

# IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

Updated 08.08.2005

## Tennessee Jury Innovations

### 1. Note Taking

#### **Juror Information.**

Juror Notetaking. -- Jurors shall be instructed that they may take notes during the trial. The court shall provide suitable materials for this purpose. Jurors shall have access to their notes during recesses and deliberations. After the jury has rendered a verdict, the notes shall be collected by court personnel who shall destroy them promptly.

Tenn. Civ. Proc. Rule 43A.01 (2005)

Note: Court Orders May Amend This Rule

#### **Juror Notebooks**

When the court deems it helpful in a particular case, jurors may be provided with notebooks to use in collecting and organizing appropriate materials, including such items as jury instructions, copies of exhibits, and the juror's own notes. Counsel should be apprised of this procedure and invited to prepare exhibits and other materials in a way that facilitates their inclusion in the jurors' notebooks. At the end of the trial, the notebooks should be collected by court personnel and their contents destroyed, unless the court instructs to the contrary.

Tenn. Civ. Proc. Rule 43A.02 (2005)

Note: Court Orders May Amend This Rule

### 2. Juror Handbooks/Notebooks

#### **Juror Information.**

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should be collected by court personnel and their contents destroyed, unless the court instructs to the contrary.

Tenn. Civ. Proc. Rule 43A.02 (2005)

Note: Court Orders May Amend This Rule

### **3. Juror Questions and Questioning of Witnesses**

#### **Juror Questions of Witnesses**

In the court's discretion, a juror desiring to propound a question to a witness may be permitted to do so. The juror must put the question in written form and submit it to the judge through a court officer at the end of a witness' testimony. The judge shall review all such questions and, outside the hearing of the jury, shall consult the parties about whether the question should be propounded. The judge, in his or her discretion, may ask the juror's question in whole or part and may change the wording of the juror's question before propounding it to the witness. The judge may permit counsel to ask the question in its original or amended form in whole or part, in the judge's discretion. When juror questions are permitted, early in the trial jurors shall be instructed about the mechanics of asking a question. In addition, the jurors shall be instructed to give no meaning to the fact that the judge chose not to ask a question or altered the wording of a question submitted by a juror. A juror's question shall be anonymous, so that the juror's name is not included in the question. All jurors' questions, whether approved or disapproved by the court, shall be retained for the record.

Tenn. Civ. Proc. Rule 43A.03 (2005)

### **4. Juror Pay/Compensation**

#### **Per diem and travel allowance**

(a) Every regular juror, including jurors on chancery court juries, is entitled to receive at least ten dollars (\$ 10.00) for each day's attendance.

(b) The legislative body of any county or the legislative body of the metropolitan government of any county having a metropolitan form of government may by vote increase this rate to an amount in excess of ten dollars (\$ 10.00) for each day's attendance and to be allowed all tolls necessarily incurred in going to and returning from court and mileage at the rate of ten cents (10 cent(s)) per mile on the way from the home of the juror to the courthouse of the county where such juror is summoned and attends, or in the alternative such county may pay each juror a flat rate of eleven dollars (\$ 11.00) per day, or any county with a metropolitan or home rule type of government may, at its option, set the compensation for each juror in its county by ordinance, to be paid out of the county treasury.

(c) The provisions of this section shall not be intended or considered as

repealing or rescinding any special or private act now in effect.

(d) The amount of fees or compensation of juries serving in all criminal actions shall be equal to that of juries serving in felony cases.

Tenn. Code Ann. § 22-4-101 (2004)

**Absence from employment -- Amount of compensation**

(a) (1) Upon receiving a summons to report for jury duty, any employee shall on the next day the employee is engaged in such employee's employment exhibit the summons to the employee's immediate superior, and the employee shall thereupon be excused from employment for the day or days required of the employee while serving as a juror in any court of the United States or the state of Tennessee; provided, that such employee's responsibility for jury duty exceeds three (3) hours during the day for which excuse is sought.

(2) If an employee summoned for jury duty is working a night shift or is working during hours preceding those in which court is normally held, such employee shall also be excused from employment as provided by this section for the shift immediately preceding the employee's first day of service on any lawsuit. After the first day of service, when such person's responsibility for jury duty exceeds three (3) hours during a day, then such person shall be excused from the person's next scheduled work period occurring within twenty-four (24) hours of such day of jury service. Any question concerning the application of the provisions of this subsection to a particular work shift or shifts shall be conclusively resolved by the trial judge of the court to which the employee has been summoned.

(b) (1) Notwithstanding the excused absence as herein provided, the employee shall be entitled to such employee's usual compensation received from such employment, less the amount of the fee or compensation the employee received for serving as a juror, except that the employer may pay the employee such employee's usual compensation without deducting an amount equal to the fee or compensation the employee received for such employee's jury service.

(2) Railroad employees who are paid on a mileage basis will be paid the mileage pay they would have received had they reported for work rather than for jury service on each day covered by the provisions of this section.

(c) It is the duty of all persons paying jurors their fee or compensation for jury service to issue to each juror a statement showing the daily fee or compensation and the total amount of fees or compensation received by the juror. Upon request of the juror prior to each day's service, the person responsible shall provide such juror's employer with a statement that

shows the number of hours that the juror spent serving if service has been less than three (3) hours.

(d) No employer shall be required under the provisions of this section to compensate an employee for more time than was actually spent serving and traveling to and from jury duty.

(e) This section shall not apply to any employer who employs on a regular basis less than five (5) people or to any employee who has been employed on a temporary basis for less than six (6) months.

(f) (1) No employer shall discharge or in any manner discriminate against an employee for serving on jury duty if such employee, prior to taking time off, gives the required notice pursuant to subsection (a) to the employer that such employee is required to serve.

(2) (A) Any employee who is discharged, demoted, or suspended because such employee has taken time off to serve on jury duty is entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer.

(B) Any employer who willfully refuses to rehire, or otherwise restore an employee or former employee commits a Class A misdemeanor.

(g) Any employer who violates the provisions of this section commits a Class A misdemeanor.

(h) For the purposes of this section, "employer" includes the state of Tennessee or any local government.

Tenn. Code Ann. § 22-4-108 (2004)

## **5. Alternate Jurors**

### **Alternate Jurors**

The court may direct prior to the start of jury selection that one or more jurors in addition to the regular jury of twelve persons be called and impaneled. The additional 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. If one or more additional jurors are called, each party is entitled to one peremptory challenge for each such additional juror, up to the maximum provided by law. Such additional peremptory challenges may be used against any regular or additional juror. The trial court in its discretion may use either of the following methods to select and impanel additional jurors:

(1) During the jury selection or the trial of the case, there shall be no distinction made by the court as to which jurors are additional jurors and which jurors are regular jurors. Before the jury retires to consider its verdict, the court shall select by lot the names of the requisite number of jurors to reduce the jury to a body of twelve or such other number as the law provides. A juror who is not selected to be a member of the final jury shall be discharged when that jury retires to consider its verdict.

(2) Following the selection of the jury of twelve regular jurors or such other number as the law provides, the additional jurors shall be selected and impaneled as alternate jurors. Alternate jurors in the order in which they are called shall replace regular jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a regular juror shall be discharged when the jury retires to consider its verdict.

Tenn. Civ. Proc. Rule 47.02 (2005)

Note: Court Orders May Amend This Rule

#### **6. Discussions pre-deliberation**

N/A

#### **7. Deliberation**

N/A

#### **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 that provided by law, 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.

Tenn. Civ. Proc. Rule 48 (2005)

## **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 that provided by law, 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.

Tenn. Civ. Proc. Rule 48 (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**

### **Instructions to Jury: Requests for Instructions**

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. The court may, in its discretion, entertain requests for instructions at any time before the jury retires to consider its verdict.

[As amended by order filed January 1, 2003, and effective July 1, 2003.]

Tenn. Civ. Proc. Rule 51.01 (2005)

Note: Court Orders May Amend This Rule

### **Instructions to Jury: Objection -- Failure to Object**

After the judge has instructed the jury, the parties shall be given opportunity to object, out of hearing of the jury, to the content of an instruction given or to failure to give a requested instruction, but failure to make objection shall not prejudice the right of a party to assign the basis of the objection as error in support of a motion for a new trial.

Tenn. Civ. Proc. Rule 51.02 (2005)

Note: Court Orders May Amend This Rule

### **Instructions to Jury: Timing**

(1) At Beginning of Trial. Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the general nature of the case, and the elementary legal principles that will govern the proceeding.

(2)

(2) Before and After Closing Argument. Jury instructions on the applicable law may be given before closing argument, in the court's discretion. All or part of such instructions may be repeated after closing argument. Additional instructions concerning organizational and related matters also may be given after closing argument. [Added by order filed January 31, 2003, and effective July 1, 2003.]

Tenn. Civ. Proc. Rule 51.03 (2005)

Note: Court Orders May Amend This Rule

### **Instructions to Jury: Written Form**

If the judge elects to reduce to writing the instructions given under Rule 51.03(2), the judge shall give the jury one or more copies of the written instructions, in their entirety, for use in the jury room during deliberations. After the deliberations are concluded, the written charge shall be returned to the judge. [Added by order filed January 31, 2003, and effective July 1, 2003.]

Tenn. Civ. Proc. Rule 51.04 (2005)

Note: Court Orders May Amend This Rule

### **18. Child-Care for Jurors**

N/A

### **19. Jury Room**

N/A

### **20. Accommodation**

#### **Board and lodgings**

For boarding and lodging each jury, persons shall be allowed twenty-seven dollars (\$ 27.00) per day.

Tenn. Code Ann. § 22-4-102 (2004)

### **21. Juror's Bill of Rights**

N/A

### **22. Materials Permitted in Possession of the Jury**

N/A

### **23. Various Rules**

#### **Interim Commentary**

During the course of the trial, the court may permit counsel to address the jury in order to assist jurors in understanding the evidence that has been presented or will be presented. The trial court may place reasonable time

limits on such statements and shall permit all counsel to respond to the remarks of any one lawyer.

Tenn. Civ. Proc. Rule 44A (2005)

Note: Court Orders May Amend This Rule

#### **24. Various Recommendations**

N/A