

# IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

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## Minnesota Jury Innovations

### 1. Note Taking

N/A

### 2. Juror Handbooks/Notebooks

N/A

### 3. Juror Questions and Questioning of Witnesses

N/A

### 4. Juror Pay/Compensation

#### **Compensation of jurors and travel reimbursement**

A juror shall be reimbursed for round-trip travel between the juror's residence and the place of holding court and compensated for required attendance at sessions of court and may be reimbursed for additional day care expenses incurred as a result of jury duty at rates determined by the Supreme Court. A juror may request reimbursement for additional parking expenses incurred as a result of jury duty, in which case the reimbursement shall be paid and the juror's compensation for required attendance at sessions of court shall be reduced by the amount of the parking reimbursement. Except in the Eighth Judicial District where the state shall pay directly, the compensation and reimbursement shall be paid out of the county treasury upon receipt of authorization to pay from the jury commissioner. These jury costs shall be reimbursed monthly by the Supreme Court upon submission of an invoice by the county treasurer. A monthly report of payments to jurors shall be sent to the jury commissioner within two weeks of the end of the month in the form required by the jury commissioner.

Minn. Stat. § 593.48 (2004)

### 5. Alternate Jurors

N/A

### 6. Discussions pre-deliberation

N/A

## **7. Deliberation**

### **Separation of Jury**

After the jury has retired for its deliberations, the court, in its discretion, may permit the jury to separate overnight and return to its deliberations the following morning.

Minn. R. Civ. P. 47.03 (2004)

### **Sequestration or Separation of Jury**

Commonly the jury will be unable to reach a verdict by the end of the working day, either because the case is given to them toward the end of the day or because the initial deliberations do not result in agreement. When this occurs, one possibility is that the jury will be sequestered (kept together) for additional deliberations and not allowed to encounter any outside influences until a verdict is reached. Food and lodging is provided at county expense. <sup>93</sup> In the vast majority of cases, however, this is not necessary. <sup>94</sup> If the jurors are adequately instructed by the judge not to discuss the case with others or to engage in other misconduct, such as viewing the scene, <sup>95</sup> there is no reason that the jury must be kept sequestered instead of returning to their individual homes for the night:

After the jury has retired for its deliberations, the court, in its discretion, may permit the jury to separate overnight and return to its deliberations the following morning. <sup>96</sup>

This rule has worked well in practice since it was first adopted in 1968. So long as there is no indication of any improper conduct or improper influence on any juror during the period of separation, the verdict reached during later deliberations will not be tainted in any way. <sup>97</sup>

The reasons for the rule are both to prevent hardship to the jurors by separating them from their homes and families overnight and also to prevent hardship on the county by the expense of food and lodging:

In some cases, such as protracted trials or cases involving substantial public interest, the trial judge may feel that separation is not desirable. In many other cases the trial judge may believe that separation will not effect [sic] the integrity of the jury verdict. In the opinion of the Committee, it is better practice to permit separation of the jury during its deliberations than to compel the jury to remain at the deliberations throughout the night and, perhaps, coercing a verdict through physical exhaustion.

The purpose of the amendment is related to solving the problem of overnight sleeping accommodations and is not intended to permit separation of the jury over the weekends or holidays, or to permit the jury to avoid early evening deliberations. The trial judge is not to instruct the jury that they may adjourn at a given time in the evening, but rather should permit the separation at a time when it is clear that deliberations should not continue further into the night

**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**

**Size of the Jury**

The size of the jury is six to twelve members, the actual number being within the discretion of the trial judge depending on the anticipated needs of the case. The bulk of civil cases will be tried to a jury of six or seven members. Until the rules amendments of 1999, the jury was six members, with the possibility of alternates. Following amendment of rules 47 and 48 in 1999, alternate jurors have been eliminated. <sup>99</sup> The court empanels additional members of the original jury as the need is anticipated. When a juror is excused, the jury continues in its diminished size. Should, for example, the court empanel a jury of eight members, and all eight continue service through the trial, then all eight will participate in reaching the verdict:

The court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the court pursuant to Rule 47.04. Unless otherwise provided by law or the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced to fewer than six members. <sup>100</sup>

The rule places the decision on initial size of the jury in the hands of the judge, but it allows the parties to stipulate to two things: receipt of a less-than-unanimous verdict, and taking a verdict from a jury reduced to fewer than six members. The latter provision is important, but the former provision about a nonunanimous verdict is not important as a five-sixths verdict is provided by statute. <sup>101</sup>

Because the standard civil jury size was six, the court will likely retain that size for a short trial, or empanel a jury of seven to be on the safe side. Only in complicated trials or trials anticipated to endure for more than a week will the court likely consider a larger jury. The size of the jury may depend also on considerations other than only the needs of the individual case. <sup>102</sup> For an exceptionally long trial, the court may even consider seating a larger number than twelve. <sup>103</sup>

For many years, statute provided for a twelve member jury in Minnesota civil cases. In 1971, the Minnesota legislature rewrote the statute to provide for a six member jury in civil cases (and criminal misdemeanors), and a twelve-member jury in criminal felony and gross misdemeanor trials. <sup>104</sup> The size of the jury in a civil case, therefore, was mandated at six members from 1971 until the statute was repealed and replaced by court rule.

Minnesota Civil Practice § 1921

### **Replacing Jurors**

In practice under the Minnesota code, a civil jury of twelve was drawn and selected, and those twelve persons heard the case. If one of the twelve jurors became incapacitated before verdict, the court had no choice but to discharge the entire jury panel and summon a new jury for a new trial unless both parties consented to the substitution of a juror or to the verdict of the remaining jurors. <sup>86</sup>

Because an additional method of protecting the parties and the court against the possibility of incapacitation of a juror was necessary, Minnesota Rule 47.02 was adopted to allow the court to direct that one or two additional, alternate jurors be selected at the outset of a trial. The rule provided that an alternate juror should be the same as other jurors so far as qualifications, voir dire, oath, and hearing of the case. Each party received one additional peremptory challenge to be used only against an alternate juror. <sup>87</sup> An alternate juror would sit with the other members of the jury and would replace a juror who during the trial became unable or disqualified to perform his duties. An alternate juror who did not replace a principal juror would be dismissed when the jury was sent out to reach a verdict. Consequently, if a juror became incapacitated during deliberations, there was no provision for a replacement. At that point, the court had to declare a mistrial unless the parties stipulated to the verdict of the remaining jurors. <sup>88</sup>

Because this system of seating principal and alternate jurors created disappointment for alternate jurors who were not seated and what some people perceived to be first class and second class jurors, Minnesota Rule 47.02 was abrogated in 1999, together with amendment to Minnesota Rule 48. The system in place today eliminates the need for replacement jurors. The court seats a jury of from six to twelve members, depending on the anticipated needs of the case, and all jurors participate fully in hearing the case and deliberations:

The court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the court pursuant to Rule 47.04. <sup>89</sup>

The rule contemplates a court will empanel a jury of larger than six members in any case that is expected to continue for more than a day or two. The decision on the size of the initial jury is in the discretion of the trial court, although the judge will likely wish to hear from the parties on this subject.

With the larger size of the jury, a juror may be excused without the need for a replacement juror. The trial continues with the remaining members of the jury. So long as the size of the jury remains at least six members, no problem is encountered.<sup>20</sup> Consequently, the concept of alternate jurors is eliminated from Minnesota state practice.

Should a juror be unable to continue to serve at any time during the trial, the court may excuse the juror: "The court may for good cause excuse a juror from service during trial or deliberation."<sup>21</sup> The rule does not specify good cause, but certainly death, serious injury, incapacitating illness, and disappearance plus diligent search will qualify. Some older cases suggest mental illness will also suffice.

Minnesota Civil Practice § 1912

## **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**

### **Instructions to the Jury; Objections**

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, and such action shall be made a part of the record. The court shall instruct the jury before or after closing arguments of counsel except, in the discretion of the court, preliminary instructions need

not be repeated. The instructions may be in writing and, in the discretion of the court, one or more complete copies may be taken to the jury room when the jury retires to deliberate. No party may assign as error unintentional misstatements and verbal errors or omissions in the charge, unless that party objects thereto before the jury retires to consider its verdict, stating specifically the matter to which that party objects and the ground of the objections. An error in the instructions with respect to fundamental law or controlling principle may be assigned in a motion for a new trial although it was not otherwise called to the attention of the court.  
Minn. R. Civ. P. 51 (2004)

**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**

N/A

**24. Various Recommendations**

N/A