

Draft Rule 265.1 Juror Questions

- (a) *Discretion of Trial Court.* On its own initiative or on a party's request, the trial court in its discretion may allow jurors to submit written questions to witnesses who have appeared in person and testified.
- (b) *Procedure for Juror Questions.*
 - (1) Before voir dire or, at the latest, before the presentation of any evidence begins, the trial court must inform the parties if juror questions will be allowed.
 - (2) If juror questions will be allowed:
 - a. The trial court must read all of the following instructions to the jury after the jury is seated, and may repeat any or all of these instructions to remind the jury of its role. The trial court may modify these instructions as the circumstances of the particular case may require.

After the parties have asked their own questions of each witness and before each witness is excused, you may submit in writing any questions you have for that witness. Any questions you submit should be about the testimony the witness has given. Your questions should not give an opinion about the case, criticize the case, or comment on the case in any way. You may not argue with the witness through a question.

I will review all your questions with the parties privately. Keep in mind that the rules of evidence or other rules of court may prevent me from allowing some questions. I will apply the same rules to your questions that I apply to the parties' questions. Some questions may be changed or rephrased, and others may not be asked at all. If a question you submitted is not asked, do not take it personally, and do not assume it is important that your question is not asked.

You must treat the answers to your questions the same way you treat any other testimony. You must carefully consider all the testimony and other evidence in this case before deciding how much weight to give particular testimony.

Remember that you are neutral fact finders and not advocates for either party. You must keep an open mind until all the evidence has been presented, the parties have finished their summations, and you have received my instructions on the law. Then, in the privacy of the jury room, you will discuss the case with the other jurors.

Any question you submit should be yours alone and not something you got from another person. That is because of my overall instruction that you must not discuss the case among yourselves or with anyone else until you have heard my final instructions on the law, and I have instructed you to begin your deliberations.

- b. The trial court must provide the jurors with the following form and instruct them to write any questions for the witness on this form. The trial court may modify this form as the circumstances of the particular case may require.

Juror Question Form

You may submit one or more questions about the witness's testimony. Your questions should not give an opinion about the case, criticize the case, or comment on the case in any way. You may not argue with the witness through a question. Your questions should be yours alone, and not something you got from another juror.

Write your questions, if any, on this form. Do not put your name on the form. After the parties have asked their own questions of each witness, the judge will tell you to pass the form to the bailiff. The bailiff will give the form to the judge, who will review all your questions with the parties privately. Remember that the judge will apply the same rules to your questions that the judge applies to the parties' questions. As a result, some questions may be changed or rephrased, and others may not be asked.

You must treat the answers to your questions the same way you treat any other testimony. You must carefully consider all the testimony and other evidence in this case before deciding how much weight to give particular testimony. And you must not discuss this case with a fellow juror until the judge has told you to begin your deliberations.

- (3) After the parties have asked their own questions of each witness who appears and testifies, the trial court must ask the jurors to pass the juror-question form to the bailiff with any questions the jurors have for that witness.

- (4) Upon receipt of a written question from the jury, the trial court must allow the parties, outside the hearing of the jury, to make objections to the question on the record and obtain a ruling. On its own initiative or upon a party's request, the trial court may remove the witness from the courtroom before reviewing the question or allowing the parties to object to the question.
- (5) In its discretion, the trial court may re-word the question or decide that the question should not be asked. If the trial court re-words the question, the trial court must read the re-worded question and allow the parties to make objections to the re-worded question on the record and obtain a ruling outside the jury's hearing.
- (6) If the trial court allows a verbatim or re-worded juror question, the trial court may either ask the question or allow a party to ask the question of the witness. The parties will be allowed to ask any follow-up questions.
- (7) The trial court must include any completed juror-question form in the record.

Comment to 2009 Change: To the extent possible, the trial court should take steps to maintain the anonymity of the juror who asks a question. In addition to instructing jurors not to put their names on juror-question forms, the trial court may want to take a break after each witness to allow jurors to write any questions in the privacy of the jury room. Alternatively, the trial court may want each juror to have a juror-question form in the jury box and ask each juror to pass the form to the bailiff, even if the juror did not write a question on the form.