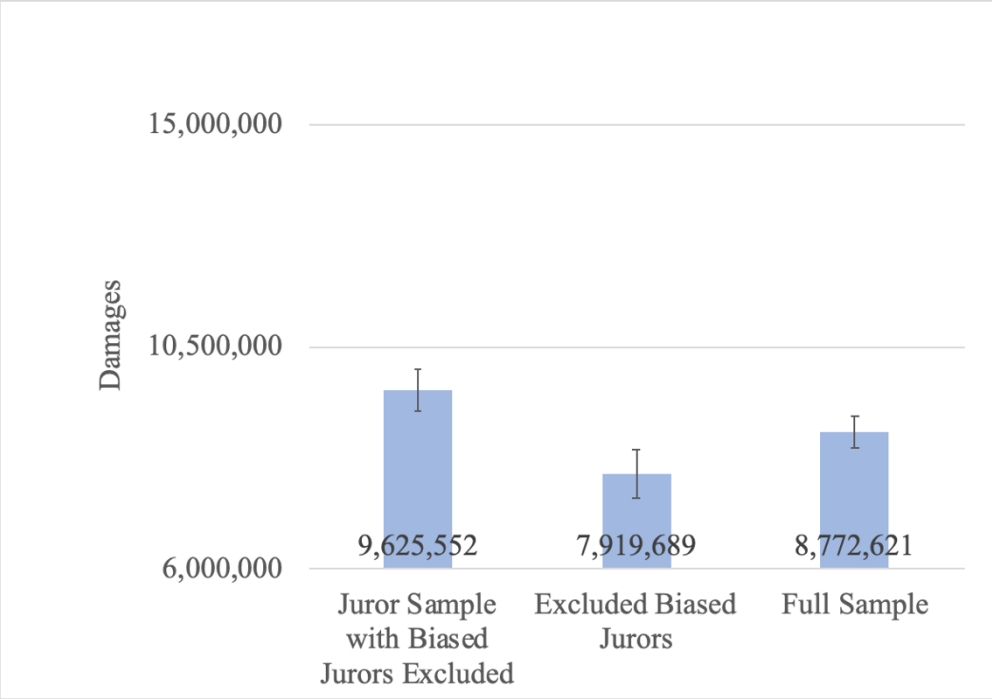
Figure 3. Liable verdict rates for the full sample, a subsample that excluded biased jurors, and a subsample of the biased jurors who were excluded.



Damage awards: We found that the average damage award for the full-sample jury pool were higher than for the jury that excluded jurors whose extended *voir dire* responses revealed that they were less likely to follow the law (*see* Figure 4). If the attorneys were not able to ask the questions that identified the high percentage of jurors who expressed problematic views about the law, this would result in an award that is estimated to be $852,931 lower than what the jury pool would have awarded when both plaintiff and defense attorneys were able to strike problematic jurors. The excludable biased jurors had the lowest award: they awarded $1,705,863 less than those who did not express problematic views during extended *voir dire*, and they awarded $852,932 less than the full sample, on average. The differences between the full sample and the subsample that excluded problematic jurors, $t(1175) = 1.97$, $p = .05$, and the subsample of excludable problematic jurors, $t(858) = -1.76$, $p = .08$, were not statistically significant. [183]

[183] The differences were also not statistically significant when we limited the sample to only jurors who chose a liable verdict.

Figure 4. Average damage awards for the full sample, a subsample that excluded biased jurors, and a subsample of the biased jurors who were excluded.



VIII. CONCLUSION

Here, based on the results, existing literature, and the variety of processes that exist in United States courts, we offer a set of conclusion and guidelines that, if implemented, would balance the very real time constraints of jury trials with the best practices necessary to guarantee a fair jury to both sides.

1. The generic minimal *voir dire* questions had very little utility. It was rare for jurors to answer the biases questions in the affirmative and the questions had almost no explanatory power in predicting their verdicts or their damage awards. As a group, these questions only explained 0.6% of variation in verdicts and only 2% of the variation in damage awards. As such, the limited *voir dire* used in many courts does almost nothing to predict jury behavior, nor does it provide information to the court or the parties about which jurors can/should remain.

2. The majority of the extended *voir dire* questions consistently predicted jurors' verdicts and damage awards in meaningful and consistent directions. As a group, these questions explained 20% of the variance in verdicts and 19% of the variance in damage awards. Attorneys and courts will do a much better job picking jurors based on these questions.

3. Relatedly, extended *voir dire* using open-ended questions that address the specific features of civil cases, like how they function, and address the specific issues in the case is necessary. Jurors do not reveal bias in response to questions that ask them if they "have any biases." Indeed, the questions used by many courts do nothing to predict bias and do nothing to cure it. Jurors can't identify their own biases or predict how they would impact decision-making. Instead, jurors will only reveal potential biases when asked questions that are more specific, and that then allow the juror to respond. It is also reasonable to expect that revealing

bias requires some time and familiarity, and as such, requires enough time for jurors to feel comfortable.

4. Inferentially, *voir dire* requires time. Relatedly, time limits like those common in many Colorado courts and federal courts almost certainly guarantee that jurors with biases are seated on the jury. Each juror should be examined at some length, whether as part of a group or individually. The scope of possible biases is wide, jurors are resistant to revealing bias if it makes them sound like they could not be fair, and it will take time to explore the issues with jurors.

5. Questionnaires could expedite jury selection. One possible way to expedite review would be to allow detailed questionnaires, as jurors could answer the questions without having to speak in front of others, and providing questionnaires would be an efficient way to ask a number of questions of the entire panel, all at once.

6. Courts must allow for identification of both (a) general bias and (b) specific biases. Many general biases about civil lawsuits are relatively prevalent, including views on the propriety of lawsuits, damage caps, preferences for either side, concerns about the burden of proof, and the like. Specific biases also abound. These vary from case to case. Both general and specific biases will influence jury decision-making—and at least some of this influence is improper, as the data shows that some views will prevent jurors from following existing law.

7. Once a juror identifies a general or specific bias, they should be excluded. Rehabilitation does not work. If anything, the jurors who say they can set aside bias are more likely to be blind to the role that bias plays in their future fact-finding.

8. A practical implication of the data is that there should be more jurors struck for cause, and as a result, a larger panel may be needed at times. More fundamentally, the view that jurors should be "saved" in some way, or that the fewest number of total jurors possible should be used to seat a jury is not necessary, nor wise. Because jurors are abundant, rather than attempting to keep jurors, courts should be willing to cull a significant number of jurors in order to obtain a final jury that consists of jurors without either strong general or specific biases.

9. On net, of the biases measured, more of them hurt plaintiffs. Yet, both sides face biases that, if allowed, could result in jury nullification. It is essential and possible to seat a jury free of these intense biases.

10. Juries are often criticized as too prone to produce results inconsistent with the evidence. Similarly, the Constitution, case law, and statutes typically guarantee a fair trial by a fair jury. Existing practices that prohibit or drastically limit *voir dire* and that support and allow jury rehabilitation encourage jury nullification because of bias and also threaten the right of both sides to a fair trial.

11. With a random draw, given the prevalence of some biases, it is possible to seat a jury in which the majority of jurors hold biases that will make processing the evidence difficult. And given that biases seem to skew against plaintiffs, these biases could all favor the defense in some cases. Deliberation is unlikely to cure this.

TAB 6

Rule 10

A proposal to amend Rule 10(d) to narrow the top margin to 1 inch because the larger 1½ inches are no longer needed.

Email from Jeffrey Enquist

From: Jeffrey Enquist <jenquist@fabianvancott.com>
Sent: Tuesday, November 1, 2022 5:55 PM
To: DiFrancesco, Lauren E. (Shld-SLC-LT) <Lauren.DiFrancesco@gtlaw.com>
Subject: Suggestion - Rules of Civil Committee modification

Lauren,

Hope all is well. I'll keep it short. Can I suggest a rule modification to Utah Rule of Civil Procedure 10(d)? Rule 10(d) states:

> **(d) Paper format**. All pleadings and other papers, other than exhibits and court-approved forms, must be 8½ inches wide x 11 inches long, on white background, with a top margin of not less than 1½ inches and a right, left and bottom margin of not less than 1 inch. All text or images must be clearly legible, must be double spaced, except for matters customarily single spaced, must be on one side only and must not be smaller than 12-point size.

My only suggestion to change this rule is to modify the top margin from 1½ inches to 1 inch. The rule was instituted to allow for the filing of paper copies in a folder with a top hole punches. The move to electronic filing, including at all levels of the court, has negated the need for the additional top margin. Moreover, those that file paper pleadings are typically pro se and either use electronic court forms available online or otherwise abide by a 1 inch margin when drafting by hand and those filings are typically scanned and produce electronically. The online court forms can be modified to accommodate a change in the rule. Finally, a ½ inch change on a motion that is 15 to 25 pages equates to an additional 1 to 1.5 pages of briefing. I don't have the stats on this, but I suspect an additional page or page-and-a-half would eliminate some of the need to ask for overlength briefing.

Rule 10. Form of pleadings and other papers.

Effective: 5/1/2022

(a) Caption; names of parties; other necessary information.

(1) All pleadings and other papers filed with the court must contain a caption setting forth the name of the court, the title of the action, the file number, if known, the name of the pleading or other paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is assigned. A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-party claim, must include in the caption the discovery tier for the case as determined under Rule 26.

(2) In the complaint, the title of the action must include the names of all the parties, but other pleadings and papers need only state the name of the first party on each side with an indication that there are other parties. A party whose name is not known must be designated by any name and the words "whose true name is unknown." In an action in rem, unknown parties must be designated as "all unknown persons who claim any interest in the subject matter of the action."

(3) Every pleading and other paper filed with the court must state in the top left hand corner of the first page the name, address, email address, telephone number and bar number of the attorney or party filing the paper, and, if filed by an attorney, the party for whom it is filed.

(4) A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-party claim, must also file a completed cover sheet substantially similar in form and content to the cover sheet approved by the Judicial Council. The clerk may destroy the coversheet after recording the information it contains.

(5) Domestic relations actions, as defined in Rule 26.1, must be captioned as follows:

(i) In petitions for divorce, annulment, separate maintenance, and temporary separation: “In the matter of the marriage of [Party A and Party B].”

(ii) In petitions to establish parentage: "In the matter of the parentage of children of [Party A and Party B]."

(iii) In petitions to otherwise establish custody, parent-time, or child support: "In the matter of the children of [Party A and Party B]."

(iv) If a domestic relations action includes additional interested parties, such as the Office of Recovery Services, they must be listed in the case caption after the text described above.

(b) Paragraphs; separate statements. All statements of claim or defense must be made in numbered paragraphs. Each paragraph must be limited as far as practicable to a single set of circumstances; and a paragraph may be adopted by reference in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials must be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference; exhibits. Statements in a paper may be adopted by reference in a different part of the same or another paper. An exhibit to a paper is a part thereof for all purposes.

(d) Paper format. All pleadings and other papers, other than exhibits and court-approved forms, must be 8½ inches wide x 11 inches long, on white background, with ~~a top margin of not less than 1½ inches and~~ a right, left, top, and bottom margin of not less than 1 inch . All text or images must be clearly legible, must be double spaced, except for matters customarily single spaced, must be on one side only and must not be smaller than 12-point size.

(e) Signature line. The name of the person signing must be typed or printed under that person's signature. If a proposed document ready for signature by a court official is electronically filed, the order must not include the official's signature line and must, at the end of the document, indicate that the signature appears at the top of the first page.

(f) Non-conforming papers. The clerk of the court may examine the pleadings and other papers filed with the court. If they are not prepared in conformity with paragraphs (a) - (e), the clerk must accept the filing but may require counsel to substitute properly prepared papers for nonconforming papers. The clerk or the court may waive the requirements of this rule for parties appearing pro se. For good cause shown, the court may relieve any party of any requirement of this rule.

(g) Replacing lost pleadings or papers. If an original pleading or paper filed in any action or proceeding is lost, the court may, upon motion, with or without notice, authorize a copy thereof to be filed and used in lieu of the original.

(h) No improper content. The court may strike and disregard all or any part of a pleading or other paper that contains redundant, immaterial, impertinent or scandalous matter.

(i) Electronic papers.

(1) Any reference in these rules to a writing, recording or image includes the electronic version thereof.

(2) A paper electronically signed and filed is the original.

(3) An electronic copy of a paper, recording or image may be filed as though it were the original. Proof of the original, if necessary, is governed by the Utah Rules of Evidence.

(4) An electronic copy of a paper must conform to the format of the original.

(5) An electronically filed paper may contain links to other papers filed simultaneously or already on file with the court and to electronically published authority.

TAB 7

Rule 4

A proposal to amend Rule 4 to recognize validity of personal service of process on inmate.

Concurring opinion by Judge Orme:

Jordan Credit Union v. Sullivan, 2022 UT App 120, ¶¶ 14-18 (Orme, J., concurring) (affirming correctness, under text of Rule 4(d)(1)(D), of main opinion holding that district court lacked personal jurisdiction over inmate who was personally served with process, but urging change to rule 4(d)(1)(D) as set forth below):

> Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, <u>if personal service cannot be effected on such individual</u>, by delivering a copy of the summons and complaint to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual[.]

2022 UT App 120, ¶ 18 (Orme, J., concurring) (emphasis added in concurrence).

2022 UT App 120

THE UTAH COURT OF APPEALS

JORDAN CREDIT UNION,
Appellee,
v.
PATRICK M. SULLIVAN,
Appellant.

Opinion
No. 20210484-CA
Filed October 27, 2022

Third District Court, Salt Lake Department
The Honorable Patrick Corum
No. 129917324

Patrick M. Sullivan, Appellant Pro Se

Richard C. Terry and Douglas A. Oviatt, Attorneys for Appellee

JUDGE MICHELE M. CHRISTIANSEN FORSTER authored this Opinion, in which JUDGE DAVID N. MORTENSEN concurred. JUDGE GREGORY K. ORME concurred, with opinion.

CHRISTIANSEN FORSTER, Judge:

¶1 Patrick M. Sullivan appeals the district court's ruling denying his motion to vacate a default judgment entered against him. Sullivan argues the court lacks jurisdiction because he was not properly served with process pursuant to rule 4(d)(1)(D) of the Utah Rules of Civil Procedure. We agree and accordingly reverse.

BACKGROUND

¶2 In 2008, Sullivan entered into a loan agreement with Jordan Credit Union (Jordan) to purchase a vehicle. In 2012, Sullivan

defaulted on the loan agreement. In response, Jordan filed a Motion for Issuance of Order to Show Cause Why a Writ of Replevin and Writ of Assistance Should Not Issue. The district court granted the order to show cause on December 12, 2012.

¶3 On December 17, Sullivan—who was incarcerated at the Utah County Jail on charges unrelated to this case—was personally served by a Utah County deputy constable with the order to show cause, summons, and complaint. On January 14, 2013, Sullivan was served with a writ of replevin, praecipe, writ of assistance, and order of possession. At that time, Sullivan was still incarcerated at the Utah County Jail and personal service was again effected by a Utah County deputy constable. Thereafter, Sullivan never appeared to answer Jordan's complaint, and on February 11, 2013, the district court entered default judgment against Sullivan.

¶4 In February 2021, Jordan filed a Motion for Renewal of Judgment against Sullivan. A copy of the motion was mailed to Sullivan at his then-current residence, the Utah State Prison. The district court granted Jordan's motion and renewed the original judgment against Sullivan.

¶5 In response, Sullivan filed a Motion to Vacate Order of Default Judgment. Sullivan argued that he "was never aware of [the 2013 default judgment], prior to [Jordan] filing a Motion for Renewal of Judgment." Sullivan maintained that he "was never served with a copy of the summons and complaint" in the original default action as required by rule 4(d)(1) of the Utah Rules of Civil Procedure. Consequently, because service was deficient, Sullivan requested the default judgment be vacated pursuant to rules 55 and 60 of the Utah Rules of Civil Procedure.

¶6 The district court denied Sullivan's motion to vacate the default judgment. In its ruling, the court rejected Sullivan's claim that he was not properly served under rule 4, finding that Jordan "established service of process on December 20, 2012." The court

noted that Sullivan was "[i]n fact" served while he was incarcerated at the Utah County Jail.

ISSUE AND STANDARD OF REVIEW

¶7 Sullivan now appeals the district court's denial of his motion to vacate the default judgment. Specifically, Sullivan argues the court erred in determining that he had been properly served pursuant to rule 4(d)(1)(D) of the Utah Rules of Civil Procedure. "A denial of a motion to set aside a judgement is ordinarily reviewed for an abuse of discretion." *Saysavanh v. Saysavanh*, 2006 UT App 385, ¶ 7, 145 P.3d 1166. "However, when a motion to set aside a judgment is based on a claim of lack of jurisdiction, the district court has no discretion." *Id.* (quotation simplified). The issue of "[w]hether service of process is proper presents a question of law that we review for correctness." *Stichting Mayflower Mountain Fonds v. Jordanelle Special Service Dist.*, 2001 UT App 257, ¶ 7, 47 P.3d 86.

ANALYSIS

¶8 "For a court to acquire jurisdiction, there must be a proper issuance and service of summons." *Weber County v. Ogden Trece*, 2013 UT 62, ¶ 44, 321 P.3d 1067 (quotation simplified). Under Utah law, service of process is governed by rule 4 of the Utah Rules of Civil Procedure. Rule 4(d)(1)(A) provides that personal service must be made "by delivering a copy of the summons and complaint to the individual personally," unless the individual is "one covered by paragraphs (d)(1)(B), (d)(1)(C) or (d)(1)(D)." Utah R. Civ. P. 4(d)(1)(A). As relevant here, subsection (d)(1)(D) proscribes the service of process on a person "incarcerated or committed at a facility operated by the state or any of its political subdivisions." *Id.* R. 4(d)(1)(D). Under that subsection, service upon an individual incarcerated must be made "by delivering a copy of the summons and complaint to the person who has the

care, custody, or control of the individual . . . . The person to whom the summons and complaint are delivered must promptly deliver them to the individual." *Id.*

¶9 Sullivan contends he was not properly served with process under rule 4(d)(1)(D). At the time Jordan filed its complaint, Sullivan was incarcerated at the Utah County Jail. Thereafter, Jordan *personally served* Sullivan with a summons and copy of the complaint. The proof of service clearly states that "a copy of the attached process" was given to "Patrick Sullivan," and the document is signed by Sullivan. Indeed, Jordan does not dispute this fact. It acknowledges the proof of service indicates that "Sullivan was *served personally* while in custody." (Emphasis added.) However, under rule 4(d)(1)(D), personal service is not sufficient where the individual being served is incarcerated. As discussed above, the rule's plain language carves out an exception for personal service upon incarcerated individuals. That exception applies here. And under that exception, service on an inmate such as Sullivan must be made "by delivering a copy of the summons and complaint *to the person who has the care, custody, or control of the individual*." *See id.* (emphasis added).

¶10 Jordan resists this conclusion on two grounds. First, Jordan argues that service upon an inmate may also be accomplished pursuant to rule 4(d)(2)(A), which provides that "[t]he summons and complaint may be served . . . by mail or commercial courier service." *See id.* R. 4(d)(2)(A). But this argument misses the mark. While service upon an incarcerated individual may be properly accomplished by mail, that is not what happened here. Service was not effectuated pursuant to this subsection of rule 4, a fact that Jordan does not dispute. Thus, the availability of an alternative method of service is irrelevant.

¶11 Second, Jordan argues the service completed in this case satisfies the "purpose and intent" of rule 4 inasmuch as "the preferred method is to serve the summons on the party directly,

falling back to other methods when that cannot be accomplished." But to credit this position would require us to ignore the plain language of the rule, which we cannot do. *See Day v. Barnes*, 2018 UT App 143, ¶ 15, 427 P.3d 1272 ("We interpret court rules, like statutes and administrative rules, according to their plain language. Courts are, in short, bound by the text of the rule." (quotation simplified)); *see also St. Jeor v. Kerr Corp.*, 2015 UT 49, ¶ 13, 353 P.3d 137 (declining the defendant's request to depart from the plain language of rule 4 and "to 'look to the spirit of the rules' rather than the text itself"); *Redwood Land Co. v. Kimball*, 433 P.2d 1010, 1010 (Utah 1967) (holding that service is proper only when effectuated in "strict compliance" with the rules); *Nolan v. RiverStone Health Care*, 387 Mont. 97, ¶ 10, 391 P.3d 95 ("Because proper service of process is jurisdictional, . . . strict compliance with the rules for service of process is mandatory."). Because subsections (d)(1)(A) and (d)(1)(D) explicitly provide that personal service may be made "[u]pon any individual *other than*" "an individual incarcerated," and because "it is service of process, not actual knowledge of the commencement of the action, which confers [personal] jurisdiction," *see Saysavanh v. Saysavanh*, 2006 UT App 385, ¶ 25, 145 P.3d 1166 (quotation simplified), the district court was without jurisdiction to enter default judgment against Sullivan, *see Meyers v. Interwest Corp.*, 632 P.2d 879, 880 (Utah 1981) ("It is axiomatic that a court acquires power to adjudicate *by proper service of process* which imparts notice that the defendant is being sued and must appear and defend or suffer a default judgment." (quotation simplified) (emphasis added)).

¶12 In sum, "the district court lacks personal jurisdiction when there has not been effective service of process," and "judgments entered by a district court lacking personal jurisdiction over the defendant are void." *Cooper v. Dressel*, 2016 UT App 246, ¶ 3, 391 P.3d 338 (quotation simplified). Here, Jordan failed to properly serve Sullivan pursuant to rule 4(d)(1)(D) because Sullivan was served personally while he was incarcerated at the Utah County

Jail. Consequently, because service of process was defective, the district court lacked jurisdiction and its judgment is void.

CONCLUSION

¶13 The district court erred in denying Sullivan's motion to vacate the default judgment. Under the facts of this case, Sullivan was not properly served pursuant to the governing rule and the court therefore lacked personal jurisdiction to enter a default judgment against him. We reverse the court's denial of Sullivan's motion, vacate the default judgment, and remand the case for further proceedings as appropriate.

ORME, Judge (concurring):

¶14 I concur in the court's opinion. Given the text of rule 4(d)(1)(D), I have no choice. But the rule we are bound to follow leads to a result in this case that is nothing short of silly. Our Supreme Court should change the rule. *See generally* Utah Const. art. VIII, § 4 ("The Supreme Court shall adopt rules of procedure[.]").

¶15 Every judge and lawyer, and every law student who has taken Civil Procedure, knows that the gold standard for service of process is personal service, which is what happened here. All the other variations of service, such as substitute service and service by publication, exist to cover situations when personal service has been avoided or is not possible.

¶16 And the logistical difficulty of effecting personal service on an inmate is no doubt what our Supreme Court had in mind in adopting rule 4(d)(1)(D). Surely any ol' process server cannot simply waltz into a correctional facility and hand a summons and complaint to an inmate. And while this is absolutely true with the

typical "person 18 years of age or older at the time of service and not a party to the action or a party's attorney," *see* Utah R. Civ. P. 4(d)(1) (stating the eligibility requirements for process servers), this is apparently not true when the process server is a constable—a certified peace officer, albeit not one whose responsibilities include correctional work, *see* Utah Code Ann. § 53-13-105(1)(a), (1)(b)(ii) (LexisNexis Supp. 2022) (stating that a constable is "a sworn and certified peace officer," specifically a "special function officer"); *id.* § 17-25-1 (2017) (listing the general powers and duties of constables, including to "execute, serve, and return all process directed or delivered to" the constable).

¶17 Here, the constable did nothing more than cut out a pointless middle step. Instead of handing the summons and complaint to the sheriff or the sheriff's designee so the paperwork could be handed to the inmate, the constable handed it to the inmate directly. Voila! He could then personally vouch for actual service on the inmate rather than just substitute service. *See generally* Utah R. Civ. P. 4(d)(1)(D) (stating that service on an inmate is accomplished by serving the inmate's custodian, or the custodian's designee, who then, if all goes well, will "promptly" deliver the summons and complaint to the inmate). And that is the point, obviously—to get the summons and complaint in the hands of the inmate, which is exactly what happened here somewhat more efficiently than the rule contemplates.

¶18 The necessary adjustment to rule 4(d)(1)(D) is obvious and requires the addition of only a few words, underlined below:

> Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, <u>if personal service cannot be effected on such individual,</u> by delivering a copy of the summons and complaint to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator

> of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual[.]

Such a change will preclude the absurd result we had to announce in this case given the current phraseology of the rule.

Rule 4. Process.

Effective: 11/1/2022

(a) Signing of summons. The summons must be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and issued.

(b) Time of service. Unless the summons and complaint are accepted, a copy of the summons and complaint in an action commenced under Rule 3(a)(1) must be served no later than 120 days after the complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint are not timely served, the action against the unserved defendant may be dismissed without prejudice on motion of any party or on the court's own initiative.

(c) Contents of summons.

(1) The summons must:

(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(B) be directed to the defendant;

(C) state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number;

(D) state the time within which the defendant is required to answer the complaint in writing;

(E) notify the defendant that in case of failure to answer in writing, judgment by default may be entered against the defendant;

(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service; and

(G) include the bilingual notice set forth in the form summons approved by the Utah Judicial Council.

(2) If the action is commenced under Rule 3(a)(2), the summons must also:

(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(3) If service is by publication, the summons must also briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Methods of service. The summons and complaint may be served in any state or judicial district of the United States. Unless service is accepted, service of the summons and complaint must be by one of the following methods:

(1) Personal service. The summons and complaint may be served by any person 18 years of age or older at the time of service and not a party to the action or a

party's attorney. If the person to be served refuses to accept a copy of the summons and complaint, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by leaving them at the individual's dwelling house or usual place of abode with a person of suitable age and discretion who resides there, or by delivering them to an agent authorized by appointment or by law to receive process;

(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to a parent or guardian of the minor or, if none can be found within the state, then to any person having the care and control of the minor, or with whom the minor resides, or by whom the minor is employed;

(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, by delivering a copy of the summons and complaint to the individual and to the guardian or conservator of the individual if one has been appointed; the individual's legal representative if one has been appointed, and, in the

absence of a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or control of the individual;

(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, if personal service cannot be effected on such individual, by delivering a copy of the summons and complaint to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual;

(E) Upon a corporation not otherwise provided for in this rule, a limited liability company, a partnership, or an unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or other agent authorized by appointment or law to receive process and by also mailing a copy of the summons and complaint to the defendant, if the agent is one authorized by statute to receive process and the statute so requires. If no officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, a place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of the place of business;

(F) Upon an incorporated city or town, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the recorder;

(G) Upon a county, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the county clerk;

(H) Upon a school district or board of education, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the superintendent or administrator of the board;

(I) Upon an irrigation or drainage district, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the president or secretary of its board;

(J) Upon the state of Utah or its department or agency by delivering a copy of the summons and complaint to the attorney general and any other person or agency required by statute to be served; and

(K) Upon a public board, commission or body by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to any member of its governing board, or to its executive employee or secretary.

(2) Service by mail or commercial courier service.

(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(3) Acceptance of service.

(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary expenses of serving the summons and complaint.

(B) Acceptance of service by party. Unless the person to be served is a minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, a party may accept service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint.

(i) Content of proof of electronic acceptance. If acceptance is obtained electronically, the proof of acceptance must demonstrate on its face that the electronic signature is attributable to the party accepting service and was voluntarily executed by the party. The proof of acceptance must demonstrate that the party received readable copies of the summons and complaint prior to signing the acceptance of service.

(ii) Duty to avoid deception. A request to accept service must not be deceptive, including stating or implying that the request to accept service originates with a public servant, peace officer, court, or official government agency. A violation of this paragraph may nullify the acceptance of service and could subject the person to criminal penalties under applicable Utah law.

(C) Acceptance of service by attorney for party. An attorney may accept service of a summons and complaint on behalf of the attorney's client by signing a document that acknowledges receipt of the summons and complaint.

(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

(4) Service in a foreign country. Service in a foreign country must be made as follows:

(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) as directed by the foreign authority in response to a letter of request issued by the court; or

(iii) unless prohibited by the law of the foreign country, by delivering a copy of the summons and complaint to the individual personally or by any form of mail requiring a signed receipt, addressed and dispatched by the clerk of the court to the party to be served; or

(C) by other means not prohibited by international agreement as may be directed by the court.

(5) Other service.

(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

(B) If the motion is granted, the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action. The court's order must specify the content of the process to be served and the event upon which service is complete. Unless service is by publication, a copy of the court's order must be served with the process specified by the court.

(C) If the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.

(e) Proof of service.

(1) The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.

(2) Proof of service in a foreign country must be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court.

(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

TAB 8

Nicholas Stiles
Appellate Court Administrator

Nicole J. Gray
Clerk of Court

Supreme Court of Utah
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Telephone 801-578-3900
Email:supremecourt@utcourts.gov

Matthew B. Durrant
Chief Justice
John A. Pearce
Associate Chief Justice
Paige Petersen
Justice
Diana Hagen
Justice
Jill M. Pohlman
Justice

To: Lauren DiFrancesco, Chair, Advisory Committee on the Rules of Civil Procedure
From: Nick Stiles, Appellate Court Administrator
Re: Request from Utah Supreme Court
Date: September 2, 2022

Dear Lauren –

The Supreme Court has recently considered court data surrounding self-represented parties in civil actions. As you're aware from your experience in practice and time on the Court's Advisory Committee, self-represented litigants make up a large percentage of parties interacting with our civil justice system. Because of this, the Court would like to modify the composition of your Committee to include two new members that bring in the perspective of self-represented litigants. The new members can be either former self-represented litigants or someone in a position to offer the relevant perspective. This might include: front counter clerks, community-based organizations, social services agencies (libraries, homeless shelters, community action agencies, senior centers, and independent non-profits), and legal clinics (Timpanogos Legal Center, Utah Legal Services, the Legal Aid Society of Salt Lake City, the Utah Bar's Access to Justice office, S. J. Quinney College of Law's Pro Bono Initiative, and J. Reuben Clark Law School's Community Legal Clinic). Would you mind placing this item on an upcoming committee meeting for discussion? I am glad to come and present the issue and field questions. I would also encourage the invitation of Nathanael Player of the Administrative Office of the Court's Self-Help Center as the Court has looked to him for guidance on this issue.

The Court would also like your Committee to study the following three rules with a focus on eliminating the hurdles that self-represented parties face. The three rules include:

URCP 12(a)(1) directs a defendant to serve an answer within a specific time. However, the rule does not tell the defendant to file the answer as well, often leading to default. We would like the Committee to evaluate whether adding the requirement in the rule that the answer be filed would reduce the number of cases ending in default.

URCP 26.1(h) requires parties in domestic relations actions to be served with notice of the requirements to exchange initial disclosures and financial declarations. However, in practice, when parties agree on all terms, the disclosure are not required. The Court would like the Committee to consider amending the rule to clarify that the disclosures are only required if the responding party files an answer or otherwise disagrees with the petition.

URCP 104 requires the filing of a separate affidavit in support of a divorce decree, even though court form pleadings articulate the grounds for jurisdiction and for divorce as sworn statements under the Unsworn Declarations Act, Utah Code Title 78B, Chapter 18a. This rule duplications work, adds more generation of paperwork, and more confusion in divorce actions. The Court would like the Committee to consider

repealing this rule or amending it to clarify that a sworn pleading can suffice for the affidavit mentioned in the rule.

Please let me know if you have questions or if I can assist in any way!

Respectfully,

Nick Stiles
Administrator, Utah Appellate Courts

TAB 9

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February 23, 2022

VIA EMAIL

Lauren DiFrancesco
Chair, Supreme Court's Advisory Committee on the Rules of Civil Procedure
difrancescol@gtlaw.com

Re: Rule 3(a)(2) of the Utah Rules of Civil Procedure

Dear Lauren,

I write regarding Rule 3(a)(2) of the Utah Rules of Civil Procedure and hope that the Supreme Court's Advisory Committee on the Rules of Civil Procedure might briefly review that provision. Having recently had the unfortunate experience of being personally sued by a collection agency in relation to a disputed medical bill, I was able to gain the perspective of an actual defendant in that type of case. My case was relatively unimportant and itself not an issue for the committee. As a result of this learning experience, however, I would like to draw some attention on certain gaps in Rule 3(a)(2). While I realize that this rule is not a high profile or particularly significant rule, I am afraid that this rule is adding to the disadvantage that legally unsophisticated and economically vulnerable parties already have in trying to navigate the system. While some amount financial hardship is unavoidable when consumers of medical services are private pay or have a high deductible plan, I am concerned that gaming of the rules only exacerbates these issues. Accordingly, I respectfully suggest, for the committee's consideration, a couple amendments regarding Rule 3(a)(2).

1. Eliminate Rule 3(a)(2).

Rule 3(a)(2) is unnecessary and can be deleted. Current Rule 3(a)(2) allows for formal service of a Complaint prior to the Complaint being filed (with filing then at plaintiff's discretion). The defendant has to check with the court clerk, after the period for filing has passed, to see if the complaint is actually filed. Presumably, this rule variation is intended to facilitate quick settlement before filing costs are incurred. I'm skeptical. For example, I was sued on a $225 medical bill; after being served, I was told I

would have to pay over $600 to resolve the claim; within a day, I offered $345 to settle.[1] Express Recovery Services, represented by the Law Office of Edwin Parry, stubbornly insisted that I was required to pay the full amount demanded, and I never received any response to my offer, much less a meaningful counter-offer. Perhaps my experience is simply anecdotal and not representative of more common circumstances, but I have a hard time believing that an unsophisticated party gets any better treatment than an attorney with over 15 years litigation experience. Rule 3(a)(2) is confusing to defendants and causes additional stress to figure out if a case is actually being filed or not. In sum, why keep the relative complexity of Rule 3(a)(2) if it doesn't actually help resolve cases? The process for initiating cases and making a responsive pleading would be easier to understand if Rule 3(a)(2) were simply deleted.

2. <u>If Rule 3(a)(2) Remains, Clarify the Deadline for Responsive Pleadings</u>.

Even if Rule 3(a)(2) is retained, the responsive pleading deadline for a case initiated under Rule 3(a)(2) should be clarified. Again, I'll use my case for illustration purposes only. Instead of responding to my settlement offer, the Law Office of Edwin Parry filed the Complaint on day 10, the last day allowed under Rule 3(a)(2). From what I understand, the Law Office of Edwin Parry files many cases on behalf of Express Recovery Services, and filing on Day 10 is their common practice. Although I am very familiar with litigation, I was still rattled by this process. On Day 1, I explained the medical provider's billing error to them and hoped that it would be resolved without resorting to a lawsuit. On Day 2, I offered to pay more than the original bill and was told that Mr. Parry might get back to me. On Day 11, I was happy that a lawsuit didn't show on Exchange. On Day 14, I was dismayed to learn that the Complaint had been filed. As a practical matter, even though I was aware that a complaint might be filed, 14 days passed before I came to understand that I was actually being sued in Third District Court.

After talking with the court clerk and learning that a complaint has been filed, a defendant served under Rule 3(a)(2) then has to figure out when a responsive pleading is due. Under a reasonable reading of Rule 12, I believe that service is not "complete" until a Complaint is actually filed, meaning that the responsive pleading deadline should be 21 days after the actual filing date of the Complaint. But the Law Office of Edwin Parry firmly insists that a responsive pleading is due 21 days *after initial service*, regardless of when the Complaint is filed. And they can point to a form of summons on the court's website supporting this interpretation.[2] The Summons served with a copy of the Complaint advises defendants to wait "at least 14 days after service" before calling the court clerk to see if a Complaint has been filed. As a result, unsophisticated parties, already confused by the process, find themselves at an immediate disadvantage when they realize, after talking to the court clerk, that they are supposed to file a formal document with the court within seven days. From a very practical perspective, defendants may file a responsive pleading to meet this deadline before even learning of options for representation. Even if representation is later obtained, a *pro se* defendant may make unwarranted admissions in their answer; they may also fail to assert affirmative defenses or compulsory counterclaims. As a result,

[1] While I believed in the merits of my defense, I did not want to litigate. I explained my offer was for the full amount potentially recoverable, because UTAH CODE § 12-1-11, explicitly referenced in the contract, limited the collection fee to $90 (being 40% of $225).

[2] *See* Ten Day Summons, available at https://www.utcourts.gov/howto/filing/summons/.

before the case has even started, defendants are at a disadvantage, adding to the perception that the deck is stacked in the collection agency's favor.

Consistent with the spirit of the Rules of Civil Procedure, all defendants should get at least 21 days to file an answer after knowing that a complaint has actually been filed, regardless of whether they are sued under Rule 3(a)(1) or (a)(2). Even if this process for serving an unfiled complaint is retained, there is an extremely easy fix for the responsive pleading deadline. Rule 12 could be amended to state an answer must be served within 28 days after the filing of a Complaint if a case is initiated under Rule 3(a)(2) (with the extra seven days provided because of the requirement to call the court clerk to learn about the filing, which the collection agency itself recommends not be done until at least 14 days after service).

3. Procedures for Funneling Minor Disputes to Small Claims Court.

The specific issues related to Rule 3(a)(2) discussed above can be addressed with an easy amendment. Nonetheless, I will also generally encourage the committee to consider how routine collection actions on relatively minor medical bills can be steered to small claims (if litigation is truly warranted at all). As a general principle, unsophisticated and unrepresented lay persons are better served by the small claims process, which is much more likely to provide the defendant a meaningful opportunity to present an actual defense on the merits, which should be a goal of the system. Our judges and other court staff do a great job of helping *pro se* litigants navigate the system. But small claims is specifically structured to handle these types of cases. Especially with the threat of attorney's fees for a prevailing party, the *pro se* defendant cannot afford the risks associated with learning to navigate the more complex procedures for district court. I suspect that a collection agency would still accomplish a very high percentage of default judgments in small claims, because a high percentage of cases involve undisputed bills (the main problem being an ability to pay). But for the small percentage of cases involving an actual dispute on the merits, the small claims process would allow a *pro se* defendant to adequately, and briefly, present their side of the story to a human being authorized to decide the case. Even if the defendant loses, the small claims judge is best positioned to make sure that the judgment entered fairly reflects an amount truly warranted under the contract at issue, versus whatever the collection agency unilaterally asserts in its demands.

Thank you for your consideration of these issues.

Sincerely,

/s/ Tim Clark

Rule 3. Commencement of action.

(a) How commenced. A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4. If the action is commenced by the service of a summons and a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.

(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

Advisory Committee Notes

Rule 3 constitutes a significant change from the prior rule. The rule retains service of the ten-day summons as one of two means to commence an action, but the rule requires that the summons together with a copy of the complaint be served on the defendant pursuant to Rule 4. In so doing, the rule eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. The changes in Rule 3 must be read and should be interpreted in conjunction with coordinate changes in Rule 4 and with a change in Rule 12(a) that begins the running of the defendant's 20-day response time from the service of the summons and complaint.

Paragraph (a). This paragraph eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. Paragraph (b) of the former rule, which permitted the plaintiff to deposit copies of the complaint with the clerk for defendants not otherwise served with a copy at the time of the service of the summons, has also been eliminated. The rule requires, in effect, that both the summons and the complaint be served pursuant to Rule 4. Under a coordinate change in Rule 12(a), the defendant's time for answering or otherwise responding to the complaint does not begin to run until service of the summons and complaint pursuant to Rule 4.

Paragraph (b). This paragraph is substantially identical to paragraph (c) of the former rule.