

IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

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Hawaii Jury Innovations

1. Note Taking

Except upon good cause articulated by the court, jurors shall be allowed to take notes during trial. The court's good cause findings need not be written, but must be articulated clearly in a reported proceeding.

Hawaii Rules of Civil Procedure, Rule 47(d)

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html)

2. Juror Handbooks/Notebooks

N/A

3. Juror Questions and Questioning of Witnesses

At the discretion of the court, jurors may be allowed to suggest questions to be asked of witnesses. Each juror question must be in writing and delivered to the court through appropriate court personnel. Upon receipt of a question, the court shall review the propriety of submitting the question to the witness with the parties or their attorneys on the record, but outside the hearing of the jury. If the court deems the question appropriate and subject to the Hawai'i Rules of Evidence (HRE), the court may ask the question. The parties shall have an opportunity to examine matters touched upon by any juror question submitted to a witness, subject to the HRE. Any party may object to the asking of a question, but the court may ask the question over any objection after the objection has been placed on the record. The jury shall be pre-instructed about the procedure for asking questions.

Hawaii Rules of Civil Procedure, Rule 47(c)

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

4. Juror Pay/Compensation

Jurors in Hawaii are paid \$30 per day starting with first day of service and .33 cents per mile, round trip.

http://www.courts.state.hi.us/page_server/GenInfo/AtAGlance/63F107F959CEA27FFCA42C4ABE.html

5. Alternate Jurors

The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

Hawaii Rules of Civil Procedure, Rule 47(b)

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

6. Discussions pre-deliberation

The Committee on Jury Innovations for the 21st Century which was established by the Hawaii Supreme Court did not recommend pre-deliberation juror discussion of evidence in civil trials.

George E. Mize and Christopher J. Connelly, *Jury Trial Innovations: Charting a Rising Tide*, 41 Court Review 4, 8 (2004).

7. Deliberation

N/A

8. Length of Service

N/A

9. Length of Time Restrictions on Trials

N/A

10. Judge's Responses to Jury Questions

N/A

11. Jury Size

The parties may stipulate that the jury shall consist of any number less than 12 or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Hawaii Rules of Civil Procedure, Rule 48

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

12. Number of Jurors Needed to Return a Verdict

N/A

13. Juror Admonition

N/A

14. Jury Nullification

N/A

15. The Use of Plain English

N/A

16. Absence of the Jury

N/A

17. Jury Instructions

Pre-Instruction of Jury

Prior to the presentation of evidence, the court may pre-instruct the jury on the elements of the pleaded causes of action and claimed defenses.

Hawaii Rules of Civil Procedure, Rule 51(a)

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

Jury Instructions

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests.

Hawaii Rules of Civil Procedure, Rule 51(b)

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

When requests are filed, counsel shall be entitled to be heard thereon. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. Whenever the court refuses to give any requested instruction, the court shall write the word "refused" in the margin thereof. Whenever the court approves any requested instruction, the court shall write the word "given" in the margin thereof. Whenever the court modifies any requested instruction, the court shall mark the same in

such manner that it shall distinctly appear what part is refused and what part is given. Instructions to which no objection is made shall be marked "given by agreement" and no later objection thereto may be made or allowed. Unless the court shall take action pursuant to subdivision (d) of this rule, instructions settled as above set forth shall be read to the jury.

Hawaii Rules of Civil Procedure, Rule 51(c)

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

The court may revise the language of any or all of the requested instructions which are approved by the court in whole or in part pursuant to subdivision (c) of this rule and of any or all of the requested instructions to which no objection is made, and may combine such instructions, with or without any additional instructions which the court shall deem appropriate, in such manner as the court believes will eliminate repetition and will afford to the jury an adequate and understandable charge. If no written requests for instructions are filed the court shall prepare its own instructions. Any revision made and any instructions prepared by the court pursuant to the foregoing provisions shall be reduced by the court to writing, and counsel shall be entitled to be heard thereon. The court shall inform counsel of its proposed action with respect to any such revision made or instructions prepared by the court, and any changes therein made by the court shall be reduced to writing and submitted to counsel prior to their arguments to the jury. Instructions settled as above set forth shall be read to the jury.

Hawaii Rules of Civil Procedure, Rule 51(d)

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

The court shall in no case orally qualify, modify or explain to the jury any instruction, whether settled pursuant to subdivision (c) or pursuant to subdivision (d) of this rule. If, during deliberation on its verdict, the jury shall request further instructions, the court may further instruct the jury in accordance with instructions prepared by the court and reduced to writing, first submitting the same to counsel.

Hawaii Rules of Civil Procedure, Rule 51(e):

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

Except upon good cause articulated by the court, **the court shall instruct the jury before the arguments are begun and shall provide to each juror, including alternates, a copy of the jury instructions, to follow along as instructions are read.** The court's good cause findings need not be written, but must be articulated clearly in a reported proceeding. The court may, as it deems necessary or appropriate, give additional instructions after arguments are concluded and before the jury retires. No

party may assign as error the giving or the refusal to give, or the modification of, an instruction, whether settled pursuant to subdivision (c) or subdivision (d), of this rule, unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Hawaii Rules of Civil Procedure, Rule 51(f):

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

18. Child-Care for Jurors

N/A

19. Jury Room

N/A

20. Accommodation

N/A

21. Juror's Bill of Rights

N/A

22. Materials Permitted in Possession of the Jury

N/A

23. Various Rules

Mini-Openings

At the discretion of the court, each party may present a "mini-opening statement" to the jury panel. The mini-opening statement shall be limited to a brief statement of the facts expected to be proven prior to the commencement of jury selection. The court shall permit the parties or their attorneys to conduct the examination of each prospective juror. The court may conduct such examination, but in such instance, the court shall permit the parties or their attorneys to supplement the examination by further inquiry.

Hawaii Rules of Civil Procedure, Rule 47(a)

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

Other Jury Trial Innovations

The court may schedule the presentation of all expert testimony during the same phase of the trial.

Hawaii Family Court Rules, Rule 43(b)

http://www.courts.state.hi.us/page_server/LegalReferences/271A7DD039E757A8EAE7AD4B72.html

Juror Surveys: Over the past several years, the Judiciary has utilized a *Public Satisfaction Survey* to obtain direct feedback from the public as to how well the courts are performing. During 1998 and 1999, approximately 500 people conducting business in the courts took the time to complete the Hawaii State Judiciary's "We Value Your Opinion" public satisfaction surveys. The survey forms are available at all Judiciary courts and programs statewide.

<http://www.abanet.org/justice/01summary/state/hawaii.pdf>

Voir Dire will be referred to as jury selection. Christina Uebelein, *Jury Innovations in the 21st Century*, Hawaii Bar Journal (April 1999).

24. Various Recommendations

N/A