

Death Qualification Checklist

1. Bring jurors to the Courtroom in assigned groups of five (5) to (8) jurors. Seat them in the jury box. If using individual questioning, bring only one juror at a time.
2. Provide the prospective juror oath.
3. Give the juror(s) some initial remarks to let them know what will be asked of them during this process (See Sample Initial Remarks).
4. Provide the juror(s) with copies of their questionnaires. Identify each juror and ask each juror(s) individually the following: "Juror No. , Were each of the questions on each of the Jury Questionnaires answered truthfully and honestly to the best of your ability as you now answer under oath?" "Are there any changes or additions?" (Follow-up as necessary).
5. Ask each juror the following questions with respect to the Pre-trial Publicity Questionnaire (follow-up as necessary):
 - a. Were your responses to the questionnaire concerning your knowledge of the facts of this case accurate (true)?
 - b. Are you familiar with any of the facts of this case, either through your own personal knowledge or through any other source?
 - c. Have you read, heard, or seen anything about this case?
 - d. Is there anything that you have read, heard, or seen prior to coming to the court that has caused you to formulate an opinion as to the guilt or innocence of the defendant?
6. Address capital qualification questions (*See* Death Qualification Flow Chart).
 - a. If appropriate, the judge questions a juror about specific answers on the death penalty views questionnaire.
 - b. Identify each juror and obtain a response from each juror to the following questions:
 - i. **Question 1:** "As I stated to you earlier in the proceedings, it may be necessary for you to make a determination in regard to the imposition of the death penalty or some other penalty. Remember, any penalty you consider should be done as if it is absolute and will be carried out in this case. Your conscientious, religious, or other objections to the death penalty are not grounds for you to be excused as a juror. Do you understand these statements?"
 - ii. **Question 2:** "Are you religiously, morally, or otherwise against the imposition of the death penalty?" (*Alternative: "Are you in favor of or opposed to the death penalty?"*)
 - c. Ask the following to those jurors **who are not against the death penalty: Question 3:** "To those of you who are not against the death penalty, are there any of you who are in favor of the death penalty in every case where a murder has been committed?" Obtain a response from each appropriate juror.

- d. Ask the following questions to those jurors **who are against the imposition of the death penalty**:
- i. **Question 4:** "If possible, please try to answer this question "yes" or "no:" Even though you have a conscientious, religious, or other objection to the death penalty, if you are selected as a juror in this case, will you, nevertheless, follow my instructions as Judge and fairly consider the imposition of the sentence of death, if appropriate, in this case. *(Alternative: "It is possible in this case that I may instruct you that the law requires you to fairly consider the penalty of death. Even though you are against the imposition of the death penalty, will you follow the law and consider the penalty of death, if appropriate, in this case? ")*
 - ii. **Question 5:** (Alternative or in addition to Question 4): "If I instruct you that you are to consider the death penalty, will you be able to follow my instructions and consider the penalty of death?"
- e. If a juror's response to the above questions is still that he or she **will not follow the instructions of the court**, ask, as appropriate, any of the following questions:
- i. **Question 6:** "Will your views on the death penalty prevent or substantially impair your ability as a juror to perform your duty in accordance with your oath and the Court's instructions?"
 - ii. **Question 7:** "If you were a juror in a case, would you automatically (in every case) vote against the death penalty, regardless of the facts and the evidence in the case? Would you, in this case, automatically vote against the death penalty under all circumstances?"
 - iii. **Question 8:** "Juror _____, are you stating to me unequivocally/without any doubt that, under no circumstances, will you follow my instructions as Judge and that you cannot and will not consider fairly the imposition of the sentence of death, if appropriate, in this case? Do you understand my question?" *(Alternative: "If I were to instruct you that you must fairly consider the imposition of the death penalty in this case, will you be able to follow my order and fairly consider the penalty of death?" "Are you saying that, under no circumstances, would you be able to follow my order?")*.
 - iv. **Question 9:** "I will re-ask the question in stronger terms. Juror _____, do you unequivocally and without any doubt state that under no circumstances will you follow my instructions as Judge and consider fairly the imposition of the death penalty, if appropriate, in this case?"
 - v. **Question 10:** "Do you have anything to state or clarify, amplify, expand, or otherwise make clear your answer to these questions?"
- f. Ask each juror any other questions to clarify any doubt.
- g. Go over any personal questions relevant to each juror.
- h. Ask each juror if he or she has even been convicted of a crime. If so, was it a felony (which might disqualify the Juror).
- i. Allow the attorneys to question the group, with the prosecution inquiring first, followed by the defense. NOTE: When lawyers are permitted to inquire of the jurors, caution them that, if a Juror

has responded to the pre-trial publicity questions in the negative, there should be minimal additional questioning on pretrial publicity.

- j. Once all questioning has been completed, ask the jurors to leave the courtroom.
- k. Consider challenges for cause (see section on *Witherspoon* analysis).
- l. Bring jurors back into the courtroom and advise as to report-back date and/or excuse jurors who have been excused for cause.
- m. Give oral admonitions and remind jurors of written admonitions order.