

IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

Updated 08.08.2005

North Dakota Jury Innovations

1. Note Taking

Juror note taking

The court may allow jurors to take notes during trial with supplies provided by the court. If note taking is allowed, the court shall give a cautionary instruction informing the jurors:

- (1) any notes must pertain to the case;
- (2) extensive note taking may distract them from properly fulfilling their function; and
- (3) they should rely primarily on their collective recollection of what was seen and heard, and not on any particular juror's notes. If the court directs, all notes taken must be returned after deliberation and destroyed.

NDROC, Rule 6.7 (2005)

Note: Review Court Orders Which May Amend this Rule

2. Juror Handbooks/Notebooks

N/A

3. Juror Questions and Questioning of Witnesses

Questioning by jury

In a civil case, the trial court may allow a juror to submit a question to be asked of a witness. The question must be in writing and delivered to the judge through appropriate court personnel. Upon receipt of a question, the court shall review with counsel on the record but outside the hearing of the jury, the propriety of submitting the question to the witness. If the court deems it appropriate, the court shall then ask the question. The parties shall have an opportunity to examine matters touched upon by any juror question submitted to a witness, subject to the North Dakota Rules of Evidence. If the question is not asked, the court shall tell the jury the law prevented the question from being asked.

NDROC, Rule 6.8 (2005)

Note: Review Court Orders Which May Amend this Rule

4. Juror Pay/Compensation

Mileage and compensation of jurors

A juror must be paid mileage at the rate provided for state employees in section 54-06-09. A juror must be compensated at the rate of twenty-five dollars for the first day and fifty dollars for each subsequent day of required attendance at sessions of the district court and ten dollars for each day of required attendance at sessions of a coroner's inquest. The mileage and compensation of jurors must be paid by the state for jurors at sessions of the district court. Jurors at coroner's inquests must be paid by the county.

N.D. Cent. Code, § 27-09.1-14 (2005)

5. Alternate Jurors

Alternate jurors

The court may direct that one or 2 jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. If one or 2 alternate jurors are called each side is entitled to one peremptory challenge in addition to those otherwise allowed by this rule. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by this rule shall not be used against the alternates.

N.D.R. Civ. P., Rule 47(d) (2005)

Note: Review Court Orders Which May Amend this Rule

6. Discussions pre-deliberation

Predeliberation discussion by jurors

(a) Civil case. In a civil case, the court may, without objection, allow the jury to engage in predeliberation discussion.

(1) Discussion jury. If the court allows predeliberation discussion, at each adjournment, the court shall admonish the jurors:

-- to only discuss the evidence among themselves in the jury room during recess from trial when all the jurors are present; and

-- to reserve judgment about the outcome of the case until deliberations

commence.

Any alternate juror must be allowed to participate in any predeliberation discussion.

(2) No discussion jury. If the court prohibits predeliberation discussion, at each adjournment, the court shall admonish the jurors:

-- not to converse among themselves nor with anyone else on any subject connected with the trial; and

-- not to form or express an opinion until the case is submitted to them for deliberation.

(b) Criminal case. In a criminal case, the court must prohibit the jury from engaging in predeliberation discussion. At each adjournment, the court shall admonish the jurors:

-- not to converse among themselves nor with anyone else on any subject connected with the trial; and

-- not to form or express an opinion until the case is submitted to them for deliberation.

(c) The jurors may be permitted to separate, or the jurors may be kept under the charge of a proper officer during each recess or adjournment during a trial. The officer must keep the jurors together as instructed by the court, refrain from and prohibit anyone from communicating with the jurors on any subject connected with the trial, and return the jurors into court.

NDROC, Rule 6.11 (2005)

Note: Review Court Orders Which May Amend this Rule

7. Deliberation

Conduct of jurors in retirement

When the case finally is submitted to the jurors, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place under charge of an officer, until they agree upon a verdict, are temporarily dismissed by the court, or are permanently discharged by the court. Unless, by order of the court, the officer having the jurors under the officer's charge must not suffer any communication to be made to them, or to make any himself except to ask them if they have agreed upon a verdict, and the officer, before the verdict is rendered, must not communicate to anyone the state of their deliberations or the verdict agreed upon. Where the jurors have not agreed upon a verdict during

normal working hours of any day of deliberations, the trial judge may temporarily dismiss the jurors and direct them when to resume deliberations. Where a trial jury contains both male and female members, the trial judge may direct that the female members of the jury be placed in charge of a female bailiff and permitted to retire to a suitable place for rest, and the male members of the jury placed in charge of a male bailiff for a similar purpose. In all cases where the jurors are dismissed or separated, as above stated, the trial judge shall admonish the members thereof that they must not in any manner discuss the case with anyone, nor permit anyone to discuss it with them, while they are so dismissed or separated, and that they must discuss and consider the case only in the room when all members of the jury are present.

N.D. Cent. Code, § 28-14-18 (2005)

8. Length of Service

Length of service by jurors

In any two-year period a person may not be required:

1. To serve or attend court for prospective service as a petit juror more than ten court days, except if necessary to complete service in a particular case;
2. To serve on more than one grand jury; or
3. To serve as both a grand and petit juror.

N.D. Cent. Code, § 27-09.1-15 (2005)

9. Length of Time Restrictions on Trials

N/A

10. Judge's Responses to Jury Questions

N/A

11. Jury Size

Size of juries in civil cases

In all civil actions when a jury is impaneled, a jury must consist of six qualified jurors unless any party makes a timely written demand for a jury of nine.

N.D. Cent. Code, § 28-14-03.1 (2005)

Juries of less than nine -- Majority verdict.

(a) Stipulation. The parties may stipulate that the jury shall consist of any number less than nine or that a verdict or finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

(b) Jury of six. In all civil actions in which a jury is impaneled, the jury shall consist of six qualified jurors unless any party entitled to do so makes a written demand for a jury of nine in accordance with N.D.R.Civ.P. 38.

N.D.R. Civ. P., Rule 48 (2005)

Note: Review Court Orders Which May Amend this Rule

12. Number of Jurors Needed to Return a Verdict

Juries of less than nine -- Majority verdict.

(a) Stipulation. The parties may stipulate that the jury shall consist of any number less than nine or that a verdict or finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

(b) Jury of six. In all civil actions in which a jury is impaneled, the jury shall consist of six qualified jurors unless any party entitled to do so makes a written demand for a jury of nine in accordance with N.D.R.Civ.P. 38.

N.D.R. Civ. P., Rule 48 (2005)

Note: Review Court Orders Which May Amend this Rule

13. Juror Admonition

Admonitions to jurors -- Keeping in charge

The jurors sworn to try a civil action may be kept in charge of proper officers during each recess of the court pending the trial. Whether the jurors are permitted to separate or are kept in charge of an officer, they must be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is submitted finally to them.

N.D. Cent. Code, § 28-14-16 (2005)

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 jury

(a) Requests.

(1) A party may, at the close of the evidence or at an earlier reasonable time that the court directs, file and furnish to every other party written requests that the court instruct the jury on the law as set forth in the requests.

(2) After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated at an earlier time for requests set under Rule 51 (a) (1), and

(B) with the court's permission file untimely requests for instructions on any issue.

(3) The court may require each request to be written on a separate sheet. North Dakota pattern jury instructions may be requested by reference to the instruction number.

(b) Instructions.

(1) The court:

(A) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(B) must give the parties an opportunity to object on the record and out of the jury's hearing to the proposed instructions and actions on requests before the instructions and arguments are delivered.

(2) The court may instruct the jury at any time after trial begins and before the jury is discharged.

(3) Immediately after the jury is sworn the court may give instructions concerning:

(A) jury duties and conduct;

(B) the order of proceedings;

(C) elementary legal principles governing the proceedings; and

(D) the procedure for submitting written questions to witnesses under N.D.R.Ct. 6.8, if the court allows written questions.

(4) The court's instructions must be in writing unless the parties otherwise agree.

(A) If written instructions are given, they must be signed by the court and provided to the jury for use during deliberations.

(B) If oral instructions are given, they may be provided to the jury for use during deliberations only if they are transcribed and the court orders them provided.

(C) All instructions used by the jury during deliberations must be returned to the court when the verdict is submitted.

(c) Objections.

(1) a party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds of the objection.

(2) An objection is timely if:

(A) a party that has been informed of an instruction or action on a request before the jury is instructed and before final jury arguments, as provided by Rule 51(b)(1), objects at the opportunity for objection required by Rule 51 (b) (2); or

(B) a party that has not been informed of an instruction or action on a request before the time for objection provided under Rule 51 (b) (2) objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Preserving Objections; Plain Error.

(1) A party may assign as error:

(A) an error in an instruction actually given if that party made a proper objection under Rule 51 (c), or

(B) a failure to give an instruction if that party made a proper request under Rule 51 (a).

(2) A court may consider a plain error in the instructions affecting

substantial rights that has not been preserved as required by Rule 51 (d)
(1) (A) or (B).

N.D.R. Civ. P., Rule 51 (2005)

Note: Review Court Orders Which May Amend this Rule

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

What papers jurors may take

Upon retiring for deliberation, the jurors may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not in the opinion of the court to be taken from the person having them in possession, and they also may take with them notes of the testimony or other proceedings on the trial taken by any juror, but none taken by any other person.

N.D. Cent. Code, § 28-14-17 (2005)

23. Various Rules

N/A

24. Various Recommendations

N/A