

## NOTICE TO ATTORNEYS CONCERNING JURY SELECTION

Counsel are expected to familiarize themselves prior to trial with the provisions of G.S. 15A-1214 and related case law pertaining to jury selection. During the course of jury selection, counsel should anticipate that those provisions will be enforced, including, but not limited to the following:

1. The purpose of the jury selection process is to provide reasonable opportunity for counsel to satisfy themselves and the people they represent that prospective jurors meet the qualifications required by law, can and will serve as fair and impartial jurors throughout the trial of the matter, decide the case based upon the evidence presented in the courtroom and follow the law as instructed by the court.
2. Counsel should not attempt to use the jury selection process for purposes of:
  - (a) Visiting with or seeking to establish rapport with the jurors;
  - (b) Indoctrinating the jurors to a particular view;
  - (c) Arguing the case during questioning; or
  - (d) Asking what kind of verdict they would render under certain circumstances.
3. General questions should be addressed to the jury panel as a whole and counsel should seek to avoid undue repetition arising from asking the same questions to each individual juror. Counsel may address jurors individually when asking questions that apply only to that person, questions prompted by affirmative answers to general questions, or questions relating to unique personal experiences of that juror. *State v. Phillips*, 300 N.C. 678, 268 S.E.2d 452 (1980).
4. Examples of *improper* questions from counsel during jury selection that will not be permitted include:
  - (a) Hypothetical questions tending to “stake out” the juror or elicit in advance what a juror’s decision will be, given certain facts. *State v. Vinson*, 287 N.C. 326, 215 S.E.2d 60 (1975); *State v. Hunt*, 37 N.C. App. 315, 246 S.E.2d 159 (1978). Examples of improper hypotheticals include:
    - (1) Asking a juror how he would weight a particular mitigating or aggravating circumstance. *State v. Walls*, 342 N.C. 1, 463 S.E.2d 738 (1995);
    - (2) “If you were to find that the defendant had previously been convicted of a murder, could you still follow the judge’s instructions...” *State v. Robinson*, 339 N.C. 263, 451 S.E.2d 196 (1994);
    - (3) “If I choose not to put on a defense, would you hold that against me...” *State v. Blankenship*, 337 N.C. 543, 447 S.E. 727 (1994) as distinguished from “If the defendant chooses not to testify...”

- (b) Questions that include an incorrect statement of law. *State v. Hedgepeth*, 66 N.C. App. 390, \_\_\_ S.E.2d \_\_\_ (1984)
  - (c) Questions of law posed to a juror (the jurors are not expected to know the law until receiving instructions from the court).
  - (d) Questions about parole eligibility. *State v. Payne*, 337 N.C. 505, 448 S.E.2d 93 (1994); *State v. Smith*, 347 N.C. App. 453, 496 S.E.2d 841 (1995)
  - (e) Questions about capital punishment as a deterrent to crime or other legislative policy issues. *State v. Ali*, 329 N.C. 394, 407 S.E.2d 183 (1991)
  - (f) Questions concerning juror perceptions of the meaning of life imprisonment.
5. Counsel are properly permitted to ask questions reasonably directed toward determining that the juror has formed no opinion as to the guilt or innocence of the defendant, can fairly and impartially discharge the duties of a juror and can follow the law as instructed by the court. Such questions include, for example:
- (a) Asking jurors if they can follow the law as provided by the court regarding particular trial issues. *State v. Hedgepeth*, 66 N.C. App. 390, \_\_\_ S.E.2d \_\_\_ (1984);
  - (b) "Death qualifying" questions, asking whether a juror's views about the death penalty would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Wainwright v. Witt*, 469 U.S. 412 (1985); *State v. Brown*, 327 N.C. 1, \_\_\_ S.E.2d \_\_\_ (1990);
  - (c) "Non-death qualifying" questions, asking prospective jurors as to whether they would automatically vote for the death penalty following conviction of first degree murder, without regard to the existence of mitigating circumstances. *Morgan v. Illinois*, 504 U.S. 719 (1992); *State v. Fletcher*, 348 N.C. 292, \_\_\_ S.E.2d \_\_\_ (1998)
6. The Court shall determine, in the exercise of discretion, whether to require that *voir dire* be conducted solely by one of defendant's two co-counsel, or to permit alternation of questions between counsel at appropriate intervals. *State v. Fullwood*, 343 N.C. 725, \_\_\_ S.E.2d \_\_\_ (1996).