

Are You Now, or Have You Ever Been, Crazy: Questions about Mental Health for Supplemental Juror Questionnaires

BY DIANE WILEY

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Imagine having to talk about having depression or that your child has a drug problem to a room full of strangers. This is what we often expect our jurors to do. It's not fair to them and many of them simply don't tell us about their experiences. Yet, in most personal injury, employment and other civil rights cases there are issues involving the mental health of the plaintiffs. Some of our clients have brain injuries. Physical injuries, harassment and discrimination generally produce mental stressors – from reactions to horrific and chronic pain, to the inability to work, the inability to participate in leisure activities, or to pick up grandchildren. At the same time, more and more people in our society (our prospective jurors) are experiencing, and being diagnosed with, depression, anxiety, Attention Deficit Hyperactivity Disorder (ADHD), Bi-Polar Disorder, Post Traumatic Stress Disorder (PTSD) and other mental illnesses.

These are issues that are important to identify during jury selection when the plaintiff has mental health issues as a result of an injury or discrimination. While there is increasing recognition by the public about the impact of psychological injuries and conditions, there are still people who refuse to believe that psychological injuries are “real” and others who feel that while these conditions may affect people, they should not be compensated. An additional problem is that some jurors and/or their family members have had bad experiences with psychiatrists, psychologists, social workers or other mental health counselors which may affect how they respond to testimony about mental health.

Because of the stigma still attached to mental health problems, many jurors do not want to talk in open court about issues they or family members have had. Thus, as with all sensitive issues, prospective jurors' experiences with and attitudes towards mental health and mental health providers are easier to identify using a Supplemental Juror Questionnaire (SJQ). We find that more people will report mental health issues when given a questionnaire than in open court.

Before constructing the questionnaire, consider the conditions under which you will be conducting the voir dire. If there will be no time allowed for following up on the questionnaire answers, you will want to make the questions as complete as possible in drawing out the issues you need information on.

Jurors, like the rest of us, form their opinions and attitudes based on their experiences, combined with their core beliefs. Thus, the questionnaire should be designed to identify:

- Jurors' experiences with mental health issues in general
- Specific juror experiences which might impact their reaction to the issues in the case
- Attitudes towards mental health issues in the case
- Attitudes towards compensation for mental health problems caused by an injury or discrimination

In many cases, it will not be necessary to follow up on individual jurors' mental health experiences during voir dire if you design the questionnaire correctly. However, if you do have attorney voir dire, you will still want to ask questions dealing with jurors' attitudes about mental health treatment and people's ability to recover.

If you feel it is necessary to follow up on something in the questionnaire, be sure to tell the jurors that you are going to ask them about some of their answers in the questionnaire:

"If you or a loved one have had a mental health (or chemical dependency) issue or have had a problem with a mental health professional and you don't want to talk about it in front of the other jurors, please raise your hand and we can talk about it with the judge in private."

It goes without saying, but I'll remind you anyway, that you must clear this with the judge first. If the judge will not allow you to examine jurors at sidebar about their or family members' mental health problems, I recommend that you not ask them in front of the other jurors. Those who are willing to talk about it in open court may bring it up in talking about their attitudes towards mental health professionals or other more general questions.

The occurrence of mental health problems is significant enough that whenever we have used questionnaires, jurors report problems ranging from slight depression to chemical dependency and even schizophrenia. They will have relatives with alcohol and drug problems or who are bi-polar. Some will have received family counseling in relation to divorce or because of children with problems. Some will have had court ordered counseling. These are often formative life experiences and many jurors will find it painful or embarrassing to talk about them.

You will have jurors who have successfully overcome mental health problems. Some of them will be empathetic towards other who have problems, some will be self-righteous. Some will be dealing with mental health issues with family members who have not been successful and some of those jurors will feel frustrated and blame the family member for not working hard enough. Others will be sympathetic to the struggle to overcome depression, anxiety and other mental health problems. Some

jurors will have dealt with mental health problems in their employment. As with all of the issues we deal with in voir dire, simply having had a similar experience does not mean that the juror will have a certain attitude or be good or bad for your case. It is their reaction to the experience that counts.

The following are some sample questions designed to cover a variety of mental health issues that may arise in different cases. We generally provide three lines for providing an explanation, which will not be reproduced here.

- 1. Have you or anyone close to you ever taken any courses or training in or worked in the field of mental health or with people who have mental health issues?**

____ Yes No ____

IF YES, is this: you spouse/partner child relative friend

Please explain:

- 2. Have you or anyone close to you ever suffered from depression, anxiety, emotional distress or mental illness of any kind?**

____ Yes No ____

IF YES, is this: you spouse/partner child relative friend

Please explain:

- 3. Have you, anyone in your family, or anyone close to you ever received counseling for any kind of emotional, family or psychological problem or for a mental illness of some kind?**

____ Yes No ____

IF YES, is this: you spouse/partner child relative friend

Please explain:

Type of professional providing treatment:

Was the treatment satisfactory? ____ Yes No ____

Please explain:

4. Have you, anyone in your family, or anyone close to you used medications for emotional or psychological problems?

___ Yes No ___

IF YES, is this: you spouse/partner child relative friend

Please explain, including what medications were used:

Was this medication helpful? ___ Yes No ___

Did you, or your family member, or person close to you have any side effects from using this medication? ___ Yes No ___

IF YES, what side effects were experienced:

There may be cases where it is important to know if the juror has any experience with specific medications:

5. Have you or anyone close to you ever taken any of the following medications?

	No	Self	Relative	Friend	What problem was this medication prescribed for?
Prozac or Fluxotine					
Desyrel or Trazadone					
Klonopin or Clonazepam					
Tagamet or Cimetidine					
Halcion or Triazolam					
Xanax or Alprazolam					

6. What is your general opinion about professionals who provide counseling, such as psychologists, psychiatrists, pastoral counselors like ministers, and other mental health professionals?

positive negative mixed neutral

Please explain your answer:

7. Have you or anyone close to you ever had any kind of brain damage – whether from birth, due to an injury or stroke, or other medical condition?

___ Yes No ___

IF YES, is this: you spouse/partner child relative friend

Please explain the person’s condition, the cause (if known), and his/her age at the time the brain damage occurred:

8. Have you ever heard of PTSD or Post-Traumatic Stress Disorder?

___ Yes No ___

IF YES, do you have any concerns about the diagnosis of PTSD?

___ Yes No ___

Please explain:

9. Do you know anyone who may have had or has been diagnosed as having PTSD?

___ Yes No ___

IF YES, is this: you spouse/partner child relative friend

What was the cause?

How has PTSD affected the person?

10. Do you know anyone who has a serious emotional or psychological problem who has not received any help or treatment?

___ Yes No ___

IF YES, is this: you spouse/partner child relative friend

Please explain, including why this person has not received any help:

11. Have you or anyone close to you ever threatened, attempted or committed suicide?

___ Yes No ___

IF YES, is this: you spouse/partner child relative friend

Please explain:

12. Have you or anyone close to you ever engaged in self-harming or intentionally injuring acts?

___ Yes No ___

IF YES, is this: you spouse/partner child relative friend

Please explain:

13. Have you or anyone close to you ever taken any courses or training in or worked in the field of alcohol or chemical dependency?

___ Yes No ___

IF YES, is this: you spouse/partner child relative friend

Please explain:

14. Have you or anyone close to you ever belonged to Alcoholics Anonymous, any 12 step or other kind of chemical dependency organization, or received alcohol or chemical dependency treatment?

___ Yes No ___

IF YES, is this: you spouse/partner child relative friend

Please explain:

15. Have you or anyone close to you ever had a chemical dependency problem involving the use of legal or illegal drugs?

___ Yes No ___

IF YES, is this: you spouse/partner child relative friend

Please explain:

16. What do you think about providing money to compensate a person who proves that he or she suffered emotional distress as a result of (an injury caused by the negligence of another, sexual discrimination, etc.)?

17. What do you think are the biggest problems facing residential (treatment) facilities for the mentally disabled and what is the cause of those problems?

18. Do you think that anyone can overcome any kind of mental health problem if they try hard enough?
 ___ Yes No ___

Please explain your thoughts about this:

It's always important to have a privacy question such as the following at the end of every questionnaire, but especially important in SJQ's with questions about mental health. This allows jurors to feel more comfortable about the jury selection process and not worry that they may be forced to talk about these issues in open court.

Are any of your answers to the questions in this questionnaire so personal that you would not want them to be discussed in front of other jurors?
 ___ Yes No ___

IF YES, which questions? _____

If you want to get accurate information in your questionnaire, you'll need to construct it in a way where you get prospective jurors to identify whether the answer to a question refers to the juror or someone else they know. The easiest way to do this, and which takes the least space, is to use the following:

IF YES, is this: you spouse/partner child relative friend

It's also important to ask about "partners" due to the number of people who are living together. Some people will answer about their partners when asked about a "spouse", but others won't.

Supplemental Juror Questionnaires can make the crucial difference in our ability to identify problem jurors, particularly when there are sensitive issues that jurors will not want to talk about in open court or when there is no attorney conducted voir dire. Attorneys are most likely to convince judges to use SJQ's if the questionnaire is designed well and if the other side agrees.

For more information about Supplemental Juror Questionnaires in general, including jurisdictions where they have been used, sample questionnaires and motions, see JURYWORK: Systematic Techniques (National Jury Project; Elissa Krauss, General Editor; Sonia Chopra, Ph.D., Associate Editor (West Publishing, 2d Ed., updated annually).