**CIVIL JURY QUALIFICATION EPISODE NOTES**

Every jury trial, whether civil or criminal, requires the judge to qualify jury on certain points.

In performing the research for this episode, I found myself asking some questions that I had never previously considered.

For example, there are the statutory qualification questions found in O.C.G.A. § 15-12-163(b). I ask questions on this topic in all of my civil trials, just as I do in my criminal trials.

***STATUTORY LANGUAGE:***

§ 15-12-163(b) (b) The state or the accused may make any of the following objections to the juror:

(1) That the juror is not a citizen, resident in the county;**[[1]](#endnote-1)**

(2) That the juror is under 18 years of age;

(3) That the juror is incompetent to serve because of mental illness or intellectual disability, or that the juror is intoxicated;

(4) That the juror is so near of kin to the prosecutor, the accused, or the victim as to disqualify the juror by law from serving on the jury;

(5) That the juror has been convicted of a felony in a federal court or any court of a state of the United States and the juror's civil rights have not been restored;**[[2]](#endnote-2)** or

(6) That the juror is unable to communicate in the English language.

Fun fact: §15-12-163 appears under the heading labeled “Juries in Felony Cases.”

I also ask:

* 1. **Have you expressed any opinion as to which of the parties ought to prevail in this case?[[3]](#endnote-3)**
  2. **Have you any wish or desire as to which party ought to succeed in this case?[[4]](#endnote-4)**

These questions come from O.C.G.A. § 15-12-164. Again, under the heading of “Juries in Felony Cases.”

**If you are trying a DIVORCE case:** Are you conscientiously opposed to the granting of a divorce by reason of religious or other convictions? Provided the evidence is sufficient to do so, would you grant a divorce on legal grounds as instructed by the court?**[[5]](#endnote-5)**

But there *are* some questions that are unique to a civil case that may not be relevant in a criminal case.

Relationships within the 3rd degree: **O.C.G.A. § 15-12-135** (applies to both criminal and civil cases)

Parties (Plaintiff and Defendant);**[[6]](#endnote-6)** (both criminal and civil cases)

Attorneys (if they have a contingent fee or pecuniary interest in outcome of case);**[[7]](#endnote-7)** (just civil cases)

Anyone else identified in the pretrial order. (just civil cases)

(again, the extreme value of a consolidated pretrial order)

ALSO relevant to civil cases:

**Does anyone in the panel have any interest in the outcome of this case because of a business or personal relationship with anyone involved in this case?[[8]](#endnote-8)**

The cases suggest that this prohibition does not necessarily extend the individuals related to *witnesses* in the case – but the trial court acts within its discretion in excusing a child of a witness.**[[9]](#endnote-9)**

Employees of corporate parties are incompetent to serve as jurors in the case involving that corporation.**[[10]](#endnote-10)** But relatives of employees are NOT incompetent to serve as jurors.**[[11]](#endnote-11)**

However, there is a bit of a tightrope that is relevant to qualification of a jury in a civil case that bears some extensive discussion – ***INSURANCE***

These are the questions I ask in all tort cases (maybe a different outcome in contract cases)[[12]](#endnote-12)

**Are any of you a stockholder (or policyholder in the case of a mutual insurance company), officer, director, agent or employee of [name of each company having interest in case as party, insurer, or otherwise]?** **[[13]](#endnote-13)**

**Are any of you related within the 3rd degree, to any stockholder (or policyholder, if mutual insurance company), officer, director, or agent of [name same company(ies)]?**

We know that, under collateral source rule, that the potential availability of insurance to pay for damages in a civil tort case is not admissible.

Collateral source rule is a judicially identified doctrine that has been the long-standing law of Georgia.**[[14]](#endnote-14)**

Without getting into the nuts and bolts of the collateral source rule, for this discussion, let’s merely acknowledge that the jury cannot be told about insurance availability in a civil case involving a tort.

However, when qualifying a jury, it is mandated that potential jurors be qualified as to whether they have any relationship with anyone that has a pecuniary interest in the outcome of the case – even non-parties.

Clearly, insurance companies who stand to potentially be liable for damages awarded by a jury have a potential pecuniary interest in the outcome of the case! (Even when the insurance company is not a named party to the lawsuit)

This discussion also requires an understanding of insurance:

1. Mutual Insurance Company
2. Stock Insurance Company

Mutual Insurance Company – the policyholder has a stake in the outcome of the case because it affects their premiums and, in some cases, savings in the payment of insurance claims actually results in a dividend payment to the policyholders.**[[15]](#endnote-15)**

And you will recall that jurors are disqualified if they have any pecuniary interest in the outcome of the case.

Compare a mutual insurance company with a stock insurance company –

Stock Insurance Company – like most traditional corporations, a stock insurance company has shareholders who have a financial interest in claims the insurer has to pay out.

Because anyone with a pecuniary interest in the outcome of the case is not allowed to serve as a juror, stockholders in a stock insurance company are incompetent to hear a case involving that stock insurance company.

AND these prohibitions apply to anyone who is either insured by a mutual company or a shareholder in a stock insurance company AND anyone related within the 3rd degree to such person!

The question is not whether that juror who is a shareholder of a stock company or policyholder of a mutual company can be impartial. These jurors require per se disqualification as a matter of law. *Ford Motor Co. v. Conley*, 294 Ga. 530, 550 (2014).

The qualification of the panel relating to their relationship to an insurer must be conducted in the open courtroom prior to trial.**[[16]](#endnote-16)**

You will recall that relatives of employees of party corporations are not disqualified to serve as jurors.

Different rules for potential jurors related within the 3rd degree to policy holders or shareholders of insurers.**[[17]](#endnote-17)** Potential jurors related within the 3rd degree to policy holders of mutual companies or shareholders of stock companies ARE disqualified.

We know you are all wondering - how you figure out all of the insurance stuff in the middle of voir dire

The short answer is that you don’t – you have the lawyers figure all of this out within the consolidated pretrial order! (Remember, we told you these things are very important)

Now that we know more than we ever wanted to know about insurance companies, let’s double back to how asking these questions create a bit of a tightrope situation with the consideration of the collateral source rule.

We are required to qualify the jury as to potential insurers – but we cannot tell jurors that there is potentially insurance coverage in this case.

Yes, it is another of those legal fictions where we ask questions about insurers and close our eyes to the possibility that the jurors will figure out that if we ask the question, that the insurance company we are asking about must be involved somehow.

So, that’s all for our episode on qualifying potential jurors in civil cases.

Remember, judges are required to ensure that potential jurors are properly qualified as to their relationships and any financial interest they may have in the outcome of a civil case. Some of those relationships are obvious, and some are more nuanced.

The outline is full of statutory and case citations and that outline can be found at **goodjudgepod.com**.

Reach out to us on [goodjudgepod@gmail.com](mailto:goodjudgepod@gmail.com) with all of your podcast topic ideas

**I’m Wade Padgett**

*And I’m Tain Kell… [insert funny thing]*

1. O.C.G.A. § 15-12-163 [felony jury]; *State Highway Dep’t v. Smith,* 117 Ga. App. 210 (1968); *Taylor v. Warren*, 175 Ga. 800, 804 (166 S.E. 225, 227) (1932). [↑](#endnote-ref-1)
2. O.C.G.A. § 15-12-40. A potential juror who has a pending First Offender sentence is NOT disqualified. *Humphreys v. State*, 287 Ga. 63 (2010)–or if the conviction is on direct appeal, NOT disqualified. *Turnipseed v. State*, 53 Ga. App. 194 (1936). [↑](#endnote-ref-2)
3. O.C.G.A. § 15-12-134. Juror Rehabilitation by trial judge- *Clark v. State*, 309 Ga. App. 749, 711 S.E.2d 339 (2011); *Ros v. State*, 279 Ga. 604 Ga. 604, 619 S.E.2d 644 (2005); *Poole v. State*, 291 Ga. 848 (2012). [↑](#endnote-ref-3)
4. O.C.G.A. § 15-12-134. Juror Rehabilitation by trial judge- *Clark v. State*, 309 Ga. App. 749, 711 S.E.2d 339 (2011); *Ros v. State*, 279 Ga. 604 Ga. 604, 619 S.E.2d 644 (2005); *Poole v. State*, 291 Ga. 848 (2012). [↑](#endnote-ref-4)
5. O.C.G.A. § 19-5-9. MAY NOT NEED this if divorce itself is not an issue (i.e. whether the parties dispute the marriage is irretrievably broken or there are sufficient other grounds for divorce. Discuss with counsel. Usually if divorce is not an issue, by stipulation Court can tell the jurors that it is not an issue they will be asked to resolve and that the Court will be granting parties divorce. [↑](#endnote-ref-5)
6. Where juror is client of counsel in case, no automatic disqualification. *Moore*, 281 Ga. 81 (2006). Where juror is patient of party physician-no automatic disqualification. *Cohen,* 267 Ga. 422 (1997). However, additional questioning required where juror is former RN employed by defendant physician. *Kim v. Walls*, 275 Ga. 177 (2002). Juror’s prior employment by defendant 19 years before trial is not grounds for automatic disqualification. *Hardy v. Turner* *Med. Ctr., Inc.*, 231 Ga. App. 254 (1998). [↑](#endnote-ref-6)
7. *Wilson v. Atlantic Coast Line Co.,* 116 Ga. App. 193 (1967). *Johnson v. Jackson*, 140 Ga. App. 252, 256 (1976). [↑](#endnote-ref-7)
8. O.C.G.A. § 15-12-135; “A juror is incompetent if related within the prohibited degree to a person beneficially interested in the result of the litigation, although not a party of record.” *Stokes v. McNeal*, 48 Ga. App. 816 (1934)(juror sold land to the plaintiff who was seeking to dispossess the defendant – the sale contract made the landowner/juror “interested” in the outcome of the case). See *Poulnott v. Surgical Associates of Waner Robins, P.C.*, 179 Ga. App. 138, 138-139 (1986)(mere fact that wife of juror was in same field as a party to the lawsuit does not make the juror related to an “interested party.”) [↑](#endnote-ref-8)
9. *Tew v. State*, 246 Ga. App. 270 (2000); *Bryant v. State*, 270 Ga. 780 (1998)(relationship to witness is not per se ground for excusing potential witness); *Elder v. MARTA*, 160 Ga. App. 78 (1981)(in personal injury case, trial court acted within scope of discretion in disqualifying juror who was son of physician testifying on behalf of plaintiff). [↑](#endnote-ref-9)
10. *Ferguson v. Bank of Dawson*, 53 Ga. App. 309, 312 (1936). [↑](#endnote-ref-10)
11. *Ford v. Saint Francis Hosp.*, 227 Ga. App. 823 (490 S.E.2d 415) (1997). [↑](#endnote-ref-11)
12. See *Amalgamated Transit Union Local 1324 v. Roberts*, 263 Ga. 405 (1993) for a more complete discussion of the collateral source rule and its applicability to contract cases. [↑](#endnote-ref-12)
13. ***Employees*** of corporation incompetent. *Ferguson v. Bank of Dawson*, 53 Ga. App. 309, 312 (1936). If an insurance company is involved, determine if it is a “mutual insurance company” from counsel. If so, any policyholder of a mutual company is disqualified. O.C.G.A. § 15-12-135; *Wallace v. Swift Spinning Mills, Inc.,* 236 Ga. App. 613, n. 2 (1999); *Smith v, Crump*, 223 Ga. App. 52, 53-56 (1996). If the insurance company is NOT a mutual company, only shareholders (and their relatives within 3rd Degree) are disqualified. The question is not whether that juror who is a shareholder or policyholder of a mutual company can be impartial. These jurors require per se disqualification as a matter of law. *Ford Motor Co. v. Conley*, 294 Ga. 530, 550 (2014). The qualification of the panel relating to their relationship to an insurer must be conducted in the open courtroom prior to trial. *Mordecai v. Cain*, 338 Ga. App. 526, 529-531 (2016). *Lewis v. Emory University*, 235 Ga. App. 811 (1998) (“The trial court misunderstood the difference between how mutual and stock companies are handled. The jury must be qualified for both types of insurers with regard to officers, employees, and stockholders and their relatives. The jury need not be qualified as to policyholders in stock companies because such policyholders do not have any interest in the assets of the company; mutual company policyholders are shareholders or otherwise have an interest in the assets of the insurer and therefore none can serve on the jury.”) [cits omitted] [↑](#endnote-ref-13)
14. *Kelley v. Purcell*, 301 Ga. App. 88, 89-90 (2009), citing *Warren v. Ballard*, 266 Ga. 408, 410 (1996). See *Amalgamated Transit Union Local 1324 v. Roberts*, 263 Ga. 405 (1993); *Broda v. Dziwura*, 286 Ga. 507, 508-509 (2010). [↑](#endnote-ref-14)
15. *Wallace v. Swift Spinning Mills, Inc.,* 236 Ga. App. 613, n. 2 (1999); *Smith v. Crump*, 223 Ga. App. 52, 53-56 (1996) [↑](#endnote-ref-15)
16. *Mordecai v. Cain*, 338 Ga. App. 526, 529-531 (2016). *Lewis v. Emory University*, 235 Ga. App. 811 (1998) (“The trial court misunderstood the difference between how mutual and stock companies are handled. The jury must be qualified for both types of insurers with regard to officers, employees, and stockholders and their relatives. The jury need not be qualified as to policyholders in stock companies because such policyholders do not have any interest in the assets of the company; mutual company policyholders are shareholders or otherwise have an interest in the assets of the insurer and therefore none can serve on the jury.”) [cits omitted] [↑](#endnote-ref-16)
17. *Atlanta Coach Co., v. Cobb,* 178 Ga. 544, 548 (1934). *Lewis v. Emory University*, 235 Ga. App. 811 (1998). [↑](#endnote-ref-17)