

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO: 12-34123 (07)

PHILIP VON KAHLE.,

Plaintiff

v.

MICHAEL BIENES, ET AL

Defendant.

**ORDER SETTING LIMITS ON VOIR DIRE AND SETTING DATE
CERTAIN FOR TRIAL**

In *Carver v. Niedermayer*, 920 So. 2d 1123 (Fla. 4th DCA 2006) the 4th DCA held,

“We also think it was an abuse of discretion not to advise counsel of any limits on juror selection until the beginning of juror examination. See Rodriguez v. State, 675 So.2d 189, 191 (Fla. 3d DCA 1996) (trial court abused discretion in advising counsel of limit on voir dire during counsel's questioning of jurors). We think even reasonable limits on juror selection should be made known some fair time before trial begins.”

The 17th Judicial Circuit currently is in the final-construction phase of building a new courthouse. Juror availability is limited as parking is restricted. See *Administrative Order as to Jury Management 2011-25*.

The days of being able to call on unlimited jury pools have passed. Parties in civil cases, complex or otherwise are not entitled to a perfect jury, only a fair

and impartial jury. Division (07) of the 17th judicial circuit currently has pending cases which will take an estimate (12) years to resolve by jury verdict!

In this case the Court shall impose the following restrictions on Voir Dire consistent with *Carver*. **The Court will pre select a panel of prospective jurors on Wednesday, March 8th, 2017 and/or Thursday, March 9th, 2017, Jury selection will begin Friday, March 10th, 2017 and opening statements will commence Monday, March 13th, 2017 .** *Pretrial motions will be heard directly after pre selection or as determined by the Court.*

The parties are permitted to use a juror questionnaire patterned issues framed in the pleadings. All prospective screened jurors will complete a questionnaire on **Wednesday, March 8th, 2017 and/or Thursday, March 9th, 2017** and a copy of same distributed to all counsel. This should greatly limit the need for extensive Voir Dire. The parties will know the litigation history, employment status and other matters important to selecting an impartial jury --- in advance of Voir Dire. Plaintiff's counsel shall be responsible for bringing to pre selection an agreed upon juror questionnaire for all prospective jurors. *The Court shall further provide a seating chart of the prospective jurors the day before Voir Dire.*

In addition to the jury questionnaire, the Plaintiff will be entitled to not more than 2 hours of Voir Dire depending on the number of prospective jurors, and the

Defendants, collectively, will be entitled to not more than 2 hours of Voir Dire.

Therefore, each side is fair warned to go through the juror questionnaires and ask questions that do not repeat the information already known.

In light of the extraordinary amount of time, energy and expense to prepare this case for trial and subpoena sufficient jurors for the trial, the court, as part of the Voir Dire process shall impose these common-sense procedures, in the appropriate exercise of its' discretion, regarding the jury selection process, consistent with *Borroto v Garcia*, 103 So. 3d 186 (3rd DCA 2012).

Any public records search revealing litigation history or other matters discovered during a public records search of any prospective juror --- by any party -- shall be brought to the attention of the Court **PRIOR** to the conclusion of jury selection and before the jury is sworn. Any such information shall be provided to all counsel of record in the case. Failure to raise matters regarding information obtained during a public records search of a prospective juror shall constitute a waiver of the issue.

It should be noted the Clerk of Court for the 17th Judicial Circuit provides free internet access to the clerk's website while in the Broward County Courthouse. Further, a seating chart available to the party's hours before jury selection begins provides ample time for any party to conduct public records searches on any prospective juror.

The Court further finds it necessary to impose certain prohibitions and restrictions regarding questions or issues posed to prospective panel members:

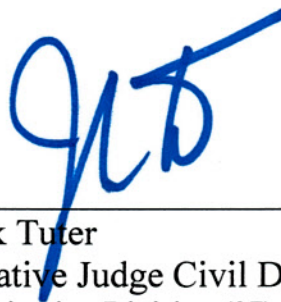
- 1) Counsel shall **NOT** be permitted to ask any prospective juror questions like, “You don’t want to really be here do you?” “This really isn’t the case for you is it?” “You really want to be somewhere else don’t you?” Or questions intended to elicit a challenge for cause which has nothing to do with the juror’s answers on impartiality and fairness.
- 2) Counsel may not pre try the case during jury selection. It is strictly prohibited to explain to the jury the evidence in the case in an attempt to elicit responses which would favor or disapprove factual disputes in the case.
- 3) Counsel shall not repeat the same questions covered on the juror questionnaire but may engage in follow up questions.
- 4) Counsel shall not discuss their own family or personal issues with any jury member.
- 5) It is not proper to propound hypothetical questions purporting to embody testimony that is intended to be submitted, covering all or any aspects of the case, for the purpose of ascertaining from the juror how they will vote on such a state of the testimony. Such questions are improper.

regardless of whether or not they correctly epitomize the testimony intended to be introduced. *Dicks v. State*, 83 Fla. 717 (1922).

- 6) Questions designed to precondition the jury and attempt to elicit a promise or commitment from the jury are not permitted.

No judicial circuit in this state has unlimited resources to find unlimited jury pools to sit in extended civil cases. Counsel are encouraged to work together in a spirit of cooperation and professionalism in the Voir Dire process to select fair and impartial juries.

DONE and **ORDERED** at Fort Lauderdale, Broward County, Florida, on 23rd day of September, 2016.



Judge Jack Tuter
Administrative Judge Civil Division
Complex Litigation Division (07)

Copies: Counsel of Record via electronic transmission