

**ORIENTATION REMARKS AND VOIR DIRE TO JURY PANEL**

I am Judge Conley. You are here for possible jury service in case no. 17-cv-264-wmc: Alina Boyden, et al. v. State of Wisconsin Department of Employee Trust Funds, et al. Many people approach jury service with apprehension and anxiety, but if each of us does our job, most people end up feeling that jury service was a worthwhile, even gratifying, experience.

The United States Courthouse that you entered this morning is not the judges' courthouse; neither is it the lawyers' courthouse; nor even the litigants' courthouse. This is your courthouse and your system of justice. Indeed, this building belongs to the public; and it is important that each of us keep in mind that the public's business is being conducted here.

To be able to continue to serve you better, we seek your input. Each of you has a stake in this system. When this trial concludes you will not only be asked to rule on this case, but also to tell us anonymously what we did right and what we did wrong. We cannot serve the public and improve our system of justice without each of your valuable contributions.

Other than by paying taxes and voting, service on a jury is probably the most important duty that most of us will undertake in support of our system of government. Only by realizing how unique our system of justice is, and how dependent it is on good people like you, can we truly understand and appreciate it.

Trial by jury has been eliminated in many countries of the world. The United States justice system is the place where most of the jury trials in the world are now held. Contrary to general belief, we have the highest involvement of *non-lawyers* of any justice system in the world. That is a heritage handed down by the people who founded our country. I cannot describe its importance any better than the U.S. Supreme Court Justices did in the video you watched this morning, so I won't try.

Instead, I will just remind you of your role as jurors in this trial. My job as judge is to decide legal questions and your job as jurors is to decide fact questions. The judge decides what kind of evidence is admissible and instructs the jurors at the end of the trial as to the law that they must apply in deciding the case. These instructions provide the legal yard stick by which the jurors must measure the evidence in order to decide the case.

The jurors decide what the facts are -- that is, they decide from the evidence admitted at trial what actually happened. An important part of the jurors' job is to decide what testimony to believe and what testimony not to believe.

In deciding what actually happened, the jurors are searching for the truth. Many people in fact define a trial as a search for the truth. The trial begins with "Voir Dire," which literally means from the Latin and French "to speak the truth" or "to inquire." Consistent with these definitions, the purpose of voir dire is to ask a series of questions of jury panel members and to obtain candid, truthful responses to help insure that we seat a jury comprised of impartial individuals -- a fundamental right of both parties.

**VOIR DIRE**

The clerk has already seated the first 14 prospective jurors in the jury box. All prospective jurors, whether seated in the box or not, should listen carefully as they may be called and asked the same or similar questions.

The deputy clerk will now swear the entire jury panel.

I want to introduce you to our court personnel:

- A. Judge William Conley
- B. Deputy Clerk Vivian Olmo

[after introduction, inquire if anyone on the jury knows either]

## QUESTIONS

1. Statement of the case: Plaintiffs Alina Boyden and Shannon Andrews, both state employees, seek damages from defendants the State of Wisconsin Department of Employee Trust Funds and the State of Wisconsin Government Insurance Board based on defendants' policy of excluding gender confirming surgery and associated hormone therapy from health insurance coverage offered to state employees. The court has already determined that defendants' policy of excluding this coverage violates federal anti-discrimination statutes. The jury's role, therefore, is limited to determining what, if any, damages should be awarded to plaintiffs.
  - a. Have any of you heard of this case before today? How? When?
  - b. When you heard about it, did you form any opinion concerning the case?
  - c. Do you believe that your ability to serve impartially as a juror in this case has been affected by what you have heard about it?
  
2. The trial of this case will begin today, October 9, 2018, and likely will be completed tomorrow, October 10, though may extend into Thursday, October 11. The trial day will generally run from 8:30 a.m. until 5:30 p.m., although we may begin slightly earlier or go later if necessary to ensure completion within the promised time frame. You will have at least an hour for lunch and two additional short breaks of 15-20 minutes, one in the morning and one in the afternoon. Is there any one of you who would be unable to serve as a juror during this time for any reason, including vision, hearing or other health limitations?
  
3. Counsel for each party will stand and tell the jury where they practice and with whom. Does anyone know counsel or their law firms?
  
4. Counsel will then introduce their client, including any party representative at counsel table. Ask panel whether anyone knows the parties or corporate representatives. If anyone has had involvement with the party, have you formed any opinions positive or negative about that party?
  
5. The following people are also involved in this case or may be called as witnesses in this case. Please raise your hand if you know any of these people:
  - a. Jeffrey E. Bogardus

- b. Stephanie L. Budge, Ph.D.
  - c. Michael S. Farrell
  - d. Arlene Larson
  - e. Elieen Mallow
  - f. J.P. Wieske
6. Question to prospective jurors individually:
- a. Please stand up and tell us about yourself.
  - b. Examples:
    - 1. Name, age, and city or town of residence.
    - 2. Where born and raised.
    - 3. Marital status and number of children, if any.
    - 4. Current occupation (former if retired).
    - 5. Current (or former) occupation of your spouse or domestic partner.
    - 6. Any military service, including branch, rank and approximate date of discharge.
    - 7. How far you went in school and major areas of study, if any.
    - 8. Memberships in any groups or organizations and, if so, ever served in a leadership position.
    - 9. Hobbies and leisure-time activities.
    - 10. Favorite types of reading material.
    - 11. Favorite types of television shows, talk radio, movies, music or other entertainment
    - 12. Bumper stickers, letters to editor or call in to radio or TV show.
    - 13. Regular contributor to any blogs, online discussion groups or online chat rooms.
    - 14. Primary source of news.
7. General questions regarding experience with court proceedings:
- a. Have you or a close relative ever been a party to a lawsuit? Describe circumstances.
  - b. Have you or a close relative ever been a witness in a lawsuit?
  - c. How many of you have served previously on a jury? Of those of you who have, please describe your experience. Were you ever the foreperson on a jury?

- d. Do any of you know any of the other persons on the jury panel?
  - e. Have you or anyone close to you, even worked in a law firm or taken law classes?
8. Case-specific questions to panel (side bar, if necessary)
- a. Is there *anything* about the fact that the plaintiffs in this case are transgender, whether positive or negative, which would interfere with your ability to be fair and impartial to both sides in this case? [Follow up at side bar.] Similarly, is there *anything* about the fact that defendants are the State of Wisconsin, Department of Employee Trust Funds and the Government Insurance Board, whether positive or negative, which would interfere with your ability to be fair and impartial to both sides in this case?
  - b. Relatedly, have you or someone close to you ever worked for the State of Wisconsin? If so, are or were you or the person close to you covered by the Wisconsin State Employee Group Health Insurance Plan? If so, any concern that this would impact your ability to decide this case on the evidence admitted at trial?
  - c. Have you or someone close to you ever
    - 1. filed a lawsuit or administrative complaint alleging discrimination, whether against the government, an employer or anyone else?
    - 2. had a lawsuit or administrative complaint filed against them or against their employer because of alleged discrimination?
  - d. If so, any concern that this would impact your ability to decide this case on the evidence admitted at trial? [Follow up at side bar.]
  - e. Have you or someone close to you ever been employed by, been a member of or volunteered for any organization whose mission includes the protection of or narrowing of constitutional or civil rights? If so, follow up.
  - f. Do you have very strong beliefs, either positive or negative, about protections from sex discrimination at work? If so, any concern that this would impact your ability to decide this case on the evidence admitted at trial?
  - g. Do you have very strong beliefs, either positive or negative, about employer-provided health care insurance? If so, any concern that this would impact your ability to decide this case on the evidence admitted at trial?
  - h. Do you have very strong beliefs, either positive or negative, about the denial of insurance coverage generally? Same question for the denial of insurance coverage for gender-confirming surgery or hormone therapy for transgender individuals specifically. Of course, you should raise your hand if you or someone close to you was granted or denied coverage for surgery. [Follow up at side bar.]

- i. Should the evidence support it, would anyone have any difficulty in awarding damages in this case in a substantial amount? Similarly, should the evidence support it, would anyone have any difficulty in awarding *no* damages or a small amount of damages?
  
9. At the end of the case, I will give you instructions that will govern your deliberations. You are required to follow those instructions, even if you do not agree with them. Is there any one of you who would be unable or unwilling to follow these instructions?
  
10. Do you know of any reason whatsoever why you could not sit as a trial juror with absolute impartiality to all the parties in this case?
  - Side bar to address strikes for cause and possible follow up questions.
  - Exercise preemptory challenges. (Note: during exercise of strikes, will read section from Introductory Instructions on conducting self during breaks and recesses to prospective jurors.)
  - Swear in jury and take break.