

From: [Maria Diamond](#)
To: [RulesCommittee Secretary](#)
Subject: Juror Questions
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22-EV-A

Dear Committee on Rules of Practice:

I was recently informed that the Committee is considering a possible rule to allow jurors to ask questions during trial. As an attorney who has litigated in the Washington state courts and federal courts for 40 years, particularly in the areas of plaintiff's personal injury, medical negligence and products liability, I have significant background and I am writing to share my experience for the Committee's consideration.

In 2001 – 2003, I served as the Washington State Trial Lawyers Association's appointed representative to the Washington State Jury Commission, which was established at that time pursuant to a charge by the Washington State Supreme Court to perform a comprehensive review of jury procedures in Washington state. I served with several judges on a subcommittee that studied and made recommendations as to whether to allow jury questions during trial. Back then we had no such process and I believe that Arizona was the only state allowing for such questions. We considered the Arizona model at some length. Ultimately, the Commission recommended that we adopt a process similar to Arizona's. We also proposed best practices for trial court judges to follow.

Our Supreme Court adopted the Commission's recommendations and, with some revisions, our best practices were likewise adopted. In the 20 years that we have now allowed jury questions during trial, what was a dramatic change that some feared has instead become what all would agree is a resounding success. I have tried many cases and found that knowing what questions jurors have and having the opportunity to answer them during trial is invaluable for all concerned.

Of course, in order for this process to work, it is essential that trial judges be provided with best practices or guidelines. In our courts, the process is basically as follows: After counsel have concluded the examination of a witness (direct, cross, and any redirect, recross), the judge tells the jury that they now have an opportunity to ask questions. The judge explains that s/he will review the questions with counsel and decide what can be answered, and that they should not infer or assume anything from the fact that one of their questions is not asked. The bailiff then distributes paper to the jurors to write down their questions and, when they indicate they are done, the questions are gathered by the bailiff and given to the judge. The judge then meets with counsel in his/her chamber, outside the presence of the jury, and the questions are circulated to the attorneys to either approve, object, or suggest modifications and the judge then decides what will be asked. The judge then asks the witness the questions from the bench. After the witness answers the jurors' questions, plaintiff's counsel, then defense counsel are asked whether they have additional questions for the witness and, if so, are permitted to ask them just as if they were continuing the

witness examination (although it is rare for this to happen). The same basic process is followed for each witness. Sometimes the jurors have no questions for a witness. Other times the jurors have many questions, especially technical ones for expert witnesses. They almost always yield valuable testimony.

I would be happy to answer any questions or share additional information should the Committee find that useful. I may be contacted at: maria@diamondmassong.com.

Thank you very much for your consideration of these comments.

Respectfully,

Maria S. Diamond (*she/her*) [Why Pronouns Matter](#)

It is not the critic who counts; not the man [or woman] who points out how the strong man [or woman] stumbles or where the doer of deeds could have done them better. The credit belongs to the man [or woman] who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errors, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself [or herself] in a worthy cause; who at best knows in the end the triumph of high achievement, and who at the worst, if he [or she] fails, at least fails while daring greatly.

—Theodore Roosevelt

Please note new address effective 8/1/2022:

DiamondMassong, PLLC

Where Law and Medicine Merge



1325 Fourth Ave., Suite 1744

Seattle, WA 98101

Phone: 206.445.1258

Fax: 206.445.1257

maria@diamondmassong.com

www.diamondmassong.com



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