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November 29, 2017

Chief Justice Paul Dawley  
c/o General Counsel Zachary Hillman  
Administrative Office of the District Court  
Edward W. Brooke Courthouse  
24 New Chardon St.  
Boston, MA 02114

**Re: Comments on the Proposed District Court Standing Order on Voir Dire Protocol**

Dear Chief Justice Dawley,

On behalf of the Boston Bar Association (“BBA”), we thank you for the opportunity to comment on the proposed District Court Standing Order on Voir Dire Protocol.

The invitation to comment was distributed to all BBA Sections, and the Criminal Law Section discussed it at length and proposed the attached comments. Please note that the enclosed document does not constitute a position of the BBA as a whole but rather reflects the views of the individual members of the Committee. We hope it may be useful to your consideration of the proposed Standing Order.

Thank you for providing members of the bar with an opportunity to weigh in on this important proposal and please feel free to contact me should you have any questions or concerns.

Very truly yours,



Mark Smith  
President

**Comments of the Boston Bar Association's Criminal Law Section Steering Committee on the  
Proposed District Court Standing Order on Voir Dire Protocol  
(November 29, 2017)**

In response to an invitation for comments from the Chief Justice of the District Court Paul C. Dawley, the Boston Bar Association's ("BBA") Criminal Law Section Steering Committee reviewed the Proposed Standing Order on Voir Dire Protocol. The BBA notes that these comments do not represent a formal position of the Association but rather are a collection of comments from interested Committee members intended to help the District Court in its consideration of the proposed protocol.

Members of the Criminal Law Section Steering Committee commended the District Court for creating the Standing Order and were hopeful that it would encourage more attorneys to utilize *voir dire* in the court. In addition, members felt the Standing Order was generally reasonable and offered helpful guidance. For example, one member noted the explanation and details offered on what questioning is, and is not, appropriate, as especially useful for practitioners.

Members of the section did raise a few areas of concern. Some members, for example, were worried that the order may be somewhat inflexible. Though the level of detail provided does offer much helpful guidance, some felt the requirements were perhaps too involved and could benefit by allowing more flexibility in the *voir dire* process, based on the nature of the case and the requests of the parties. The members noted that the order seemed to require a panel approach to attorney-conducted *voir dire*, and that in certain cases a process where each *venire* member was questioned individually by the attorneys would be more appropriate. The members noted that both processes – panel and individual – were being used in the Superior Court based on the case, the judge, and the preference of the parties, and was working well.

In addition, some members felt the requirement that all *voir dire*-related requests in criminal cases be filed not later than five (5) business days before trial may not be reasonable in practice. The reality of practice in the District Courts is that the judges do not deal with any trial motions until the morning the case is called, because typically there will be many cases called for trial each day. There is no real likelihood that a judge, some days before a trial, would address the issues of attorney-conducted *voir dire* with the parties, because the case will not even be on the radar of the trial judge until the morning of trial. Instead, requiring formal requests to be made by the date of trial would be more reasonable for attorneys as well as judges. Nor would the requirement of five-days notice assist the court in determining if additional jury panels would be needed on a certain date. The District Court does not have the ability that the Superior Court has to resolve these issues well before a trial date in a specific case. The members also noted that using the Pretrial Conference form and adding a check-off indicating if the parties will be seeking attorney-conducted *voir dire* would be sufficient and more practical, just as the parties now use that form to indicate the likely choice of bench or jury trial and other routine elections.

Finally, members of the Steering Committee noted that this Standing Order only applies to the District Court Department, and that the Municipal Court Department should also be instituting rules for attorney-conducted *voir dire*. The members felt that the rules for the District and Municipal Court Departments should be the same, in order to reduce confusion and ease the use of *voir dire* for attorneys.