

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE
FOR THE DISTRICT COURTS AND UNIFORM JURY INSTRUCTIONS - CRIMINAL**

The Supreme Court is considering whether to adopt proposed amendments to the Rules of Criminal Procedure for the District Courts and Uniform Jury Instructions - Criminal.

If you would like to comment on the proposed amendments set forth below before they are submitted to the Court for final consideration, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://nmsupremecourt.nmcourts.gov/> or sending your written comments to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received on or before November 16, 2009, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

14-121. Individual voir dire; death penalty cases; single jury used.¹

In New Mexico there are two possible penalties for a person who has been convicted of [an intentional deliberate first degree]² murder. Those penalties are life imprisonment or death. New Mexico has a two-phase trial in those cases in which the death penalty may be imposed. The same jury is used for both phases.

The first phase is called the innocence-guilt phase. In this phase the jury decides whether the state has proven the defendant guilty beyond a reasonable doubt. In making this decision the jury cannot consider the consequences of its verdict or any possible sentence. If the accused is found not guilty of first degree murder, the proceedings are ended for the jury. But if the defendant is found guilty of [an intentional deliberate first degree]² murder, the same jury is brought back for a second phase of the trial called the sentencing phase. At that time the jury may hear more evidence and will hear legal instructions and arguments of counsel. The jury then decides the penalty of life in prison or death.

In this case, _____ (name of defendant), has pleaded not guilty and is presumed to be innocent. The state has the burden of proving _____ (name of defendant) guilty beyond a reasonable doubt. I am going to ask you some questions concerning your views about possible penalties for someone convicted of [an intentional deliberate first degree]² murder. When I speak of murder, I mean a killing of a human being which is intentional, not justifiable and not legally excusable. Murder does not include killings of people which are accidental, which are committed in self-defense or for which there is some other legal defense. In other words, these questions refer only to persons who have intentionally and illegally killed another human being.

Asking these questions is a procedural requirement and the fact that you are asked questions about possible penalties does not reflect on _____'s (name of defendant) innocence or guilt in any way because _____ (name of defendant) is presumed to be innocent. In fact, these questions do not refer to this case specifically, but to your views in general. If you do not understand a question, please let me know and we will clarify the question.

1. What is your attitude about penalties for persons convicted of [an intentional

premeditated first degree]² murder?

2. Do you feel that the death penalty is the appropriate penalty for all persons convicted of [an intentional deliberate first degree]² murder?

3. Do you feel that the death penalty is appropriate for some, but not all, persons convicted of [an intentional deliberate first degree]² murder?

4. Do you feel that the death penalty is never an appropriate penalty for people convicted of [an intentional deliberate first degree]² murder?

5. After answering the above questions, please tell us more about your views and why you answered as you did.³

USE NOTE

1. For use only in cases where the death penalty may be imposed. This instruction may be used when the same jury is used for the innocence-guilt and sentencing phases of the trial. When the defendant has exercised the option to have two separate juries, one for the innocence-guilt phase and an independent jury for the sentencing phase, UJI 14-121A NMRA shall be used. These questions are not mandatory.

2. Set forth or describe the type of murder charged which may result in the imposition of the death penalty.

3. The attorneys may now question the juror. If the answer to question 2 is yes, the defendant's attorney may question first as to the juror's attitudes. If the juror's answer to question 3 is yes, the court may alternate between the prosecuting attorney and the defendant's attorney as to who questions the prospective juror first. If the answer to question 4 is yes, the prosecuting attorney may question first about the juror's attitudes.

[As amended, effective January 1, 1995; as amended by Supreme Court Order _____ effective _____.]

Committee commentary. — The questions included for use in cases where the death penalty may be imposed are based on requirements set forth in *Witherspoon v. Illinois*, 391 U.S. 510, *rehearing denied*, 393 U.S. 898 (1968). *Witherspoon* specifies that a [~~venireman~~] venireperson cannot be excluded from serving on a jury in a case where the death penalty may possibly be imposed unless [~~he~~] the venireperson is “irrevocably committed, before the trial has begun, to vote against the penalty of death regardless of the facts and circumstances that might emerge in the course of the proceedings.” 391 U.S. 510 at 522. Both questions need not be asked. If the [~~venireman~~] venireperson answers the first question in the negative, it is not necessary to ask the second question, and the [~~venireman~~] venireperson may be excused. If the answer is in the affirmative, the second question must be asked. The [~~venireman~~] venireperson may then be excused only if the second question is answered in the affirmative.
