

IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

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South Dakota 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 for jurors -- Appearance fee -- Certificate of attendance

Each juror for each day's attendance upon the circuit court or the magistrate court shall receive fifty dollars, and mileage at such rate as may be established pursuant to [§ 3-9-1](#) for each mile actually and necessarily traveled, to be paid by the county. However, any juror called but not impaneled shall receive an appearance fee of ten dollars and, in addition, mileage at such rate as may be established pursuant to [§ 3-9-1](#) for each mile actually and necessarily traveled. Such juror's fees, except as provided in [§ 16-13-47](#), shall be paid by the county treasurer upon the presentation of warrants. The warrants shall be issued by the county auditor forthwith upon filing of each juror's certificate of attendance. Each certificate shall bear the endorsement or certificate of the clerk of the court in which such fees accrued to the effect that the certificate is accurate as to the time expended and the amount of fees claimed.

S.D. Codified Laws § 16-13-46 (2004)

Employer may not discharge or suspend employee serving as juror – Penalty

No person shall discharge any employee or suspend any employee from his employment for serving as a juror in any court in the State of South Dakota. Any person violating this section is guilty of a Class 2 misdemeanor.

S.D. Codified Laws § 16-13-41.1 (2004)

Timing of payment for jurors

Any juror having compensation or mileage or both due and owing him may receive payment for it at the end of every week.

S.D. Codified Laws § 16-13-47.1 (2004)

5. Alternate Jurors

Alternate jurors

The court may direct that not more than six jurors in addition to the regular jury 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 regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, two peremptory challenges if three or four alternate jurors are to be impaneled, and three peremptory challenges if five or six alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only and the other peremptory challenges allowed by law shall not be used against an alternate juror.

S.D. Codified Laws § 15-6-47(b) (2004)

6. Discussions pre-deliberation

N/A

7. Deliberation

Jury's retirement for deliberation

When the case is finally submitted to the jury 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 or are discharged by the court; provided, that the court may, at its discretion, permit the jurors to separate during the adjournment of court overnight.

S.D. Codified Laws § 15-14-19 (2004)

Papers and notes in jury room

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

S.D. Codified Laws § 15-14-20 (2004)

Communication with jury during deliberations

Unless by order of the court the officer having the jury under his charge must not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon a verdict; or to make such communications necessary for their food and maintenance while in his charge; and he must not before their verdict is rendered communicate to any person the state of their deliberations, or the verdict agreed upon.

S.D. Codified Laws § 15-14-21 (2004)

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

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.

S.D. Codified Laws § 15-6-48 (2004)

12. Number of Jurors Needed to Return a Verdict

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.

S.D. Codified Laws § 15-6-48 (2004)

Sufficiency of verdict by five-sixths vote

In all civil actions cognizable by a magistrate judge, except actions for the forcible entry and detainer, or detainer only, of real property, tried in the circuit court, the verdict may be rendered by five-sixths of the jury in the manner provided in [§§ 15-14-28](#) and 15-14-29.

S.D. Codified Laws § 15-14-27 (2004)

Verdict procedure when five-sixths vote is sufficient-- Inquiry -- Dissenting votes

In the actions provided for in [§ 15-14-27](#), when the jury has agreed upon their verdict, they shall be conducted into court, their names shall be called by the clerk and the verdict shall be rendered by their foreman. The verdict shall be in writing signed by the foreman and shall be read by the clerk to

the jury and the inquiry made whether it is their verdict. If two or more of the jury disagree, they shall be sent out again. If five of the jury agree to the verdict, it shall be the verdict of the jury and so recorded.
S.D. Codified Laws § 15-14-28 (2004)

Polling of jury when five-sixths vote is sufficient

If neither party in an action provided for in [§ 15-14-27](#) requires the jury to be polled, the verdict is complete and the jury shall be discharged from the case. Either party may require the jury to be polled, which shall be done by the court or clerk asking each juror if it is his or her verdict. If more than one answers in the negative, the jury shall be sent out.

S.D. Codified Laws § 15-14-29 (2004)

13. Juror Admonition

Court to admonish jurors on separation

Whenever the jurors are permitted to separate they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person on any subject of the trial, and that it is their duty not to form or express any opinion thereon until the case is finally submitted to them.

S.D. Codified Laws § 15-14-12 (2004)

14. Jury Nullification

N/A

15. The Use of Plain English

N/A

16. Absence of the Jury

Certain hearings to be conducted without jury present

Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if he so requests.

S.D. Codified Laws § 19-9-9 (2004)

Court adjournments during jury's absence

While the jury is absent the court may adjourn from time to time, in respect to other business; but it is nevertheless open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

S.D. Codified Laws § 15-14-22 (2004)

17. Jury Instructions

Procedure

The court shall in no case qualify, modify, or in any manner explain to the jury any written instruction given, unless such qualification, modification, or explanation shall first have been reduced to writing and made a part of such instruction and settled.

The court may, after the giving of instructions and at any time before verdict, recall the jury for further instructions, which, if given, shall be given in full compliance with the provisions of § 15-6-51(a) and (b).

After the jury has retired for deliberation if there be a disagreement between them as to any part of the testimony or if they desire to be informed of any point of law arising in the case, they may require the officer to conduct them into court. Upon their being brought into court the information required, if given, must be given in the presence of, or after notice to the parties or counsel, and the instruction given shall be taken down by the court reporter.

In all cases the instructions shall be taken by the jury in their retirement, and the jury shall be provided with the number of copies the court deems necessary. The instructions shall include any general or preliminary instructions prepared and read to the jury by the court and the instructions as to the applicable law. The original instructions shall be returned into court with the verdict. No instruction taken by the jury shall be marked so as to indicate it was requested.

S.D. Codified Laws § 15-6-51(a) (2004)

Settlement of requested and proposed instructions

A written request offered to the court by a party is a "requested" instruction. Instructions prepared by the court are "proposed" instructions. The court must settle all requested and proposed instructions, on the record, out of the hearing of the jury. During the settlement hearing, the parties must make their objections to the proposed instructions and other parties' requested instructions pursuant to SDCL 15-6-51(a). The court must rule on the objections and requested instructions before the close of the hearing. All refused instructions shall be filed with the clerk of courts. After the close of the hearing, the instructions are "settled." The court must reduce all settled instructions to writing and read them to the jury.

The jury and the parties must receive at least one copy of the instructions.

S.D. Codified Laws § 15-6-51(b) (2004)

Jury question during deliberations

The court must settle, in writing, pursuant to SDCL 15-6-51(b), a response to a jury question sent out by the jury during deliberations.

S.D. Codified Laws § 15-6-51(c) (2004)

Note: Look to **Settlement of requested and proposed instructions** above)

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

Papers and notes in jury room

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

S.D. Codified Laws § 15-14-20 (2004)

23. Various Rules

N/A

24. Various Recommendations

N/A