

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

**Hon. Geoffrey W. Crawford**

Jury Selection Procedure – Civil

Immediately before the commencement of jury selection, the court will welcome the entire venire pool and provide a very short orientation. These remarks will identify the case as a civil case, state that the burden of proof is on the plaintiff on most issues, and distinguish between a preponderance of the evidence and the criminal standard of beyond a reasonable doubt.

Jury Composition

The jury will consist of 7 (or more) jurors. All jurors selected will serve. There will be no designated alternates. The parties will have three peremptory challenges each.

Calling up the first group of jurors

Up to 28 jurors will be called and seated. The court will discuss the trial dates and excuse any jurors who cannot reasonably attend. Any juror excused will be replaced at this stage.

Court-led voir dire

The judge will read a short summary of the case which will be provided in advance along with the court's voir dire questions in the form of a script. The judge will ask basic voir dire questions with follow-up questions for jurors who respond affirmatively to a question. (The follow-up questions are not on the script.) To assist the judge in this process, the parties must submit lists of potential witnesses not less than 3 business days before jury selection. Counsel is welcome to submit additional proposed questions prior to jury selection.

In cases involving potentially sensitive or embarrassing issues, jurors will be advised that answers which are highly personal may be provided at side bar with counsel present. This is rare.

### Attorney voir dire

After questioning from the court, both sides may ask follow up or additional questions. The court will confer with counsel and determine in advance how long a time to allow and both sides will receive equal time. Questions which are argumentative or which do not result in the flow of factual information from jurors will bring the attorney questioning to an end. An example of such questions would include, “Would you agree to return a verdict in favor of my client if I demonstrate the following to you at trial: \_\_\_\_\_.”

### Challenges for cause

Upon completion of questioning of jurors, counsel will come to the bench. The court will take challenges for cause for the entire panel of 28. Subject to peremptory challenges, the jury will consist of the first 7 (or more) jurors selected who remain after challenges for cause. The court will excuse the jurors struck for cause.

If the number of jurors remaining equals or exceeds the jury (7, for example) plus the total number of challenges (6), then the remaining jurors are sufficient in number to draw a jury. Peremptory challenges will begin immediately. If there are insufficient jurors remaining after cause challenges, the court will move the remaining jurors into the jury box in order of initial selection and refill the 28 seats. The court will repeat the voir dire script with the new arrivals and allow time for questioning by counsel. In many cases, the jurors removed for cause will not exceed 14 or 15 and sufficient jurors will remain for the peremptory round.

### Exercise of Peremptory Challenges

Once a sufficient number of jurors has been qualified for cause, the peremptory round will begin. The plaintiff goes first. If a challenge is passed, that challenge is lost and counts against the total allowed to that side. It cannot be saved for later. This system is sometimes called, “use it or lose it.”

If one side passes and then the other side passes also, the peremptory challenges will be at an end. In other words, if each side states one after the other that it does not wish to exercise a challenge, then the court will understand that both sides are content with the composition of the jury.

If one side passes and the other then exercises a challenge, the side which passed is free to resume exercising its remaining challenges without limitation. There is no restriction on “back strikes” which is the practice of challenging a juror despite previously passing or otherwise accepting his or her presence on the jury.