

# IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

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## Massachusetts Jury Innovations

### 1. Note Taking

N/A

### 2. Juror Handbooks/Notebooks

#### **Trial Juror's Handbook; Contents; Distribution; Other Educational Materials; Grand Juror General Information**

Not later than ten days prior to the term of service of each trial juror, the office of jury commissioner shall mail to each juror a copy of the trial juror's handbook. The handbook shall notify the juror of his pending juror service. The handbook shall inform jurors in lay terminology of the nature and extent of their forthcoming duties and responsibilities. The handbook may introduce and orient jurors to basic trial procedures and legal terminology. The handbook shall contain maps and directions to the jury-trial locations and such other practical information as the jury commissioner deems appropriate. The full text of the handbook shall be specified in the regulations of the jury commissioner. Each trial juror shall read the handbook before he reports for juror service. The handbook shall be a public document. The jury commissioner may distribute copies of the handbook, and related educational materials, to public and private schools, civic organizations, the press, and others, in order to promote citizens awareness and understanding of all aspects of the juror system of this commonwealth. The jury commissioner may, with the approval of the committee, distribute or exhibit to jurors further educational materials, recordings, films, videotapes, lectures, and the like, as he deems appropriate to assist such persons in understanding and fulfilling their duties and obligations as jurors. Not later than ten days prior to each grand juror's term of service, the office of jury commissioner shall mail to each juror such educational materials and practical instructions as are deemed appropriate by the jury commissioner to assist grand jurors in carrying out their duties and responsibilities. These materials shall be approved by the committee. In the event of any conflict, the instructions or charge of the trial judge in a particular case shall be paramount and shall supersede the trial juror handbook or grand juror general information provided under this section.

ALM GL ch. 234A, § 62 (2005)

### 3. Juror Questions and Questioning of Witnesses

N/A

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

##### **Jurors' Fees**

The compensation of traverse jurors impanelled to try cases of murder in the first degree shall be sixteen dollars, and that of all other traverse jurors and of grand jurors fourteen dollars, for each day's service; provided, however, that jurors held under restraint by order of the court shall, in cases of murder in the first degree, receive twenty-two dollars and, in all other cases, twenty dollars for each day's service while under restraint. All jurors shall receive for each day of actual attendance eight cents a mile for travel out and home, but not for such time as the jury is held under restraint, by order of the court, at the expense of the commonwealth. If the expense of a juror who attends court, necessarily and actually incurred for transportation out and home once in each day, exceeds the amount of the said allowance for travel, he shall be allowed the amount of such expense in lieu of the said travel allowance. If a grand or traverse juror is required to be in attendance for five or more consecutive days he shall receive his fees not later than the end of every fifth day of such attendance.

ALM GL ch. 262, § 25 (2005)

##### **Regular Wages to be Paid to Juror for First Three Days**

Each regularly employed trial or grand juror shall be paid regular wages by his employer for the first three days, or part thereof, of juror service. Regular employment shall include part-time, temporary, and casual employment as long as the employment hours of a juror reasonably may be determined by a schedule or by custom and practice established during the three-month period preceding the term of service of such juror. Each self-employed trial or grand juror shall compensate himself for the first three days, or part thereof, of juror service.

ALM GL ch. 234A, § 48 (2005)

##### **Trial Juror; Compensation for Fourth and Subsequent Days.**

Each trial juror who serves more than three days shall be paid by the commonwealth for the fourth day of service and each day thereafter at the rate of fifty dollars per day of service. A trial juror receiving payment under this section shall not be entitled to additional reimbursement for travel or other out-of-pocket expenses.

ALM GL ch. 234A, § 51 (2005)

##### **Weekly Compensation of Jurors by Checks Issued by Commonwealth; Limitations**

Grand and trial jurors in participating counties shall receive compensation due from the commonwealth by check on a weekly basis. Each check shall include all compensation for juror services and authorized reimbursements incurred by the juror during the previous week. The office of jury commissioner shall prepare and mail these checks. The comptroller of the commonwealth shall establish a separate account for jurors compensation and reimbursements under this chapter. The office of jury commissioner

shall draw upon this account for all checks issued under this section. The checks may be issued with data processing equipment, and a printed or stamped facsimile signature of the jury commissioner shall be authorized. No check shall be valid if the amount is greater than three hundred and fifty dollars. The office of jury commissioner shall not be authorized to disburse monies for sequestered jurors expenses or other special awards ordered by the court; these disbursements shall be handled in the office of the clerk of court.

ALM GL ch. 234A, § 59 (2005)

### **Credit for Days of Juror Service; Illness or Other Compelling Reason; Holidays; Compensation**

A juror, including a standby juror and a juror on telephone notice, shall not be compensated by the commonwealth or credited with a day of service except for days on which the juror actually appeared as directed to perform juror service, unless provided otherwise in this chapter. A juror who is absent from service because of serious illness or other compelling reason, as determined by the court or office of jury commissioner, shall be credited with a day of juror service. Jurors shall not be compensated by the commonwealth nor credited with a day of service for a holiday or for business day on which a trial has been adjourned except as hereinafter provided. An employed juror who will lose compensation for a holiday because he is performing juror service or who will not be permitted to return to work during an unexpected adjournment may be awarded credit for a day of service or may be awarded reasonable compensation, not exceeding fifty dollars per day, by the court upon a finding that financial hardship would be imposed upon the juror in the absence of such an award. An alternate juror shall receive the same payments and reimbursements from his employer and the commonwealth as a juror. A standby juror may be reimbursed by the court or the office of jury commissioner for reasonable telephone and travel expenses incurred as a result of the performance of the conditions of standby status even though the standby juror may not perform juror service. Such reimbursement shall not exceed fifty dollars per day.

ALM GL ch. 234A, § 55 (2005)

### **5. Alternate Jurors**

#### **Additional Jurors**

The court may order impanelled a jury of not more than sixteen members and the court shall have jurisdiction to try the case with such jury as provided by law. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 additional jurors are to be impanelled, and 2 peremptory challenges if 3 or 4 additional jurors are to be impanelled.

ALM R. Civ. P. Rule 47(b) (2005)

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

N/A

## **7. Deliberation**

N/A

## **8. Length of Service**

### **Length of Terms of Service; Trial Jurors; Grand Jurors**

The length of the term of service for trial jurors shall be one day unless a juror is assigned to or impanelled on an incompleated trial when the term ends or unless the court orders otherwise. Nothing in this section shall prevent a trial juror from serving or participating on more than one trial during his term, except that a trial juror who has participated in the rendering of a verdict shall not be required to participate in a second trial even though the juror may not have completed his first day of juror service at the time of commencement of the second trial. Jurors in the juror pool awaiting assignment to a trial shall be discharged as early in the afternoon as possible after it has been determined that their services as jurors will not be needed. The length of the term of service for grand jurors shall be three months unless the court enlarges such term. The court shall have authority to enlarge grand jurors' terms of service upon a finding that the efficient administration of justice requires such enlargement.

ALM GL ch. 234A, § 41 (2005)

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

N/A

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

N/A

## **11. Jury Size**

### **Juries of Less than Twelve -- Majority Verdict**

The parties may stipulate that the jury shall consist of any number less than twelve 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.

ALM R. Civ. P. Rule 48 (2005)

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

### **Verdict by Agreement of Five Sixths of Jurors Sufficient in Civil Action**

In any civil action the jury shall be instructed that the agreement of five sixths of its members shall be sufficient to render any special or general verdict.

ALM GL ch. 234, § 34A (2005)

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ALM R. Civ. P. Rule 48 (2005)

### **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**

#### **Argument: Instructions to Jury**

(a) Time for Argument. Counsel for each party shall be allowed thirty minutes for argument; but before the argument commences, the court, on motion or sua sponte, may reasonably reduce or extend the time. When two or more attorneys are to be heard on behalf of the same party, they may divide their time as they elect.

(b) Instructions to Jury: Objection. 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. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

ALM R. Civ. P. Rule 51 (2005)

### **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**

#### **Impanelling**

On the day when jurors are summoned to attend at court for the trial of civil or criminal cases, except capital cases, the clerk of the court shall cause the name, together with the information provided for in sections four and five, of each person so summoned to be written on separate ballots, substantially of uniform size, and shall cause them to be placed in a box provided therefor, unless such information is otherwise available in the courtroom on a list prepared for that purpose. When a case is ready for trial the clerk in open court, after shaking the ballots thoroughly, shall draw them out in succession until the names of twelve or such greater number as the court may order under section twenty-six B are drawn who appear and are not excused or set aside. For trials by juries of six the clerk shall draw said ballots in succession until the names of six or such greater number as the court may order under section twenty-six B are drawn who appear and are not excused or set aside. The persons so drawn shall be duly sworn and impanelled and, subject to said section twenty-six B, shall be the jury to try the issue, and one of them shall be appointed foreman by the court. The ballots containing names of the jurors so sworn shall be kept apart by the clerk until the verdict of such jury has been recorded or such jury has been discharged, when such ballots shall be returned to the box. If a case is ready for trial before the verdict in the preceding case has been recorded or the jury discharged, the court may order a jury for the trial of such issue to be impanelled by the drawing in the manner aforesaid of ballots from those remaining in the box.

ALM GL ch. 234, § 25 (2005)

#### **Deaf Juror; Assistance by Translator**

A translator may assist a deaf juror during the juror orientation program, the juror's welcome, and the judicial discretion hearing. As a matter of discretion, the court may permit a translator to assist a deaf juror during the trial after a determination of the competency of the translator. In the presence of the jury, the court shall instruct the translator to make true, literal and complete translations of all testimony and other relevant

colloquy to the deaf juror to the best of his ability. The court may permit a translator to be present and assist a deaf juror during the deliberations of the jury. In the presence of the jury, the court shall instruct the translator to refrain from participating in any manner in the deliberations of the jury and to refrain from having any communications, oral or visual, with any member of the jury regarding the deliberations of the jury except for the literal translations of jurors' remarks made during deliberations. The verdict of the jury shall be valid notwithstanding the presence of the translator during deliberations.

ALM GL ch. 234A, § 69 (2005)

### **View by Jury**

The court may, upon motion, allow the jury in a civil case to view the premises or place in question or any property, matter or thing relative to the case if the party making the motion advances an amount sufficient to defray the expenses of the jury and the officers who attend them in taking the view, which shall be taxed as costs, if the party who advanced them prevails. The court may order a view by a jury impanelled to try a criminal case.

ALM GL ch. 234, § 35 (2005)

### **Jury Not to Be Sent Out More Than Twice, Unless, etc**

If a jury, after due and thorough deliberation, return to court without having agreed on a verdict, the court may state anew the evidence or any part thereof, explain to them anew the law applicable to the case and send them out for further deliberation; but if they return a second time without having agreed on a verdict, they shall not be sent out again without their own consent, unless they ask from the court some further explanation of the law.

ALM GL ch. 234, § 34 (2005)

### **Prohibition of Smoking in Jury Room; Exceptions**

(1) As used in this section, "smoking" shall mean the lighting of any cigar, cigarette, pipe or tobacco product or having possession of any lighted cigar, cigarette, pipe or other tobacco product.

(2) No person shall smoke in any room used for any meetings or deliberations of a jury, except as otherwise provided in paragraph (3).

(3) Smoking may be permitted in such rooms if a majority of the members of such jury have given their consent to such smoking.

ALM GL ch. 234, § 34C (2005)

### **Private Hearings Requested by Jurors to Resolve Urgent Personal Problems of Jurors and Employers**

Following the welcome to the jurors, the court shall hold a private hearing with each juror or employer of a juror who requests to be heard. The

purpose of such hearings shall be to dispose of all urgent personal problems of jurors and employers as to possible excuses, postponements, limitations on length of juror service, compensation, reimbursement, qualifications for juror service, or any other condition of juror service. The office of jury commissioner, with the approval of the committee, may prepare suggested guidelines for the judicial discretion hearing. The court may permit observers in the judicial discretion hearing for educational purposes as long as the identities of jurors are kept confidential by such observers and the personal decorum of the hearing is not lost thereby.

ALM GL ch. 234A, § 66 (2005)

### **Grand Juror; Financial Questionnaire for Determination of Compensation**

Upon the commencement of grand juror service, each grand juror shall complete and sign a financial questionnaire under the penalties of perjury. The completed questionnaire shall contain the financial data necessary for the determination of a daily compensation rate for the grand juror to be paid by the commonwealth for the fourth and subsequent days of grand juror service. The questionnaire shall indicate whether or not the grand juror is employed and, if so, the regular daily wages of the juror and the daily compensation the juror expects to receive from his employer while performing grand juror service. The questionnaire shall indicate travel expenses, if any, in excess of those ordinarily incurred by the juror, as a result of grand juror service. The questionnaire shall be in such form and shall contain such further information as deemed appropriate by the jury commissioner with the approval of the committee. The court, clerk of court, or assistant clerk may make inquiry to a grand juror's employer for the purpose of corroborating or clarifying information supplied by the grand juror or to ascertain relevant policies of the employer. The information supplied by grand jurors in these questionnaires shall be held confidential by the court, clerk of court, and assistant clerks. A grand juror shall notify the court if at any time during the period of his grand juror service the information provided by the juror in the financial question changes or becomes obsolete. A notice of this duty shall appear prominently on the questionnaire. The completed questionnaires shall be kept on file in the office of the clerk of court for one year after the discharge of the grand jury. Completed questionnaires shall not constitute a public record.

ALM GL ch. 234A, § 52 (2005)

### **Orientation Programs for Jurors; Videotaped Materials; Use for Educational Purposes**

On the first morning of juror service, grand and trial jurors shall be oriented by the court as to their duties and responsibilities. The court may include such other general information and instruction as it deems appropriate. The court may use a videotaped presentation for this orientation. In the event of any conflict, the instructions or charge of the

trial judge in a particular case shall supersede the general information provided to jurors in the orientation program. The office of jury commissioner, with the approval of the committee, may prepare such videotaped materials and other materials as are appropriate for use in the juror orientation programs. The office of jury commissioner may permit juror orientation materials to be used for educational purposes by schools, civic organizations, the press, and other groups in order to foster improved public understanding of the jury system. Unless the court orders otherwise, members of the public may be present in the juror pool during juror orientation programs for educational purposes.

ALM GL ch. 234A, § 64 (2005)

**Meals Consistent With Religious Requirements for Sequestered Jurors**

The court shall provide, upon request of a juror, meals consisting of food or food products prepared in accordance with the religious requirements of such juror when meals would otherwise be provided during any period in which the jury has been sequestered by the court. The court shall inform the jurors of their rights under this section.

ALM GL ch. 234A, § 56A (2005)

**24. Various Recommendations**

N/A