

IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

Updated 08.08.2005

New Jersey Jury Trial Innovations

1. Note Taking

Prior to opening statements, the attorney or a party may request that the jury be permitted to take notes during the trial or portion thereof, including opening and closing statements. If the court determines to permit note-taking after all parties have had an opportunity to be heard, it shall provide the jurors with note-taking materials and shall take such steps as will ensure the security and confidentiality of each juror's notes.

NJ R GEN APPLICATION R. 1:8-8(b) (WEST 2005).

2. Juror Handbooks/Notebooks

N/A

3. Juror Questions and Questioning of Witnesses

In 1998, a pilot program to investigate juror questions to witnesses in civil trials was approved by the New Jersey Supreme Court, although it did not start until nearly two years later. From January 2000 through June 2000, 11 judges were commissioned to allow jurors to pose written questions to witnesses. It covered 147 civil trials, from which surveys were obtained from attorneys, judges, and jurors. The study results showed that 'it was apparent that jurors and judges were reacting very favorably, whereas attorney reaction was mixed . . . [T]he jurors virtually all loved it [T]he judges . . . were very pleased . . . [and] the attorneys' responses were measured.' See Gregory E. Mize & Christopher J. Connelly, *Jury Trial Innovations: Charting a Rising Tide*, 41 Court Review 4, 6; available at <http://aja.ncsc.dni.us/courtrv/cr-41-1/CR41-1Mize.pdf>.

The participating New Jersey judges, who received a median number of nine questions per trial (77% of which were put to a witness), unanimously favored the procedure, as did the overwhelming number of jurors. **Trials were lengthened by 30 minutes, but jurors reported that answers to their questions shortened the time required for deliberations.** Almost 60% of the pilot project attorneys also supported adoption of the eventual rule. See Michael Dann & Valerie P. Hans, *Recent Evaluative Research on Jury Trial Innovations*, 41 Court Review 12, 15; available at <http://aja.ncsc.dni.us/courtrv/cr-41-1/CR41-1Dann.pdf>.

After the six-month pilot program of allowing juror questions in New Jersey civil trials, the Supreme Court's Civil Practice Committee recommended that the New Jersey Supreme Court approve the procedure by rule, concluding:

No study of actual trials can measure the results against the theory in any scientifically reliable way. However the questionnaires completed by the jurors, judges, and attorneys gave us significant information—including the fact that out

of 127 trials conducted by 11 judges in as many counties, no one suggested that the process had an unfair effect on the outcome of the trial . . . It is our perception that there need be no tension between the goal of a trial as a search for justice, and the method of the adversarial process. *See* Michael Dann & Valerie P. Hans, *Recent Evaluative Research on Jury Trial Innovations*, 41 Court Review 12, 15; available at <http://aja.ncsc.dni.us/courtrv/cr-41-1/CR41-1Dann.pdf>.

Following the completion of this pilot program, the New Jersey Supreme Court approved the pilot's recommended changes, and the revisions went into effect on September 3, 2002. In addition to adopting these rules, the Conference of Civil Presiding Judges initiated a follow-up project to focus on the specific procedures that judges may use when allowing jurors to ask questions. The goal of this project is to perfect the process of question asking. The areas of inquiry include whether judges modify questions, whether attorneys ask follow-up questions of witnesses, and how much additional trial time is required for the allowance of questions. The inquiry period lasted six months and involved surveys of both judges and juries. *See* Gregory E. Mize & Christopher J. Connelly, 41 Court Review 4, 6; available at <http://aja.ncsc.dni.us/courtrv/cr-41-1/CR41-1Mize.pdf>.

The amended rule 1:8-8(c) on juror questions provides: "Prior to the commencement of the *voire dire* of prospective jurors in a civil action, the court shall determine whether to allow jurors to propose questions to be asked of witnesses. The court shall make its determination after the parties have been given an opportunity to address the issue, but they need not consent. If the court determines to permit jurors to submit proposed questions, it shall explain to the jury in its opening remarks that subject to the rules of evidence and the court's discretion, questions by the jurors will be allowed for the purpose of clarifying the testimony of a witness. The jurors' questions shall be submitted to the court in writing at the conclusion of the testimony of each witness and before the witness is excused. The court, with counsel, shall review the questions out of the presence of the jury. Counsel shall state on the record any objections they may have, and the court shall rule on the permissibility of each question. Counsel shall, on request, be permitted to reopen direct and cross-examination to respond to the jurors' questions and the witness's answers." *See* NJ R GEN APPLICATION R. 1:8-8 (WEST 2005).

Recommendation

The Civil Practice Committee's recommendation for adoption of paragraph (c) of Rule 1:8-8 regarding jurors' questions included a recommendation for use of standard instructions to the jury both at the beginning of the trial ("Preliminary Instructions Regarding Jurors' Questions") and at the close of trial (Final Instructions Regarding Juror's Questions") when the trial judge determines to use this procedure in any particular trial. The Practice Committee asked the Committee on Model Civil Jury Charges to review and make any necessary refinements to those charges, which had been used in the pilot test of this procedure. The Court agrees with the recommendation that these two jury charges, once finalized by the Committee on Model Civil Jury Charges, should be given in all trials in which the jury-question procedure is used. *See* NJ GEN APPLICATION R. 1:8-8 Court Comment to Paragraph (c) (WEST 2005).

4. Juror Pay/Compensation

Jurors are paid \$5.00 per day for the first three days and \$40.00 per day thereafter. See http://www.ncsconline.org/WC/Publications/KIS_JurManPayStates.pdf. There are also other measures to ensure that jurors are fully compensated and not being penalized for serving jury duty. Rule 2B:20-16 protects government employees. The rule states: “Any person employed full-time by any agency, independent authority, instrumentality or entity of the State or of any political subdivisions of the State shall be excused from employment at all times the person is required to be present for jury service in any court of this State, any court of another state, or any federal district court or in the United States District Court for New Jersey, and shall be entitled to receive from the employer the person’s usual compensation for each day the person is present for jury service, less the amount of per diem fee for each day of jury service as shown on a statement issued to the juror by the sheriff or other court officer making payment of juror fees.” See N.J.S.A. 2B:20-16 (WEST 2005).

Furthermore, Rule 2B:20-17 protects all employees who are called to jury duty from being penalized and also provides them a remedy in court. The rule provides:

- (a) An employer shall not penalize an employee with respect to employment, or threaten to otherwise coerce an employee with respect to that employment, because the employee is required to attend court for jury service.
- (b) An employer who violates subsection (a) is guilty of a disorderly persons offense.
- (c) If an employer penalizes an employee in violation of subsection (a) of this section, the employee may bring a civil action for economic damages suffered as a result of the violation and for an order requiring the reinstatement of the employee. The action shall be commenced within 90 days from the date of the violation or the completion of jury service, whichever is later. If the employee prevails, the employee shall be entitled to a reasonable attorney’s fee fixed by the court. See N.J.S.A. 2B:20-17 (WEST 2005).

This section prohibits employers from firing, threatening or coercing employees who are summoned for jury service or who appear for jury service or who appear for jury service, and declares it a disorderly persons offense to do so. The employee is also provided with a civil action for recovery of economic damages, and for reinstatement, if the employee is fired for appearing for jury service. The term “economic damages” is intended to exclude recovery for pain and suffering and emotional distress. See New Jersey Law Revision Commission, *Report and Recommendations Related to Juries*, Comment on page 12 (1992), available at <http://www.lawrev.state.nj.us/rpts/jury.pdf>.

5. Alternate Jurors

Rule 1:8-2(c)(1) states: “The court in its discretion may direct the impaneling of a jury of such number as it deems necessary to ensure that a sufficient number of jurors will remain to deliberate. If a juror is excused after being sworn but before opening statements begin, another juror may be impaneled and sworn, but no juror may be

empaneled and sworn thereafter. All the jurors shall sit and hear the case, but the court for good cause shown may excuse any of them from service provided the number of jurors is not reduced to less than 12 or 6 as the case may be or such other number as may be stipulated to. If more than such number are left on the jury at the conclusion of the court's charge, the clerk of the court in the jury's presence shall randomly draw such number of names as will reduce the jury to the number required to determine the issues. Following the drawing of the names of jurors to determine the issues, the court may in its discretion order that the alternate jurors not be discharged, in which event the alternate jurors shall be sequestered apart from the other jurors and shall be subject to the same orders and instructions of the court, with respect to sequestration and other matters, as the other jurors. If the alternate jurors are not discharged and if at any time after submission of the case to the jury, a juror dies or is discharged by the court because of illness or other inability to continue, the court may direct the clerk to draw the name of an alternate juror to take the place of the juror who is deceased or discharged. When such a substitution of an alternate juror is made, the court shall instruct the jury to recommence deliberations and shall give the jury such other supplemental instructions as may be appropriate." See NJ GEN APPLICATION R. 1:8-2 (WEST 2005).

Furthermore, Rule 1:8-2(c)(2) provides: "In civil actions, instead of selecting alternate jurors, the parties may agree on the record, pursuant to paragraph (b)(3) of this rule, that all remaining jurors shall deliberate and that the verdict or finding shall be returned by such number as is provided by paragraph (c)(3) of this rule." See NJ GEN APPLICATION R. 1:8-8 (WEST 2005).

6. Discussions pre-deliberation

N/A

7. Deliberation

N/A

8. Length of Service

N/A

9. Length of Time Restrictions on Trials

In 1999, the New Jersey Law Revision Commission recommended the enactment of new provisions specifying that a person who is summoned for jury service and not chosen for a jury within one or two days be released as having completed jury service. That provision represents the practice in a majority of counties, but there are a few where prospective jurors are held for a full week. Some have a one day, one trial, system and other a two days, one trial system. Others summon jurors for a one-week period but release them after two or three days. See New Jersey Law Revision Commission, *Final Report Relating to Juries*, 2, 6 (1999), available at <http://www.lawrev.state.nj.us/jury98/frpt.doc>. Despite this recommendation there is, however, no current bill amending Rule 2B:20-13 and adding a two-day one trial provision. Currently, Rule 2B-20:13 just states: "If the number of jurors in attendance is greater than is necessary for the business of the court, the Assignment Judge may

discharge the unneeded jurors before the expiration of the period for which they were summoned. The jurors discharged shall be selected randomly.” *See* N.J.S.A. 2B:20-13 (WEST 2005).

10. Judge’s Responses to Jury Questions

N/A

11. Jury Size

Rule 1:8-2(b) provides: A deliberating jury in a civil action shall consist of six persons unless:

- (2) for good cause shown the court orders a jury of twelve persons pursuant to a demand made in accordance with R. 1:8-1(b); or
- (3) fewer than six jurors remain prior to commencement of deliberations and the parties then agree on the record to submit the case to the remaining jurors; or
- (4) more than six jurors remain prior to the commencement of deliberations and the parties then agree on the record that all remaining jurors shall deliberate.

Further, Rule 1:8-2(c) provides:

- (1) Unless the parties have agreed on the record prior to commencement of deliberations to accept a verdict or finding by a lesser number, the verdict or finding shall be by agreement of five jurors when six jurors deliberate, and by agreement of ten jurors when 12 jurors deliberate.
- (2) If the parties have agreed to the record to submit the case to fewer than six jurors, pursuant to paragraph (b)(2) of this rule, the verdict or finding shall be unanimous, unless the parties have also agreed on the record prior to commencement of deliberations to a verdict or finding by a lesser number.
- (3) If the parties have agreed on the record to more than six jurors pursuant to paragraph (b)(3) of this rule, the verdict or finding shall be by agreement of five-sixths of the deliberating jurors, unless the parties have otherwise agreed on the record prior to commencement of deliberations. *See* NJ R GEN APPLICATION R. 1:8-2 (WEST 2005).

12. Number of Jurors Needed to Return a Verdict

Rule 1:8-2(b) provides: A deliberating jury in a civil action shall consist of six persons unless:

- (5) for good cause shown the court orders a jury of twelve persons pursuant to a demand made in accordance with R. 1:8-1(b); or
- (6) fewer than six jurors remain prior to commencement of deliberations and the parties then agree on the record to submit the case to the remaining jurors; or
- (7) more than six jurors remain prior to the commencement of deliberations and the parties then agree on the record that all remaining jurors shall deliberate.

Further, Rule 1:8-2(c) provides:

- (4) Unless the parties have agreed on the record prior to commencement of deliberations to accept a verdict or finding by a lesser number, the verdict or finding shall be by agreement of five jurors when six jurors deliberate, and by agreement of ten jurors when 12 jurors deliberate.

- (5) If the parties have agreed to the record to submit the case to fewer than six jurors, pursuant to paragraph (b)(2) of this rule, the verdict or finding shall be unanimous, unless the parties have also agreed on the record prior to commencement of deliberations to a verdict or finding by a lesser number.
- (6) If the parties have agreed on the record to more than six jurors pursuant to paragraph (b)(3) of this rule, the verdict or finding shall be by agreement of five-sixths of the deliberating jurors, unless the parties have otherwise agreed on the record prior to commencement of deliberations. *See* NJ R GEN APPLICATION R. 1:8-2 (WEST 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

N/A

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

Rule 1:8-8(a) states: "The jury may take into the jury room the exhibits received in evidence, and if the court so directs in a civil action, a list of the claims made by the parties and of the defenses to such claims, a list of various items of damage upon which proof was submitted at the trial and a list of the verdicts that may be properly found by the jury. Any such list may be prepared by an attorney or the court, but before delivery to the jury, it shall be submitted to all parties. The court, in its discretion and at such time and in such format as it shall determine, permit the submission to the jury of the

individual copies of any exhibit provided an appropriate request to employ that technique was made prior to trial on notice to all parties and provided further that the court finds that no party will be unduly prejudiced by the procedure.” *See* NJ GEN APPLICATION R. 1:8-8 (WEST 2005).

23. Various Rules

N/A

24. Various Recommendations

N/A