

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV 19-478

THOMAS PANELLA

v.

ORDER

EASTERN MAINE MEDICAL
CENTER, *et. al.*

REC'D CUMB CLERKS OFC
DEC 7 '22 AM 10:33

Before the court is the Plaintiff's Motion for attorney directed jury voir dire. As described below, the court grants the motion, subject to the conditions with this Order.


When seeking attorney directed voir dire, the Plaintiff must show that the attorney directed voir dire will "add materially" to the court's own voir dire questions and that the questioning will assist materially in providing a fair and impartial jury. M.R.Civ. P. 47(a)(4)(A,C). The proposed topics of inquiry should allow for brief responses from prospective jurors. M.R.Civ.P. 47(a)(3)(C). The questions must be probative of a juror's bias, predisposition, or knowledge that would effect their partiality. *State v. Roby*, 2017 ME 207, ¶ 11, 171 A.3d 1157. They cannot advocate for that party's position. *Id.* They cannot be designed to ask the jurors to adopt a position on the law without benefit of the court's instructions. *Id.* ¶ 14. *See, State v. Simons*, 2017 ME 180, ¶ 21, 169 A.3d 399 (asking a juror if they agree or disagree with a legal tenet injects unnecessary confusion). The questions, or the style of questioning, cannot be used to predispose or cajole the jury into favoring that party's position. *Grover v. Boise Cascade Corporation*, 2004 ME 119, ¶ 19, 860 A.2d 851. The questions also cannot invade the juror's privacy. *Id.* ¶ 20.

If these concerns are addressed, the court finds attorney directed voir dire might provide material assistance to the selection of a fair and impartial jury. Therefore, the court grants the motion. To address the concerns, the court will not permit any questions or statements specific to this case, including questions or statements regarding the facts of this case, regarding liability, damages, or the amount of damages that the party feels will be appropriate. The court is concerned that the line between questions designed to address a juror's predisposition with respect to certain issues-for example questions designed to determine whether a juror's attitudes towards intangible injuries or the medical profession- may also be asking the jurors to take a position regarding a legal principle or may constitute an effort to predispose them. Waiting to see what happens with voir dire may be too late to do anything or may result in a voir dire with multiple interruptions. Therefore, the court will require the parties to submit the attorneys' questions in advance so they are appropriately screened. M.R.Civ.P. 47(a)(3)(C)(ii). Each side will have 45 minutes.

The entry is: Plaintiffs' Motion for jury voir dire is GRANTED subject to the conditions outlined in this Order. The parties' anticipated questions are due to the court on December 30 and will be discussed at the hearing on January 3.

This Order is incorporated on the docket by reference pursuant to M.R.Civ.P. 79(a).

DATE: 12/7/22



Thomas R. McKeon
Justice, Maine Superior Court