

# IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

Updated 08.08.2005

## Maryland Jury Innovations

Regarding Jury Innovation Recommendations, Note: *The Council on Jury Use and Management was created by resolution of the Conference of Circuit Judges in September 1998. The main purposes of the Council is to study and evaluate the utilization of juries and the conduct of jury trials in Maryland, including representativeness of the jury pool, jury selection, the trial process, juror compensation, juror comprehension in complex litigation, length of service and the jury service experience in general. The report and recommendations based on the study were published on April 12, 2000.*

### 1. Note Taking

The court may, and upon request of any party shall, provide paper notepads for use by jurors during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the jurors' notes after the trial. A juror's notes may not be reviewed or relied upon for any purpose by any person other than the juror. If a juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

MD R RCP CIR CT Rule 2-521(a) (WEST 2005)

### 2. Juror Handbooks/Notebooks

Juror notebooks are often provided in products liability and medical malpractice cases.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Juror Notebooks: Council Recommendation**

In cases where documentary evidence is voluminous, jurors should be provided with individual notebooks and copies of the documents for individual review and notation during the course of the trial.

<http://www.courts.state.md.us/juryrpt1.pdf>

### 3. Juror Questions and Questioning of Witnesses

#### **Juror Questions: Council Recommendation**

Jurors should be allowed to pose questions for witnesses under controlled circumstances. The subcommittee feels that jurors should be provided a mechanism that allows them to pose questions to witnesses under close judicial supervision. Questions by jurors would first be submitted to the judge for review. Jurors would receive an instruction that would stress that ordinarily the attorneys should ask the questions, and that if a juror does pose a question, the judge may decide that the question is not proper

for legal, evidentiary, or other reasons. While a majority of the Council endorses juror questioning of witnesses, a minority of members opposes the process. This is a subject that may be appropriate for testing in a pilot project under the auspices of the judiciary.

<http://www.courts.state.md.us/juryrpt1.pdf>

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

**HB 1185 (2005)** increases juror compensation from \$15 to \$50 per day, after the fifth day of service and provides leave time protections for employees.

<http://www.atra.org/states/MD>

Maryland's Judiciary has created an Honor Roll to recognize employers who fully compensate employees throughout their entire jury service, in an effort to enhance juror compensation, and the Council on Jury Use and Management will draft model jury service employer policies and make them available to employers.

[http://www.msba.org/departments/commpubl/publications/bar\\_bult/2005/june05/barbench.htm](http://www.msba.org/departments/commpubl/publications/bar_bult/2005/june05/barbench.htm)

#### **Juror Compensation: Council Recommendation**

Employers should compensate employees called for jury service by paying the difference between the daily jury pay provided by the court and the employee's average daily rate of compensation, for at least the first three days. The Council endorses the introduction of legislation to implement this legislation.

<http://www.courts.state.md.us/juryrpt1.pdf>

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

The court may direct that one or more jurors be called and impanelled to sit as alternate jurors. Any juror who, before the time the jury retires to consider its verdict, becomes or is found to be unable or disqualified to perform a juror's duty shall be replaced by an alternate juror in the order of selection. An alternate juror shall be drawn in the same manner, have the same qualifications, be subject to the same examination, take the same oath, and have the same functions, powers, facilities, and privileges as a juror. An alternate juror who does not replace a juror shall be discharged when the jury retires to consider its verdict.

MD R RCP CIR CT Rule 2-512(b) (WEST 2005)

#### **Alternate Jurors: Council Recommendation**

In civil cases where alternate jurors are selected, they should not be designated as such. When alternates remain at the time of deliberation they should be allowed to fully deliberate and participate in the verdict.

Jurors who are selected as alternates invest considerable time and effort in understanding the case, thinking about it and writing notes. To summarily dismiss the juror at the conclusion of closing arguments seems wasteful and at times insulting to the valuable investment the juror has made. It is recommended that in civil cases, the alternates be treated as jurors and continue with the case through deliberation until a verdict is reached.

<http://www.courts.state.md.us/juryrpt1.pdf>

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

### **Juror Discussion: Council Recommendation**

In all cases, jurors should be permitted to discuss the evidence and testimony during the course of the trial, provided that all jurors are present for the discussion and the jurors are instructed to keep an open mind and not form final opinions before the deliberation stage. Allowing jurors to discuss the evidence and testimony during trial has been tried in civil cases in several states, and the results have been viewed as successful. It is widely suspected that despite the court's admonitions, jurors do discuss the evidence and testimony during the course of trial. Allowing the jurors to engage in such discussions would recognize the natural tendency of jurors to do this and would allow them to efficiently utilize the time they spend waiting. Jurors must be instructed at the beginning of the trial that while such discussions may take place, they should keep an open mind and not reach any conclusions until they have heard all of the evidence. A majority of the Council endorses juror discussion, but a minority of members opposes it. Thus, this is a subject that may be appropriate for testing in a pilot project under the auspices of the judiciary.

<http://www.courts.state.md.us/juryrpt1.pdf>

## **7. Deliberation**

Jurors should be provided guidance on the process of deliberation by using a guide modeled after the American Judicature Society's "Guide for Jury Deliberations".

<http://www.courts.state.md.us/juryrpt1.pdf>

## **8. Length of Service**

### **Length of Service: Council Recommendation**

Courts should adopt the shortest term of juror service that is consistent with the interests of justice. The Council endorses the use of the least invasive term for jury service, but does not recommend establishing any particular term on a State-wide basis. The needs of each court must be considered in establishing the length of term of court.

<http://www.courts.state.md.us/juryrpt1.pdf>

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

N/A

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

The court shall notify the parties of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action.

MD R RCP CIR CT Rule 2-521(d) (WEST 2005)

## **11. Jury Size**

The jury shall consist of six persons. With the approval of the court, the parties may agree to accept a verdict from fewer than six jurors if during the trial one or more of the six jurors becomes or is found to be unable or disqualified to perform a juror's duty.

MD R RCP CIR CT Rule 2-511(b) (WEST 2005)

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

### **Unanimous Verdicts**

The verdict of a jury shall be unanimous unless the parties stipulate at any time that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. The verdict shall be returned in open court. Upon the request of a party or upon the court's own initiative, the jury shall be polled before it is discharged. If the poll discloses that the required number of jurors have not concurred in the verdict, the court may direct the jury to retire for further deliberation or may discharge the jury.

MD R RCP CIR CT Rule 2-522(b) (WEST 2005)

### **Unanimous Verdicts: Council Recommendation**

There is no demonstrated need at this time to depart from the long-standing tradition of unanimous verdicts in civil and criminal cases. The current option of stipulating to a less than unanimous verdict in civil and criminal cases should be explored by the judge and counsel before dismissing a jury that has not attained unanimity. The Council was not presented with data which indicated that deadlocked juries are such a problem that consideration should be given at this time to moving to a less than unanimous verdict for either civil or criminal cases. Useful statistics on this subject are not available at this time. Less than unanimous verdicts would be an appropriate subject for further study under the auspices of the judiciary.

<http://www.courts.state.md.us/juryrpt1.pdf>

### **13. Juror Admonition**

N/A

### **14. Jury Nullification**

N/A

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

#### **Plain English: Council Recommendation**

A concerted effort should be made by appellate and trial judges, lawyers and court personnel to eliminate the use of the archaic term “voir dire,” since it is unnecessary and mystifying to potential jurors, litigants and other lay people. The term “jury selection” should be consistently used instead. Maryland Rule 2-512(d) refers to the process as “examination of jurors.”

<http://www.courts.state.md.us/juryrpt1.pdf>

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

N/A

### **17. Jury Instructions**

The procedure of providing jurors substantive guidance on the law at the beginning of the case and providing them with copies of the instructions is permitted by current law, it does not appear that jurors often get substantive guidance on the law at the beginning of the case—for example, in an auto tort case, a definition of negligence.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Maryland Rules, Rules of Civil Procedure Circuit Court, Rule 2-520:**

(a) The court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate. In its discretion, the court may also give opening and interim instructions.

(b) The parties may file written requests for instructions at or before the close of the evidence and shall do so at any time fixed by the court.

(c) The court may instruct the jury, orally or in writing or both, by granting requested instructions, by giving instructions of its own, or by combining any of these methods. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

(d) In instructing the jury, the court may refer to or summarize the evidence in order to present clearly the issues to be decided. In that event, the court shall

instruct the jury that it is the sole judge of the facts, the weight of the evidence, and the credibility of the witnesses.

(e) No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury.

(MD R RCP CIR CT Rule 2-520 (WEST 2005)).

### **Jury Instructions: Council Recommendation**

In appropriate cases, jurors should receive substantive instructions on the law at the beginning of the trial and, where feasible, be provided with copies of these instructions. Not providing jurors substantive guidance on the law can leave the jury adrift. The Council believes that, to the extent feasible, such basic instructions can and should be given. At the same time, the Council does recognize that in many cases instructions will be need to be developed as the trial proceeds.

<http://www.courts.state.md.us/juryrpt1.pdf>

### **Jury Instructions: Council Recommendation**

Written copies of the jury instructions should be given to the jury for their review during deliberations. If written copies are not readily available, then an audiotape should be given to the jury. Judges who routinely already do this find that juror questions are greatly reduced. Jurors find that they have a ready reference source on the law when discussion turns to a particular point. The advent of standardized instructions on computer discs makes the task less daunting than would have been even a few years ago. All judges' chambers should be equipped with the capability to provide such instructions to the jury.

<http://www.courts.state.md.us/juryrpt1.pdf>

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

### **Child Care**

Courts have, in large jurisdictions, created day care centers in courthouses and judiciary buildings. In smaller jurisdictions, courts have created cooperative arrangements with nearby (licensed and certified) day care centers for prospective jurors who wish to take advantage of such services.

<http://www.courts.state.md.us/juryrpt1.pdf>

### **Child Care: Council Recommendation**

Courts should be encouraged to adopt procedures to facilitate solutions to child care and elder care problems of prospective jurors. The judge and

court staff should be mindful of, and give serious consideration to, the child care and elder care problems of jurors.

<http://www.courts.state.md.us/juryrpt1.pdf>

### **19. Jury Room**

N/A

### **20. Accommodation**

#### **Jury Accommodations: Recommendation**

Every Circuit Court should provide separate jury assembly facilities to include comfortable seating and other amenities, clean and convenient restrooms, adequate check-in area, vending machines and work area/work stations.

<http://www.courts.state.md.us/juryrpt1.pdf>

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

N/A

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

Jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and consent of the court. Written or electronically recorded instructions may be taken into the jury room only with the permission of the court.

MD R RCP CIR CT Rule 2-521(b) (WEST 2005)).

### **23. Various Rules**

#### **Juror Privacy**

The court, either before or after submission of the case to the jury, may permit the jurors to separate or require that they be sequestered.

MD R RCP CIR CT Rule 2-511(c) (WEST 2005)

#### **Interim Summation**

In complex and lengthy cases, the court should allow counsel to present interim summations at appropriate stages in the trial to assist juror comprehension. This recommendation would apply only to cases that continue for many days or for weeks, or in bifurcated cases, and where there may be a need for counsel to reorient the jury, such as when a new phase of the trial is taking place.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Foreperson Selection**

The jurors and any alternates to be impanelled shall be called from the qualified jurors remaining on the list in the order previously designated by the court and shall be sworn. **The court shall designate a juror as foreman.**

MD R RCP CIR CT Rule 2-512(i) (WEST 2005)

### **Jury Views of Premises**

(a) The court, on motion of any party or on its own initiative, may order that the trier of fact view any property that is involved in the litigation or any place where a material fact in issue occurred. The judge shall be present at and shall supervise the view and shall be the only person permitted to make any statement to the jury during the view.

(b) The parties, their attorneys, and other representatives may be present during a view. A jury shall be transported to and attend a view as a body under the charge of an officer of the court, and the expense of transporting the jury shall be assessed as costs.

MD R RCP CIR CT Rule 2-515 (WEST 2005)

## **24. Various Recommendations**

### **Mini-Opening Statements: Council Recommendation**

Mini-opening statements by counsel to the entire jury array in advance of questioning should be encouraged. This procedure allows the counsel at an early stage to introduce themselves and their case to the jury to the jury array and allows the array to be better informed before the jury selection process begins. It should be brief (a minute or two) and non-argumentative.

<http://www.courts.state.md.us/juryrpt1.pdf>

### **Jurors Speaking to Jurors Post Trial: Council Recommendation**

Judges should be encouraged to meet with jurors immediately before releasing them post-verdict: to personally thank the jurors for their service; to release the jurors from prior admonitions, i.e., not discussing the case, reading or watching broadcasts about the case; and to advise them of their obligations as to further jury service. However, Judges should not comment as to the judge's personal opinion about the jury's verdict.

<http://www.courts.state.md.us/juryrpt1.pdf>

### **Juror Request to View Evidence**

Generally courts have discouraged jurors' requests to rehear the testimony of a witness.

<http://www.courts.state.md.us/juryrpt1.pdf>

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.  
MD R RCP CIR CT Rule 2-521(c) (WEST 2005)

**Juror Request to View Evidence: Council Recommendation**

Where practically feasible and in consultation with counsel, judges should make complete trial testimony of a witness available for review by the jury in deliberation, if a request is made for it. The Council felt that where a jury asks to review testimony, and where it is readily available, a reasonable request by the jury should be accommodated. While it may be technically difficult to give the jurors the testimony in some jurisdictions, others may be able to accommodate such requests by providing a tape or allowing the jurors to hear a replay in the courtroom.

<http://www.courts.state.md.us/juryrpt1.pdf>

**Verdict Sheets: Council Recommendation**

In appropriate cases, jurors should be provided with verdict sheets at the beginning of trial so they are aware of the precise question(s) they will have to resolve. Oftentimes, jurors have no idea during the trial, or even until deliberation, as to the questions that they will be called on to decide. This can cause unnecessary anxiety for jurors, and they are not able to focus on the core issue they are hearing testimony or argument. Providing jurors with verdict sheets at the beginning of trial can assist them. There will be cases where this procedure would not be productive and could potentially prejudice the end result. Thus, the judge should employ this procedure only after consultation with counsel.

Judges and attorneys should take care to have verdict sheets carefully drafted to present the issues to be decided in a clear and logical sequence and to avoid the jury unnecessarily deciding issues that do not have to be resolved. Each juror should be given an individual copy of the verdict sheet before instructions and closing arguments so that each can focus on the precise issues to be decided. Judges and lawyers should take great care in preparing jury verdict sheets that clearly and logically set out the issues. It is wasteful to have jurors consider unnecessary issues. Judges should also consider in appropriate cases having jurors resolve questions in a sequential fashion that efficiently uses their time. It would be useful for judges and counsel to have a form book of well-crafted verdict sheets as a reference tool.

<http://www.courts.state.md.us/juryrpt1.pdf>

**Time Limits: Council Recommendation**

Judges should encourage counsel to voluntarily limit the time for final argument and should advise the jury of the estimates given by counsel. It

is important to provide counsel an adequate opportunity for closing argument, but is also important to provide jurors with guidance on how long various parts of the trial will take. Counsel should be required to fairly estimate how long their arguments will be and the jury should be told of these estimates by the judge.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Re-Closing Argument: Council Recommendation**

When a deliberating jury expresses trouble on particular points or issues that are preventing them from reaching a verdict, judges, after consultation with counsel, should consider allowing brief re-closing by counsel on those subjects. Such an approach may prevent the jury from becoming deadlocked and assist it in understanding the issue. While a majority of the Council endorses this practice, a number of members representing trial counsel felt it to be inappropriate.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Deadlocked Juries: Council Recommendation**

After consultation with counsel, judges should consider assisting deadlocked juries by asking them to consider listing the issues or questions that continue to divide them so that the judge may consider clarification of instructions, provision of further instructions, read-back of testimony, re-argument, or some other device. Such requests to the jury should be accompanied by an instruction that emphasizes the non-coercive nature of the inquiry. Deadlocked juries are wasteful and should be avoided if there is a way to assist the jury to reach a unanimous verdict. The court should consider the devices suggested in this recommendation only after consultation with counsel and only where an appropriate instruction is given that emphasizes that the court is only attempting to assist the jury and is not attempting to coerce it to reach a verdict.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Juror Information: Council Recommendation**

Prospective jurors should be better prepared for service by providing them with jury duty information at the time of summoning. This information should focus on jury selection, the trial process, the length of service and general procedures. Additionally, information concerning jury orientation, parking and public transportation, inclement weather closings or delays; location of jury office, check-in procedures, excuse and postponement procedures and services available to the disabled. Much of this information should be placed on judiciary websites that would permit interaction between the prospective juror and the court.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Foreperson Selection: Council Recommendation**

The jury should ordinarily be allowed to select its own foreperson, unless the judge finds there is a reason to designate the foreperson. When, and by whom, a foreperson is designated in Maryland courts varies. Sometimes the first juror selected is the foreperson; sometimes the judge selects the foreperson; and sometimes the jury selects its foreperson. The Council believes that as part of its decisional process, it is ordinarily appropriate to allow the jury to select its own spokesperson.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Trial Management: Council Recommendation**

Once a trial commences, the judge and counsel should manage the case to avoid lengthy periods where jurors are waiting for the proceeding to begin or continue. During the course of trial, the judge should provide the jury with periodic updates on the progress of the trial, reasons for delay and the expected time of completion.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Juror Waiting: Council Recommendation**

To minimize waiting time during the pre-trial phase of jury service, frequent communication between the jury staff and jurors as to the current status of dockets is essential. Jurors should be advised if a significant delay is expected and, to the extent possible, the reason for delay. Jurors should be released as soon as possible once it is determined that their service is not required for that day. Jury commissioners and jury clerks should be trained by the Administrative Office of the Courts on ways to effectively implement this recommendation.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Post Trial Services: Council Recommendation**

Judges should be encouraged to provide post verdict counseling by qualified mental health professionals in appropriate cases for any jurors who wish such service.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Advance Written Questionnaires: Council Recommendation**

Where feasible, and in appropriate cases, advance written questionnaires for jury panels should be utilized. Questionnaires can provide information in a more efficient form and with less invasion of juror privacy. (e.g. whether a juror has been charged with a crime or has been the victim of a crime.) Advance written questionnaires can be especially useful in protracted or complex cases where jury selection will require prospective jurors to answer many questions. They may also be useful in more routine cases where jurors are asked certain standard questions.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Judicial Training: Council Recommendation**

There should be specific and comprehensive training for new circuit court judges on how to conduct and manage jury trials. While new judges do receive some training in jury trials in the New Judge Orientation Program, the Council believes that the program should be expanded, or another program developed, to train new judges in managing and conducting jury trials.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Attorney Training: Council Recommendation**

There should be training for attorneys who try jury trials on how to conduct such trials. Just as judges need more and better training on conducting jury trials, the Council believes that attorneys should be better trained on methods of effective communication and the special issues that arise in jury trials.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Jury Bailiffs: Council Recommendation**

There should be a review of how jury bailiffs are selected, trained and supervised. A state-sponsored regular training program should be considered for bailiffs. There is a hodge-podge of methods that courts use to provide jury bailiffs. The bailiff can play an important role in jury comfort and satisfaction, and the bailiff performs an important function in protecting the integrity of the jury's deliberation. Consideration should be given to methods of training bailiffs, including the development of a handbook.

<http://www.courts.state.md.us/juryrpt1.pdf>

#### **Citizen Awareness: Council Recommendation**

The Council recommends the development and implementation of a statewide awareness program to educate respective communities about the jury process in an effort to encourage juror participation, to include:

- an annual theme on the importance of jury duty
- collaboration between the Judiciary and local boards of education to facilitate judicial visits to the schools to discuss the jury system; student poster campaigns; jury mock trial competitions
- radio, television and newspaper advertisements revolving around the theme of jury service
- juror exit surveys
- press coverage of jury system initiatives
- judicial speaking engagements to schools, businesses and civic groups on the importance of jury service
- preparation of public service film on the day in the life of a typical juror
- preparation of public service film from the Judiciary's perspective concerning the jury process

<http://www.courts.state.md.us/juryrpt1.pdf>