

ASTC Professional Code
PRACTICE AREA C
SMALL GROUP RESEARCH (SGR)

For the purpose of these Professional Standards and Practice Guidelines, the following definition of Small Group Research (SGR) applies: Trial consultants use SGR to study individuals' beliefs, attitudes and opinions and behavior relevant to issues in litigation. SGR is characterized by participant interaction in a group setting. SGR can be used, for example, to help clients evaluate evidence, assess arguments, develop themes, and inform case strategy. Examples of possible SGR design components include but are not limited to arguments from opposing parties, questionnaire data collection, individual and group verdict decisions, and facilitated or non-facilitated participant group discussion about case-related issues. The specific form of SGR a trial consultant chooses to implement is based in part, but not limited to, the trial consultant's experience and expertise, the research questions the SGR project is designed to address, and the research methodology used to answer the research questions. Trial consultants recognize that SGR can take many different forms. The ASTC does not endorse one form of SGR methodology over another.

SMALL GROUP RESEARCH: PROFESSIONAL STANDARDS

I. Appropriate Applications of SGR

- A. Trial consultants shall recommend and employ small group research in those instances when, in their professional judgment, such research is well suited to the research problem at hand.
- B. Trial consultants shall not knowingly convey to the client that results of SGR be accorded greater confidence than the research design and findings warrant.

II. Duty to Clients

- A. Except with the permission of the client, trial consultants shall not disclose, and shall use their best efforts to prevent disclosure, concerning: a) the fact that SGR was conducted or b) results associated with an SGR project.
- B. Trial consultants shall use best efforts to prevent the identity of the SGR client(s) from being disclosed unless and until the client(s) clearly indicate(s) they wish to be so identified to research participants.

III. Duty to Participants

- A. Trial consultants shall inform SGR participants that their participation is voluntary.
- B. Trial consultants shall treat SGR participants with respect and consideration at all times.
- C. Trial consultants shall obtain written permission from participants when they may be observed and recording devices may be used or when their recorded image may be used for educational, marketing or for purposes other than the original research project.
- D. Trial consultants shall use their best efforts to protect the anonymity of research participants.

IV. Methodology

- A. When reporting SGR results, trial consultants shall present the results accurately and draw inferences and make interpretations consistent with the research findings.

SMALL GROUP RESEARCH: PRACTICE GUIDELINES

I. Appropriate Applications of SGR

- A. Advise clients about the appropriate applications and strengths of SGR, such as assistance with case presentation planning.
- B. Inform clients about the limitations of using SGR to predict litigation outcomes.
- C. When appropriate, before conducting SGR, inform the client(s) of the purpose, estimated costs and appropriate uses of proposed SGR.
- D. Recognize that there are a variety of ways to design and implement SGR, and explore with clients the approach that best meets the client(s)' needs.
- E. When appropriate, advise client about the limitations of using SGR to design criteria for exercising challenges.

II. Duty to Clients

- A. Obtain written agreement from SGR participants to maintain the confidentiality of any case specific information as a condition of participation.
- B. Examples of measures that may be implemented to maintain client confidentiality include, but are not limited to:
 - 1. Requiring recruiters, research facilities and other outside vendors to sign confidentiality agreements;
 - 2. Using additional "decoy" names when recruiting to shield the identities of the litigants;
 - 3. During the recruitment process, disqualifying participants with probable case-related connections;
 - 4. Overseeing the recruiting process on a frequent basis;
 - 5. Re-screening participants prior to the research exercise;
 - 6. Requiring participants to present identification on-site to ensure participants' identities;
 - 7. Using best efforts to avoid recruiting participants who could be called as prospective jurors in the case;
 - 8. Limiting exposure to the nature and findings of the research by limiting the amount of case-related information and participant discussion to which vendors and non-client assignees are exposed.
- C. In situations in which clients wish to disclose the SGR sponsor to SGR participants, discuss with the client(s) the pros and cons of revealing the sponsor(s)' identity.

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- D. Discuss with the client(s) the pros and cons of presenting witness testimony to SGR participants, including the potential risks of discoverability.
- E. With the permission of the client, trial consultant may use SGR results which are presented in ways that protect the client, case and participant identities for marketing, education or other purposes.

III. Duty to Participants

- A. Hold as confidential information that is likely to identify a participant with his or her responses, unless the participant requests or permits such disclosure.
- B. Inform SGR participants if it is probable that they will be exposed to emotionally-sensitive material and explain that participants are free to withdraw their participation from the research if they feel uncomfortable.
- C. When SGR participants have been deliberately misled, trial consultant conducts a final debriefing to mitigate potential harms, if the consultant believes any are likely.
- D. Inform participants of the person(s) responsible for on-site supervision of the SGR research to whom they may address any questions or concerns.
- E. Examples of ways that trial consultant may protect the confidentiality of SGR include, but are not limited to:
 - 1. Inform SGR participants that if called to serve as a juror on a case involving the same parties or the same case facts as addressed in the SGR, the prospective juror should request a conference with the judge concerning his/her knowledge of the case, outside the presence of other prospective jurors. Remind participants that while they should discuss their personal knowledge with the judge, they should not discuss their personal knowledge with other prospective jurors.
 - 2. If SGR participant names are sought through legal discovery, to protect participant anonymity, suggest that the client(s) seek to use attorney work-product or other privileges to protect against discovery of the SGR participant names.
- F. If SGR participant names are compelled by the Court, discuss the following options with the client(s):
 - 1. The client(s) can ask the judge to compare the venire list with the list of SGR participant names *in camera*.

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2. The client(s) can offer to compare the venire list to the SGR participant list and submit an affidavit regarding the presence or absence of research participants in the venire.

IV. Methodology

- A. Communicate to the client the limitations associated with the research design implemented.
- B. Communicate to the client the bases for research findings and recommendations.
- C. Communicate to the client the best means of using the research findings following the research project.
- D. Communicate to the client the research methodologies employed in the study design, juror-participant recruitment (insert footnote), data analysis and reporting of research results.

(footnote for insertion: Recruiters use various advertising and recruiting techniques that should be fully explored by the trial consultant.)