

## **Juror Questions to Witnesses**

*A trial court has the discretion to allow jurors to ask questions.<sup>1</sup> If a trial court allows such questions, then the following charge is recommended.*

The lawyers are responsible for questioning the witnesses. The Court may at times ask a witness a question.

Jurors are responsible for listening carefully to all the testimony and other evidence and rendering a fair verdict based on the evidence presented to them. Thus, jurors do not regularly question witnesses. In a rare instance, a juror may, however, wish to ask a question which will clarify in the juror's mind something the witness testified to. Here are the rules for submitting questions.

First, because you will often find that a question which you would like to ask is eventually asked by a lawyer, please do not write a question down while the lawyers are questioning the witness. When the lawyers are finished questioning a witness and before the witness is excused you may, if you wish, write a question for the witness.<sup>2</sup> Please, [do not write your name on the paper, and] do not feel compelled to write a question, and do not at any time discuss with a fellow juror or anyone else whether to ask a question or what to ask.

Second, if you do write a question, the question should be designed to obtain relevant information, usually of a clarifying nature. Your questions should not, directly or indirectly, express your opinion of the witness or the case, or seek to argue with the witness. Nor are you to assume the role of investigator or advocate. You are the impartial finders of fact and your questions therefore should be neutral in tone and substance and limited to clarifying something which a witness has testified to. Again, please do not feel compelled to write

a question. A question from a juror should be the exception, not the rule.

Three, your question will be subject to the same rules of evidence that apply to questions that lawyers ask.<sup>3</sup> I will thus review your written question with the lawyers and decide whether or not to permit the question as written or as revised in a legally permissible form. I will ask the witness any authorized questions.

If your question is not asked, or is asked in a different form, please do not be offended, do not speculate as to why the question was not asked, or as to what the answer would have been, and do not draw any unfavorable inference against the People or the defendant. After the witness has answered your question, the lawyers will be permitted to ask any relevant follow-up questions.

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1. See, *People v. Knapper*, 230 App. Div. 487 (1st Dept. 1930); For procedural guidance with respect to the court making an adequate record of a juror's question, cf. *People v. O'Rama*, 78 N.Y.2d 270 (1991).

2. See, *People v. Wilds*, 141 A.D.2d 395 (1st Dept. 1988).

3. See *People v. Wilds*, *supra*.