

IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

Updated 10.12.2005

New Hampshire Jury Innovations

1. Note Taking

It is within the Court's discretion to permit jurors to take notes on evidence. If notetaking is allowed, after the opening statements the Court will supply each juror with a pen and notebook to be kept in the juror's possession in the court and jury rooms, and to be collected and held by the bailiff during any recess in which the jurors may leave the courthouse and during arguments and charge. After verdict, the Court will immediately destroy or order the destruction of all notes.

Superior Court Rule 64-A (WEST 2005)

2. Juror Handbooks/Notebooks

N/A

3. Juror Questions and Questioning of Witnesses

In any civil case, and in any criminal case in which all parties consent, it is within the discretion of the trial judge to permit jurors to ask written questions. If a trial judge decides to permit jurors to ask written questions at trial, the following procedure shall be utilized:

1. At the start of the trial, the judge will announce to the jury and counsel the decision to allow jurors to ask written questions of witnesses. At this time the judge will instruct the jurors on taking notes and, as to the scope of questioning, the procedure to be followed.
2. Trial will proceed in the normal fashion until questioning of the first witness has been completed by both counsel.
3. When questioning of the first witness is completed, the court will allow jurors to formulate any questions they may have, in writing. Jurors will be asked to put their seat number on the back of the question. The judge is the only person who will see the number.
4. The bailiff will collect the anonymous questions and deliver them to the judge.
5. At the bench, the judge and counsel will read the proposed questions. Counsel will be given the opportunity to make objections on the record to any proposed question after which the judge will decide if they are appropriate, based on the rules of evidence, and whether, under the circumstances of the case, the judge will exercise discretion to permit the questions.
6. Questions may be rephrased by the judge, or the judge may ask the question in a way mutually agreeable to the parties. The question should, however, attempt to obtain the information sought by the juror's original question.
7. After all the chosen questions are answered, each counsel will have an opportunity to re-examine the witness. The party who called the witness will

proceed first. The judge should allow only questions which directly pertain to questions posed by the jurors. The judge may also impose a time limit. If the judge does plan to impose a time limit, counsel should be notified and given an opportunity to object to the length outside the hearing of the jury.

8. The judge shall instruct the jury substantially as follows:

A. INSTRUCTIONS TO THE JURY AT BEGINNING OF TRIAL

Ladies and gentlemen of the jury, I have decided to allow you to take a more active role in your mission as finders of fact. I will permit you to submit written questions to witnesses under the following arrangements.

After each witness has been examined by counsel, you will be allowed to formulate any questions you may have of the witness. Please remember that you are under no obligation to ask questions, and questions are to be directed only to the witness. The purpose of these questions is to clarify the evidence, not to explore your own legal theories or curiosities.

If you do have any questions, please write them down on a pad of paper. Do not put your name on the question, and do not discuss your questions with fellow jurors. The bailiff will collect the questions, and I will then consider whether they are permitted under our rules of evidence and are relevant to the subject matter of the witness' testimony. If I determine that the question or questions may be properly asked of the witness pursuant to the law, I will ask the question of the witness myself.

It is extremely important that you understand that the rejection of a question because it is not within the rules of evidence, or because it is not relevant to the witness' testimony, is no reflection upon you. Also, if a particular question cannot be asked, you must not speculate about what the answer might have been.

B. INSTRUCTIONS TO THE JURY WHEN DECISION WHETHER TO ASK QUESTIONS IS MADE

Ladies and gentlemen of the jury, I remind you of my earlier remarks regarding juror questions. Some questions cannot be asked in a court of law because of certain legal principles. For this reason there is the possibility that a question you have submitted has been deemed inappropriate by me and will not be asked. I alone have made this determination, and you should not be offended, or in any way prejudiced by my determination.

C. IN ITS DISCRETION, THE COURT MAY ADD ADDITIONAL INSTRUCTIONS.

Superior Court Rule 64-A (WEST 2005)

4. Juror Pay/Compensation

I. Grand and petit jurors' fees and mileage shall be paid by the state. The jurors' fees shall be \$10 for each half day's attendance before a superior court; for each mile's travel to and from the place where the juror serves, mileage shall be paid at the rate of \$.20 per mile, mileage to be allowed for each day's attendance when the juror is required to leave the town or city in which he resides.

II. For the purposes of this section "attendance for a half day" means attendance either at the forenoon session or at the afternoon session.

III. The clerk of the court attended shall determine whether a juror has attended for a half day. Said clerk may count travel time to reach the place where the juror serves in determining attendance of the juror, if the juror is required to travel more than 50 miles one way by the most direct route to reach the court.

N.H. Rev. Stat. § 500-A:15 (WEST 2005)

Every juror, while in attendance at superior court or the United States district court, shall be allowed free parking in the city or town in which the court is sitting. The clerks of court shall furnish to each juror an identification card for display through the windshield of the juror's car. When his jury service is completed, the juror shall return his identification card to the clerk of court. The form, shape and color of the identification card and the information to be contained on the card shall be approved by the director of the division of motor vehicles. No juror shall use any area limited to 15 minutes of parking or less.

N.H. Rev. Stat. § 500-A:17 (WEST 2005)

N.H. Rev. Stat. § 500-A:14:

I. An employer shall not deprive an employee of his employment, or threaten or coerce him regarding his employment because the employee receives and responds to a summons, serves as a juror, or attends court for prospective jury service.

II. Any employer who violates paragraph I may be found in contempt of court.

III. If an employer discharges an employee in violation of paragraph I, the employee may, within one year of the discharge, bring a civil action for:

- (a) Recovery of wages lost as a result of the violation; and
- (b) An order requiring his reinstatement.

IV. Damages recovered shall not exceed lost wages. If an employee prevails in an action under paragraph III, the employee shall be allowed a reasonable attorney's fee fixed by the court. (N.H. Rev. Stat. § 500-A:14 (WEST 2005))

5. Alternate Jurors

I. In the trial in the superior court of any civil or criminal case, when it appears to the presiding justice that there is reason for the selection of alternate jurors, the jurors shall, at the direction of the presiding justice, be

drawn, selected and empaneled in the same manner as the regular jurors.

II. The alternate jurors shall:

- (a) Be sworn with and seated near the jury with equal opportunity for seeing and hearing the proceedings;
- (b) Attend the trial at all times with the jury;
- (c) Obey all orders and admonitions of the court to the jury;
- and
- (d) Be kept with the jury if the court orders the jury to be kept together.

III. The alternate jurors shall be liable as regular jurors for failure to attend the trial or to obey any order or admonition of the court to the jury. They shall receive the same compensation as other jurors. At the final submission of the case to the jury, any remaining alternate jurors who have not been substituted under paragraph IV, may be excused by the court or, if required to remain at court, shall be kept separate and apart from the other jurors in an appropriate place, subject to the same rules and orders as the jurors, until the jury has agreed upon a verdict or has been otherwise discharged.

IV. If, before the final submission of the case to the jury, one or more jurors becomes incapacitated, is disqualified or dies, his place shall be taken, upon the order of the court, by an alternate juror who shall become one of the jury and serve in all respects as if selected as an original juror.

V. If, at any time after the final submission of the case to the jury, and before the jury has agreed on a verdict, a juror becomes incapacitated, is disqualified or dies, the presiding justice may order him to be discharged and direct the clerk to place the names of all of the remaining alternates in a box and draw the name of an alternate, who shall then take the place of the discharged juror on the jury. Before making a substitution, the presiding justice shall make a finding on record that the substitution will not cause prejudice to any party. The presiding justice shall instruct the jury to recommence deliberations and shall give the jury such other supplemental instructions as may be appropriate. The jury shall then renew its deliberations with the alternate juror.

N.H. Rev. Stat. § 500-A:13 (WEST 2005)

6. Discussions pre-deliberation

N/A

7. Deliberation

N/A

8. Length of Service

Any person who is summoned to serve as a juror on the petit or grand jury shall not be required to serve a term longer than 30 days. A juror who is sitting on a trial in progress or a grand jury hearing in progress shall be required to serve until the trial or hearing is completed.

N.H. Rev. Stat. § 500-A:13 (WEST 2005)

The persons who actually attend court as jurors shall not have their names again placed on the master jury list for at least 3 years.

N.H. Rev. Stat. § 500-A:16 (WEST 2005)

9. Length of Time Restrictions on Trials

N/A

10. Judge's Responses to Jury Questions

N/A

11. Jury Size

N/A

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

The recommendation that all instructions should be as simple and clear as possible has been adopted in New Hampshire.

http://www.flcourts.org/gen_public/pubs/bin/JuryInnovationsFinalReport.pdf

16. Absence of the Jury

N/A

17. Jury Instructions

Written Jury Instructions

The recommendation that copies of written jury instructions should be given to jurors for their use during deliberations has been adopted in New Hampshire.

http://www.flcourts.org/gen_public/pubs/bin/JuryInnovationsFinalReport.pdf

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

Juror Privacy

(a) The presiding judge should permit the media to photograph, record and broadcast all courtroom proceedings that are open to the public. The presiding judge may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence. Except as specifically provided in this rule, or by order of the presiding judge, no person shall within the courtroom take any photograph, make any recording, or make any broadcast by radio, television or other means in the course of any proceeding.

Restrictions. Unless otherwise ordered by the presiding judge, the following standing orders shall govern.

- (1) No flash or other lighting devices will be used.
- (2) Set up and dismantling of equipment is prohibited when court is in session.
- (3) No camera movement during court session.
- (4) No cameras permitted behind the defense table.
- (5) Broadcast equipment will be positioned so that there will be no audio recording of conferences between attorney and client or among counsel and the presiding judge at the bench. Any such recording is prohibited.
- (6) **During their term of jury service, jurors will not be photographed in connection with said service.**

Superior Court Rule 78 (WEST 2005)

Examination

I. Any juror may be required by the court, on motion of a party in the case to be tried, to answer upon oath if he:

- (a) Expects to gain or lose upon the disposition of the case;
- (b) Is related to either party;

- (c) Has advised or assisted either party;
- (d) Has directly or indirectly given his opinion or has formed an opinion;
- (e) Is employed by or employs any party in the case;
- (f) Is prejudiced to any degree regarding the case; or
- (g) Employs any of the counsel appearing in the case in any action then pending in the court.

II. If it appears that any juror is not indifferent, he shall be set aside on that trial.

RSA 500-A:12 (2004)

24. Various Recommendations

N/A