

**State's Filing #67
(Request concerning Questionnaire Review)**

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**IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS
FOURTH JUDICIAL DISTRICT**

**STATE OF KANSAS,
Plaintiff,**

vs.

**KYLE TREVOR FLACK,
Defendant.**

Case No. 2013 CR 104

REQUEST CONCERNING QUESTIONNAIRE REVIEW

Concerning the January 20 and 21, 2016, review of the juror questionnaires, plaintiff requests that the hearing's purpose be within the context of exemption from service, not as a basis for challenge.

STANDARD OF REVIEW

Concerning death penalty cases, the standard of review for jury selection is abuse of discretion. *State v. Robinson*, __ Kan. __, __ P.3d __, 2015 WL 6829686, at *120 (No. 90,196).

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STATUTORY AND CASE LAW

K.S.A. 22-3408 provides that an exemption from service on a jury is not a basis for challenge, but is the privilege of the person exempted. K.S.A. 22-3408(2)(b), and amendments thereto. In contrast, a challenge for cause requires an examination of the prospective juror by the prosecuting attorney and the defense attorney. K.S.A. 22-3408(3), and amendments thereto. The purpose of this examination "is to enable the parties to select jurors who are competent and without bias, prejudice, or partiality." *State v. Hayden*, 281 Kan. 112, Syl. ¶ 3, 130 P.3d 24 (2006).

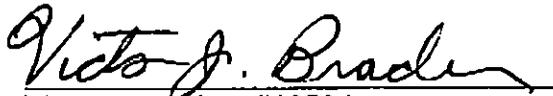
The persons that can be excused from jury service are specifically listed in K.S.A. 43-158: a person unable to understand the English language, a person under adjudication of incompetency, a person with a felony conviction within the past 10 years, a person who served on a jury in the county within the last year, and a mother breastfeeding her child. K.S.A. 43-158, and amendments thereto. K.S.A. 43-159 provides an additional list of reasons for excused jury service: a person so physically or mentally infirm as to be unequal to the task of ordinary jury duty; a person that is required elsewhere for the public welfare, health or safety; a person whom jury service would cause extraordinary personal hardship; and a person whose personal relationship to the parties would cause difficulty in impartially. K.S.A. 43-159, and amendments thereto.

REQUEST

Plaintiff requests that the January 20 and 21, 2016, review of the questionnaires be confined to the issue of exemption from jury service. In addition, plaintiff requests that the specific statutory exemption for each person excused be stated on the record.

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Respectfully submitted,



Victor J. Braden, #18524
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120 SW 10th Avenue, Room 200
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Attorney for the plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that the original State's Request concerning Questionnaire Review (Filing #67) was faxed the 30th day of December, 2015, to:

The Clerk of the Franklin County District Court
Court Building
301 South Main Street
PO Box 637
Ottawa, KS 66067-0637

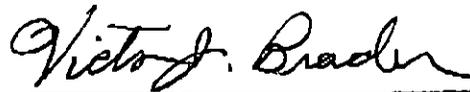
and, I hereby certify that a true and accurate copy of the State's Request concerning Questionnaire Review (Filing #67) was sent via email on the 30th day of December, 2015, to:

Timothy Frieden
Attorney for the defendant
State of Kansas
Death Penalty Defense Unit
266 North Main, Suite 210
Wichita, KS 67202

Maban Wright
Attorney for the defendant
State of Kansas
Death Penalty Defense Unit
700 SW Jackson, Suite 500
Topeka, KS 66603

and, I hereby certify that a chamber copy of the State's Request concerning Questionnaire Review (Filing #67) was sent via email on the 30th day of December, 2015, to:

The Honorable Eric W. Godderz
District Court Judge
Anderson County Courthouse
100 East 4th
P.O. Box 305
Garnett, KS 66032



Victor J. Braden, #18524
Deputy Attorney General