

3) Judge Cannot Express Opinion

In charging the jury, the court may not express its opinion regarding the evidence.

★ **E. Challenges to Jurors**

1) Types of Challenges

During jury selection, either a for cause or a peremptory challenge can be orally made to a juror. See Tex. R. Civ. P. 227. If the trial court sustains the challenge, the juror must be discharged. Id. If the trial court overrules the challenge, the party can take steps to preserve the error for appellate review.

a) Challenges for Cause

A challenge for cause constitutes an objection to a juror, alleging a fact:

- that, by law, disqualifies the juror to serve, or
- that, in the trial court's opinion, renders the juror unfit to sit on the jury.

See Tex. R. Civ. P. 228.

The examination of a juror challenged for cause is not confined to the juror's answers. Id. Other evidence can be heard in support of or in opposition to the challenge. Id.

If the court denies a challenge for cause, the challenging party must object after the conclusion of voir dire but before the jury is seated. The challenging party must use all of their peremptory challenges and tell the court that a peremptory strike is being used to strike the potential juror who should have been disqualified for cause and that the peremptory challenge would otherwise have been used to strike a specific panel member who will now be seated as a juror. *Hallet v. Houston Northwest Med. Center*, 689 S.W.2d 888, 890 (Tex. 1985).

(1) Striking Jurors

When, if in a Texas district court the names of 24 jurors or more jurors are drawn, or, if in a Texas county court the names of 12 or more jurors are drawn, each party will receive a list of the jurors' names and either party can, and must then, challenge any juror for cause. See Tex. R. Civ. P. 229. The name of a juror challenged and set aside for cause must be removed from each list. Id.

b) Peremptory Challenges

If there remain on these lists, if in a Texas district court the names of 24 jurors not subject to challenge for cause, or, if in a Texas county court the names of 12 or more jurors not subject to challenge for cause, the parties must proceed to make their peremptory challenges. See Tex. R. Civ. P. 232. A peremptory challenge to a juror can be made without providing any reason for the challenge. Id.

(1) Number of Peremptory Challenges

As a general rule, each party is entitled to 6 peremptory challenges in a Texas district court case and 3 in a Texas county court case. See Tex. R. Civ. P. 233. One of the exceptions to this rule is a motion to equalize, which, if granted, can result in a change of the number of peremptory challenges.

★ (a) Motion to Equalize

A motion to equalize can be filed to ensure that an opposing party does not possess an unfair advantage in the allocation of peremptory strikes.

In cases involving multiple parties, upon a litigant's motion made before the exercise of peremptory challenges, the trial court must equalize the number of peremptory challenges so that no litigant or side receives an unfair advantage on account of the litigants' alignment and "the award of peremptory challenges to each litigant or side." *Id.* In determining the allocation of the challenges, the trial court must consider any matter brought to its attention regarding the "ends of justice and the elimination of an unfair advantage." *Id.*

The word "side" as used in this provision does not have the same meaning as "party," "person", or "litigant". Instead, "side" means that one or more litigants that "possess common interests on the matters with which the jury is concerned". *Id.*

★ F. Opening Statement

An opening statement provides an overview of a party's evidence. Generally, it is not supposed to include arguments. It is, however, counsel's opportunity to directly address the jury and tell them what each counsel believes the evidence will establish. The opening statement can provide an overview of the party's case to the jury. Objections can be made to improper opening statements in order to preserve an issue as error for an appeal. An objection could assert, for instance, that part of the opening statement is argumentative. In order to preserve such an issue as error for an appeal, an additional motion also could be made (e.g., a motion for a mistrial) in order to seek and obtain an adverse ruling from which an appeal can be made.

G. Argument

1) General Rules

The parties can argue the case to the jury after the evidence is concluded and the jury charge is read. See Tex. R. Civ. P. 269(a). Arguments on questions of law must be addressed to the court. See Tex. R. Civ. P. 269(d). Arguments regarding the facts should be addressed to the jury under the court's supervision. See Tex. R. Civ. P. 269(e). Counsel must confine the argument to the evidence and to the opposing counsel's arguments. *Id.*

a) Improprieties

Personal criticism by counsel about each other must be avoided and must be corrected as a contempt of court. *Id.* Also, side-bar remarks, and remarks by one side's counsel, not addressed to the court, while the other side's counsel is:

- examining a witness; or
- arguing a question to the court, or
- “addressing the jury,

will be rigidly repressed by the court.” See Tex. R. Civ. P. 269(f).