

JUROR QUESTIONNAIRE

In order to move jury selection along as quickly as possible, the Court has prepared this background questionnaire to be completed before you are called to the jury box. You should answer the questions carefully and completely. Since we need to make copies, please do not write on the back of any page. If you need more room, continue at the bottom or side of the page or ask the court attendant for a plain sheet of paper.

You may be asked follow-up questions later to clarify your answers.

Answers to questions in the questionnaire and any follow-up questions should be candid and complete. Unlike during a job interview where you endeavor to give answers that please the interviewer, answers to *voir dire* questions should be designed not to please, but to accurately disclose your true feelings, beliefs, and attitudes.

If there are any questions that you would feel more comfortable answering in private, simply write "Private" in the space provided for your answer. The follow-up questions on that topic will be held out to the presence of other jurors.

1. Name: _____
2. Age and place of birth: _____
3. Town, city or township where you live: _____
4. Marital Status:
 Single and never married Single, but living with non-marital mate
 Currently married Divorced Widowed
5. A. Highest level you completed in school _____
B. Highest level your spouse completed in school _____
6. What high schools, colleges, or other schools if any, did you attend: _____

7. Have you or a close family member ever been convicted or pled guilty to a crime?
 Yes No
If "yes," please explain _____
8. EMPLOYMENT/OCCUPATION What is your present job? _____
A. Please describe your duties at work: _____

B. Please list each of the jobs and your employers for the past ten (10) years:

9. Please list all of the people who live in your household and give their ages and occupations (please do not give their names, but identify their relationship to you): _____

10. What are/were the occupations of your parents ? (If retired or no longer living, what did they do before?)

MOTHER _____

FATHER _____

11. Were you ever involved as a party or a witness in a civil lawsuit or criminal case?

Yes No

How were you involved?: _____

12. Do you have a relationship, friendship, or association with a law enforcement officer?

Yes No

Explain: _____

13. Do you or a member of your immediate family have a relationship with the insurance industry, including any relationship with an employee, claims adjuster, investigator, agent, or stockholder in an insurance company? Yes No

Explain: _____

14. Do you have a motor vehicle operator's license? Yes No

15. Do you have any physical conditions (vision, hearing or other issues) or mental conditions that would affect your ability to serve on a jury? Yes No

Explain: _____

16. Do you have any pressing business or is there anything pressing in your personal life that causes you concern about being a juror at this time? Yes No

Explain: _____

17. Do you recognize or are you acquainted with anyone else in the jury pool today?

18. Do you have a relationship, friendship or association with any lawyer, Judges or Court personnel? Yes No

What are their names and describe the relationship. _____

19. Have you, or anyone close to you, ever managed or owned a business? Yes No

20. Have you managed or supervised anyone now or in the past at work? Yes No
If "yes," please describe: _____

21. Have you ever been a member of a union? Yes No

If "yes," have you ever filed a grievance? Yes No

22. Have you ever had any training/education or have you worked in the areas of law, medicine, law enforcement or insurance? Yes No

If "yes," please explain your answer _____

23. What type of volunteer work do you do, if any?

Organization

Duty

<u>Organization</u>	<u>Duty</u>
_____	_____
_____	_____

24. What magazines or newspapers do you like to read? _____

25. What internet sites do you regularly visit ?

26. Do you blog on the internet? Yes No
If "yes," what do you blog about (please be specific)

27. If you use social media, what types of platforms do you use?

28. What if any, bumper or window stickers are on your or your family vehicles?

29. What are your three favorite TV shows? _____

30. What TV news stations or internet news sites do you watch or browse? _____

31. What is your favorite book? _____

32. How would you describe yourself? _____

33. What civic, social, political, religious or other groups do you belong to? _____

34. What are your hobbies, major interests, recreational pastimes, spare time activities? _____

35. Where have you lived for more than one (1) year? _____

36. How long have you lived in Berks County? _____
37. How would you describe your politics? _____

38. Were you ever in the military? Yes No
 If "yes," what was your branch of service, position and/or rank? _____
 Type of discharge? _____
39. On how many cases have you served on a jury? _____
40. Where did you serve on a jury? _____
41. What kind of cases did you hear as a juror? _____
42. In how many of those cases did the jury reach a verdict? _____
43. Did you ever serve as the jury foreperson? _____
44. Was your jury service a positive or negative experience? _____
45. If you or anyone close to you has ever sued or been sued in any type of lawsuit, please explain _____
46. Do you have any concerns or beliefs about awarding money damages for personal injury, including pain and suffering? If yes, please explain _____
47. If someone in your family was injured or killed due to the negligence or fault of another, would you sue? Yes No
 If "no," please explain _____
48. Do you have any beliefs or concerns that would make it difficult for you to serve as a juror? Yes No
 If "yes," Please explain _____
49. What information not covered by these questions do you think we should know before you serve as a juror in this case? _____

I certify, under penalty of perjury, that the above answers are true and correct.

Signature: _____

Date: _____

RECENT CASES ON JURY SELECTION

On the issue of jury selection, *Cordes v. Assoc. of Internal Med.*, 87 A.3d 829 (Pa. Super. Ct. 2014), appeal *denied*, 102A.3d 986 (Pa. 2014), is notable. In *Cordes*, the appellant argued that the trial court abused its discretion by denying challenges for cause asserted against three potential jurors. *Id.* at 831. The jury included a husband and a daughter of a patient of the defendant doctor, and an employee of the defendant doctor's employer's parent company. *Id.* At 832-33. In a divided opinion, the appellate court reversed, noting that the goal of jury selection was to obtain a jury with "a clean slate and open mind." *Id.* at 836. Although a potential juror's relationship with a person involved in the case need not be direct to warrant disqualification, "the close situational, familial, and financial relationships presented...stripped the trial court of its discretion to rely upon the challenged jurors' assurances of impartiality." *Id.* at 847. Therefore, exclusion was required *per se*. *Id.* This holding was meant to avoid the appearance of impartiality, and "reinforce the importance of erring on the side of caution ...and, in so doing, to protect the reputation of Pennsylvania courts for the fair and impartial administration of justice." *Id.* at 835. The concurring opinion noted that when the details of a relationship indicate a presumption of prejudice, the court must strike the juror for cause, regardless of whether there is a direct relationship or the juror believes he can be impartial. *Id.* at 866.

In *DeFrancesco v. Lehigh Valley Health Network*, No. 742 EDA2014, 2015 Pa. Super. Unpub. LEXIS 1481 (Pa. Super. Ct. May 26, 2015), *app. denied*, 129 A.3d 1243 (Pa. 2015), the court did not recognize *Cordes* as binding authority because there was no majority opinion. Instead, the court recognized that the trial judge is entitled to discretion, holding that the fact that the defense attorney's partner in another office represented the juror in an unrelated matter, did not constitute grounds for striking the juror for cause. *Id.* at *12-13.

In *Shinal v. Toms*, 162 A.3d 429 (Pa. June 20, 2017), the Supreme Court considered whether the plaintiffs were entitled to strike jurors for cause where they had some relationship with the defendant's employer and the tortious conduct occurred during the course of employment. The Court held that the decision depends on whether the relationship is sufficiently close to presume the likelihood of prejudice, or whether the juror reveals a likelihood of prejudice through conduct and answers to questions. *Id.* at 441. In the first scenario, prejudice is presumed, and the appellate court must review the trial court's determination for error of law. *Id.* In the second scenario, "much depends upon the answers and demeanor of the potential juror as observed by the trial judge, and therefore, reversal

is appropriate only in the case of palpable error." Id. (citing *McHugh v. Proctor & Gamble Paper Products Co.*, 776 A.2d 266, 270 (Pa. Super. Ct. 2011)). In the case at hand, the Court held that relationships with the third party employer were too attenuated to presume prejudice. Id. 448. Therefore, where prejudice was only suggested based on juror questioning, the Court deferred to the lower court judge who has the opportunity to see and hear what the juror says. Id. at 441-42, 450. In *Deeds v. Univ. of Pa. Med. Ctr.*, 110 A.3d 1009 (Pa. Super. Ct. 2015), *app.dismissed*, 128 A.3d 764 (Pa. 2015), the Superior Court reversed a jury verdict in favor of defendants. The case only proceeded against the defendant hospital because the parties stipulated that all persons who provided treatment to plaintiff were agents of the defendant hospital. Id. at 1011. However, the trial court denied a motion to dismiss the individual defendants, even though only the hospital was listed on the verdict sheet. Id. As a result, the trial court permitted the individual defendants to be represented by separate counsel. Id.

After a defense verdict, the trial court denied plaintiffs post-trial motions seeking JNOV or a new trial. Id. On appeal, the Superior Court considered: (1) whether plaintiff was entitled to a new trial where defendants' counsel informed the jury that the plaintiffs injuries were cared for pursuant to government benefits; (2) whether the trial court erred in allowing separate attorneys to represent the defendants; and (3) whether the trial court erred in permitting a defendant doctor to testify as an expert witness beyond the scope of his treatment. Id. at 1012.

With respect to the first issue, the court held that a new trial was warranted, as defendants' counsel's comments suggested that plaintiffs costs were being covered, and that she did not require additional compensation, in violation of the collateral source rule. Id. at 1013. With respect to the second issue, the court relied in part on Pa. R.C.P. 223(2)- which permits trial court to limit the number of attorneys representing the same group of parties who can actively participate in trial-holding that the trial court abused its discretion in allowing separate attorneys to represent the defendants. Id. at 1016-17. The court found persuasive that the defendants faced identical claims, had no cross-claims between them, shared expert witnesses, and belonged to the same group of parties. Id. As to the final issue, the court noted that the dividing line between fact and opinion testimony can be difficult to discern, but that the physician's testimony was based on his treatment and observation of the plaintiffs mother. Id. at 1019. Accordingly, because he did not render any opinion as to standard of care, the trial court did not err in admitting the doctor's testimony as a fact witness. Id.



“A FOX SHOULD NOT BE ON THE JURY AT A GOOSE’S TRIAL”

By Michael McGuckin, Esquire

As the above quote by Thomas Fuller, an erudite seventeenth century churchman and historian, makes clear, an effective Plaintiff’s lawyer has to be able to remove jurors who may have hidden animus toward the client.

The ability to impanel a fair and impartial jury is largely dependent upon the information you glean from prospective jurors during voir dire. The information you learn is critical to your decisions concerning how to use peremptory challenges as well as serving as a basis for consideration of striking prospective jurors for cause. The Rules provide that voir dire shall be conducted to provide the opportunity to obtain, at a minimum, a full description of “relationship, friendship or association with the parties ...” Pa.R.Civ.P. 220.1(15). In order to ensure fairness and avoid even the appearance of bias, there

are many circumstances where the Court will presume prejudice and exclude a juror. It is counsel’s duty to ask questions and identify the presumed prejudice which is evident in both direct and indirect relationships between jurors and the defendants.

In medical malpractice cases it is essential to engage in a thorough voir dire given that the prospective jurors may very likely have a relationship with the defendant health system, hospital, practice group and physicians. This is especially true in a county like Berks with two hospitals that directly employ physicians, and either own, control or are directly affiliated with numerous physician practice groups. Counsel must not only inquire as to employment status and affiliations, but also as to whether an individual juror is a patient or has a family member that is a patient of any of the defendants or their affiliates.

Continued on page 4

“A FOX SHOULD NOT BE ON THE JURY AT A GOOSE’S TRIAL”

Continued from page 3

Thorough questioning concerning indirect relationships with all of the defendants and related entities is required.

The Pennsylvania Supreme Court has made it clear that “[o]ne of the most essential elements of a successful jury trial is an impartial jury,” and “individuals with a bias or close relationship to the parties, lawyers or matters involved” must be examined and excluded through the voir dire process. **Bruckshaw v. Frankford Hosp. of City of Philadelphia**, 58 A.3d 102, 109 (Pa. 2012) (citing *Colosimo v. Pennsylvania Elec. Co.*, 518 A.2d 1206, 1209 (Pa. 1986)). The test for determining whether a prospective juror should be disqualified for cause is:

Whether he is willing and able to eliminate the influence of any scruples and render a verdict according to the evidence, and this is to be determined on the basis of answers to questions and demeanor...A challenge for cause should be granted when the prospective juror has such a close relationship, familial, financial, or situational, with the parties, counsel, victims, or witnesses that the court will presume a likelihood of prejudice or demonstrates a likelihood of prejudice by his or her conduct and answers to questions.

McHugh v. Proctor & Gamble Paper Products, Co., 776 A.2d 266, 270 (Pa. Super. 2001) (emphasis added) (internal citation omitted).

Recent Superior Court decisions in Pennsylvania have addressed the important issue of presumed prejudice and why plaintiff lawyers should not be forced to use peremptory challenges when challenges for cause are warranted. In *Cordes v. Associates of Internal Medicine*, 87 A.3d 829 (Pa. Super. 2014), the Superior Court held that the trial court had committed reversible error in denying the plaintiff’s challenges for cause against three jurors, who, as established during voir dire, had indirect relationships with the defendants.

In *Cordes*, plaintiff’s decedent, Mr. Cordes, was being treated by his family doctor who diagnosed him with vertigo. The physician instructed Mr. Cordes to discontinue plavix, a blood thinner. After discontinuing the plavix, Mr. Cordes suffered a massive stroke and died. The administrator of his estate filed a medical malpractice action alleging that the discontinuation of plavix was a deviation from the applicable standard of care and caused his death.

During voir dire, the trial judge denied certain challenges for cause that plaintiff asserted against three jurors. The case proceeded to trial and resulted in a defense verdict. An appeal followed. The plaintiff alleged that the three jurors should have been excluded for cause because they had “situational relationships” with the defendant-physician and a third juror had

a “close financial relationship” with a defendant since the juror was employed by the same corporation. Specifically, the plaintiff established that two of the jurors had close family members who were patients of the defendant physician. The third challenged juror was the employee of a parent company that owned a subsidiary which was a named defendant and the employer of the defendant-physician.

The Superior Court in *Cordes* found that all three jurors should have been excluded because of the “importance of insuring not only a jury that is impartial in fact, but one that appears to be free of the taint of partiality to a disinterested observer ...” The Court held that a “close situational relationship with a party may be found, even when the relationship in question is indirect.” The clinical relationships between the defendant physician and the jurors’ close family members warranted a finding of *per se* prejudice. Additionally, the Superior Court found that the juror employed by the parent company should also have been stricken for cause. In the Court’s analysis, the juror’s employment relationship with the parent company, which had a clear financial interest in the outcome of the litigation, “created a significant risk of partiality to establish prejudice per se arising from his jury service.”

The Superior Court held that “the close situational, familial, and financial relationships presented in the instant case necessarily stripped the trial court of its discretion to rely upon the challenged jurors’ assurances of impartiality. Rather, **those relationships required exclusion per se.**”

Prior to *Cordes*, the ability to challenge a trial court’s decision on a motion to strike for cause on these bases was often narrow and difficult to achieve (in the face of the routine and expected response “But I can be fair even though I have this relationship ...”). What *Cordes* clarifies going forward is that the trial court must seriously consider evidence of relationships both direct and indirect identified during voir dire. Simple assurances of “impartiality” from prospective jurors during voir dire will no longer suffice as a bar to meaningful appellate review.

After the *Cordes* decision, another Superior Court decision, *Shinal v. Toms*, M.D., 2015 Pa. Super. 178 (2015), held that the likelihood of prejudice to a plaintiff could not have been presumed based on prospective jurors’ relationship with the defendant-surgeon. The *Shinal* decision is currently on appeal.

The Superior Court’s review in *Shinal* concerning the underlying jury selection concluded that none of the challenged prospective jurors had such “a close relationship with **participants** in the litigation, on which prejudice must be presumed.” It is important to note that in the *Shinal* case, the corporate defendant, Geisinger Medical Center (and related entities) had been dismissed prior to jury selection. As such, the

health system and hospital were no longer defendants in the action, unlike *Cordes* where corporate entities remained as direct defendants. The Court reasoned that based upon the review of *voir dire*, none of the challenged jurors had such a “close relationship with participants in the litigation,” and the Court would not expand the range of relationships requiring a presumption of per se prejudice. In *Shinal*, the appeal was denied because the plaintiff failed during *voir dire* to “show or develop an argument why any of the four identified prospective jurors should have been stricken for cause as presumptively prejudicial.”

Although further appellate direction on these issues can be expected, the expansion of challenges for cause has helped to even the playing field, allowing plaintiff lawyers to ferret out the relationships with hospitals and doctors which will reveal prospective jurors as unworthy candidates to sit in judgment of defendants with whom they have a pre-existing relationship. ■

Michael W. McGuckin, Esquire, is with the Reading law firm of Liever, Hyman & Potter, P.C., where his practice focuses on complex personal injury litigation including medical malpractice.



Live the life you choose.

Life is about the choices we make and the relationships we build. At Connors Investor Services, we've been helping clients achieve their specific goals for the past 45 years. We offer a customized, disciplined approach to long-term investing—backed by a unique combination of knowledge, experience and resources. Our personal style of doing business means we're always accessible to you and put your interests first.

Live the rich, rewarding life you deserve. Begin by choosing an investment firm built on relationships and trust.

Connors Investor Services, Inc.

Integrity, Service, Performance

1210 Broadcasting Road, Suite 200
Wyomissing, Pennsylvania 19610
610-376-7418 • www.connorsinvestor.com

Registered Investment Advisor

James M. Connors • Peter J. Connors, CFA® • Robert C. Leayman, CFA®
Steven C. Silverman, CFP® • Robert J. Cagliola, CFA® • Lidia H. Zidik
Brian G. McCoy, CFA® • Steven E. Pottier, CFP® • Michael J. Noon, CTFP

CFA® and Chartered Financial Analyst® are registered trademarks owned by CFA Institute. CFP® and CERTIFIED FINANCIAL PLANNER™ are registered trademarks owned by Certified Financial Planner Board of Standards, Inc.