

# IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

Updated 08.08.2005

## Kansas Jury Innovations

### 1. Note Taking

"It is settled that permitting jurors to take notes during trial and to submit questions to be asked of witnesses lies within the sound discretion of the trial court." *State v. Walker*, 271 Kan. 823, 828, 26 P.3d 645, 649 (2001), citing *State v. Hays*, 256 Kan. 48, Syl. ¶ 3, 883 P.2d 1093 (1994); *State v. Jackson*, 201 Kan. 795, 799, 443 P.2d 279 (1968), cert. denied 394 U.S. 908 (1969), overruled on other grounds *State v. Mims*, 220 Kan. 726, 730, 556 P.2d 387 (1976). The Pattern Instructions for Kansas (PIK 3d) include instruction 101.11 that reads as follows:

Members of the jury, you will be permitted to take notes during the trial. Whether you do so is entirely up to you. However, do not allow the taking of notes to distract you from listening attentively to the testimony of a witness.

You may use your notes to refresh your memory as you deliberate. However, your deliberations must be based upon the collective memory and recollection of the entire jury as to the evidence admitted. Notes should be used only as an aid to this function and not as a substitute.

You must not remove any of your notes from the courthouse. At the beginning of a recess give your packet of notes to the bailiff. Your notes will be returned to you when court reconvenes.

At the conclusion of the trial, all notes must be given to the bailiff for immediate destruction.

### 2. Juror Handbooks/Notebooks

Juror orientation handbooks are encouraged. A sample handbook is set forth at PIK 3d 101.02.

### 3. Juror Questions and Questioning of Witnesses

As with note taking, juror questioning of witnesses lies within the sound discretion of the judge. *State v. Walker*, 271 Kan. 823, 828, 26 P.3d 645, 649 (2001).

#### **4. Juror Pay/Compensation**

##### **Same; jurors' fees**

Jurors shall be paid the following fees out of the county general fund: For attending before any court pursuant to this act, for each day of attendance, ten dollars (\$ 10) per day; for each mile necessary traveled in going to and returning from the place of attendance, mileage at the rate prescribed by law.

K.S.A. § 43-171 (2005)

#### **5. Alternate Jurors**

##### **Alternate jurors**

Immediately after the jury is empaneled and sworn, the trial judge may empanel one or more alternate or additional jurors whenever, in the judge's discretion, the judge believes it advisable to have alternate jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties. Alternate jurors shall be selected in the same manner, have the same qualifications, be subject to the same examination and challenges, take the same oath and have the same functions, powers and privileges as the regular jurors. Each party shall be entitled to one peremptory challenge to the alternate jurors. The alternate jurors shall be seated near the other jurors, with equal power and facilities for seeing and hearing the proceedings in the case, and they must attend the trial of the cause at all times with the other jurors. The alternate jurors shall obey the orders of and be bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the cause, the alternate jurors also shall be kept in confinement with the other jurors. Upon final submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the final decision of the jury. If the alternate jurors are not discharged on final submission of the case and if any regular juror is discharged prior to the jury's reaching a decision, the court may draw the name of an alternate juror who shall replace the discharged juror and be subject to the same rules and regulations as though the juror had been selected as one of the original jurors.

K.S.A. § 60-248(h) (2005)

##### **Jury service; additional jurors**

In all cases where an insufficient number of jurors appear or if a panel be exhausted by challenge or otherwise before the jury is sworn, the court may order the sheriff, other officer or the special jury clerk, as provided by subsection (b) of [K.S.A. 1975 Supp. 43-169](#), to summon a sufficient number of other persons to complete the jury. The court may order such additional members summoned in the same manner as is provided for members of the original jury panel or otherwise.

K.S.A. § 43-167 (2005)

## **6. Discussions pre-deliberation**

PIK 3d 101.02 states, in part,

Jurors should keep an open mind. They should not discuss the case before the testimony is completed and the case is submitted to them. Human experience shows that once a person expresses his or her views he or she hesitates to change them. Therefore, it is wise for a juror not to express his or her views until the entire story has been told.

## **7. Deliberation**

### **Case submitted, action and conduct of jury**

When the case is finally submitted to the jury, it shall retire for deliberation. The jurors must be kept together in a convenient place under charge of an officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night and at their meals. The officer having them under the officer's charge shall not make or allow any communications to be made to them, except the officer may ask them if they are agreed upon their verdict, unless by order of the court. The officer shall not before the verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon.

K.S.A. § 60-248(c) (2005)

### **Separation of jury, admonition of court**

If the jurors are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or allow themselves to be addressed by, any other person on any subject of the trial; that it is their duty to keep an open mind and not to express an opinion on the subject of the trial until the case is finally submitted to them; and that the admonition applies to every separation of the jurors.

K.S.A. § 60-248(d) (2005)

### **Jury may request information after retiring**

If, after the jury has retired for deliberation, it desires further information as to any part of the law or evidence pertaining to the case, it may communicate its request through the bailiff to the court in the manner directed by the court, following which the court, after notice to counsel for the parties, may consider and make such provision for a response to the request of the jury as the court finds to be required under the circumstances.

K.S.A. § 60-248(e) (2005)

## **8. Length of Service**

Persons who have served as jurors in the county within one year immediately preceding are excused from jury service.  
K.S.A. 43-158(d)

Attendance of one day or the completion of one trial, whichever is longer, is recommended. However, attendance during one week or the completion of one trial, whichever is longer, is acceptable.  
Standards Relating to Jury Use and Management Adopted by Kansas Supreme Court July 15, 1983, Standard 5(E).

## **9. Length of Time Restrictions on Trials**

The period of time that persons' lives are disrupted by jury service should be the shortest period consistent with the needs of justice, financial considerations, and proper notice in order that the sacrifices and personal inconveniences of jury services might be minimized.  
Standards Relating to Jury Use and Management Adopted by Kansas Supreme Court July 15, 1983, Standard 5.

## **10. Judge's Responses to Jury Questions**

### **Jury May Request Information After Retiring.**

If, after the jury has retired for deliberation, it desires further information as to any part of the law or evidence pertaining to the case, it may communicate its request through the bailiff to the court in the manner directed by the court, following which the court, after notice to counsel for the parties, may consider and make such provision for a response to the request of the jury as the court finds to be required under the circumstances.  
K.S. A. 60-248(e)

## **11. Jury Size**

### **Jurors.**

In all civil trials, upon the request of a party, the court shall cause enough jurors to be called, examined, and passed for cause before any peremptory challenges are required, so that there will remain sufficient jurors, after the number of peremptory challenges allowed by law for the case on trial shall have been exhausted, to enable the court to cause twelve (12) or sufficient jurors to be sworn to try the case.  
K.S.A. § 60-247 (2005)

### **Stipulation as to number**

The parties may stipulate that the jury shall consist of any number less than 12 or, subject to the provisions of subsection (g), that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

K.S.A. § 60-248(a) (2005)

### **12. Number of Jurors Needed to Return a Verdict**

#### **Verdict; number of jurors required; form; correction**

Whenever the jury consists of 12 members, the agreement of 10 jurors shall be sufficient to render a verdict. In all other cases, subject to the stipulation of the parties as provided in subsection (a), the verdict shall be by agreement of all the jurors. The verdict shall be written, signed by the presiding juror and read by the clerk to the jury, and the inquiry made whether it is their verdict. If less than the required number of jurors agree, the jury must be sent out again. If agreement of the required number is expressed, and no party requires the jurors to be polled individually, the verdict is complete, and the jury discharged from the case. If the verdict is defective in form only, it may be corrected by the court, with the assent of the jury, before it is discharged.

K.S.A. § 60-248(g) (2005)

### **13. Juror Admonition**

#### **Separation of jury, admonition of court**

If the jurors are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or allow themselves to be addressed by, any other person on any subject of the trial; that it is their duty to keep an open mind and not to express an opinion on the subject of the trial until the case is finally submitted to them; and that the admonition applies to every separation of the jurors.

K.S.A. § 60-248(d) (2005)

### **14. Jury Nullification**

Jury nullification is not allowed. Jurors are obligated to apply the rules of law to the evidence. *State v. McClanahan*, 212 Kan. 208, 214, 510 P.2d 153, 158 (1973).

### **15. The Use of Plain English**

The trial judge should, to the extent possible, phrase all instructions so as to be understood by individuals unfamiliar with the legal system.

Standards Relating to Jury Use and Management Adopted by Kansas Supreme Court July 15, 1983, Standard 16(c).

## **16. Absence of the Jury**

### **View of property or place**

Whenever in the opinion of the court it is proper for the jury to have a view of property which is the subject of litigation or of the place in which any material fact occurred, the court may order the jury to be conducted, as a body, under the charge of an officer to the place, which shall be shown to them by a person or persons appointed by the court for that purpose. While the jury is thus absent, no person other than the person so appointed shall speak to any juror on any subject connected with the trial. A view permitted under this subsection shall not be considered by the court in determining any questions of the sufficiency or insufficiency of evidence admitted in an action.

K.S.A. § 60-248(b) (2005)

### **District court clerk's record of attendance of jurors and witnesses**

The clerk of the district court shall keep a record of the attendance of jurors at each term, and of the attendance and fees of witnesses, when claimed during the term.

K.S.A. § 28-138 (2005)

### **Discharge of jury, when**

The jury may be discharged by the court on account of the sickness of a juror, or other necessity to be found by the court or by consent of both parties, or after it has been kept together until it satisfactorily appears that there is no probability of the jurors reaching a verdict.

K.S.A. § 60-248 (2005)

## **17. Jury Instructions**

### **Instructions to jury**

(a) When made. At the close of the evidence or at such earlier time during the trial as the judge reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The judge shall instruct the jury at the close of the evidence before argument and the judge may, in his or her discretion, after the opening statements, instruct the jury on such matters as in the judge's opinion will assist the jury in considering the evidence as it is presented.

(b) When waived. No party may assign as error the giving or failure to give an instruction unless he or she objects thereto before the jury retires to consider its verdict stating distinctly the matter to which he or she objects and the grounds of his or her objection unless the instruction is clearly erroneous. Opportunity shall be given to make the objections out of the hearing of the jury.

K.S.A. § 60-251 (2005)

### **18. Child-Care for Jurors**

N/A

### **19. Jury Room**

Jury deliberation rooms should include space, furnishings, and facilities conducive to reaching a fair verdict. The safety and security of the deliberation rooms should be ensured.

Standards Relating to Jury Use and Management Adopted by Kansas Supreme Court July 15, 1983, Standard 14(c).

### **20. Accommodation**

N/A

### **21. Juror's Bill of Rights**

N/A

### **22. Materials Permitted in Possession of the Jury**

“Once a case is submitted to the jury for deliberations, the jury is ordinarily given the exhibits to take into the jury room where the jurors can examine the exhibits as many times as they desire.” *State v. Fenton*, 228 Kan. 658, 667, 620 P.2d 813, 820 (1980).

### **23. Various Rules**

N/A

### **24. Various Recommendations**

N/A