

Preventing and Addressing Internet-related Juror Misconduct:

Small Group Exercise

The three scenarios presented below are based on actual instances of alleged juror misconduct in cases filed in state and federal courts. You will have 30 minutes to discuss the three scenarios. For each group, designate a reporter to present the group's conclusions at the end of the exercise.

For each scenario, read the key facts about the alleged misconduct and, as a group, answer the questions below.

1. Did the juror engage in misconduct?
2. Regardless of whether the juror's behavior meets the definition of "misconduct" in this jurisdiction, was the information/communication prejudicial to the litigant(s)?
3. What remedy, if any is necessary, would effectively address the misconduct?

If your group concludes that you need more information to make an informed decision, specify the questions that you would need to pose to the juror and/or litigants.

Scenario 1: Products Liability Case¹

- While in the Jury Assembly Room, a prospective juror surfs the court's website, discovers the daily trial calendar, and learns the name of case that is scheduled for trial that day.
- The juror Googles the defendant, a pharmaceutical company, and learns that a jury in another state recently awarded a sizeable damage award to a plaintiff in a products liability case.
- The juror shares the information with two other jurors while waiting to be sent to the courtroom for voir dire.
- The above information is disclosed in a sidebar conference with the juror after the juror responded to a question during voir dire about whether he knew anything about the case or the litigants.

¹ Based on Memorandum Opinion and Order, Cincinnati Ins. Co. v. Omega Flex, Inc., No. 3:10-CV-00670-M (W.D. Ky., Apr. 10, 2013).

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Scenario 2: Vehicular Homicide Case²

- During deliberations, the jury sends out a request for a definition of a term used in the jury instructions. The trial judge instructs the jury to review the instruction, but declines to provide a more specific definition of the term.
- A juror comes to court the following day with two pieces of paper – a handwritten definition of the term specified in the jury’s request the previous day, and a computer printout with an explanation of “Involuntary Manslaughter,” which was specified as a lesser included charge in the jury instructions.
- During a hearing with the trial judge, the juror explains that she just wanted to have the concept of involuntary manslaughter clear in her mind, and that all of the jurors struggled with the meaning of the term in the jury instructions.
- The juror has not shared the information with the other jurors.

Scenario 3: Capital Murder Case³

- During jury deliberations, the trial judge learns that juror has posted status updates about the case to her Facebook account.
- In the first post (entered before voir dire began), she wrote: “I have jury duty today – hope I get chosen for an interesting case, not a stupid slip-n-fall like last time.”
- In the second post (entered after opening statements), she wrote: “Be careful what you wish for – this is definitely more interesting, maybe too much so.”
- In the third post (entered just before the jury was sent into deliberations), she wrote: “This is going to be really rough – I don’t know what to believe.”

² Based on Ohio v. Gunnell, 973 N.E.2d 243 (Ohio 2012).

³ Based on Dimas-Martinez v. Arkansas, 385 S.W.3d 238 (Ark. 2011).