

IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

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Washington Jury Trial Innovations

1. Note Taking

Note-taking by Jurors

In all cases, jurors shall be allowed to take written notes regarding the evidence presented to them and keep these notes with them during their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered. Wash. CR 47(j) (2005) and Wash. CRLJ 38(h) (2005) and

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr47

Washington State Jury Commission Report, July 2000 Recommendation 29

Court rules should be amended to allow jurors to take notes in every case, regardless of the length or complexity of the trial. Jurors should be permitted to review their own notes in the jury room during recesses.

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=279&committee_id=101

2. Juror Handbooks/Notebooks

Washington State Jury Commission Report, July 2000 Recommendation 30

Juror notebooks should be provided in lengthy or complex cases and in other cases at the judge's discretion. The notebooks should contain information that will help jurors perform their duties, such as preliminary instructions, a summary of claims and defenses, and copies of key exhibits.

Juror notebooks can be a significant aid to juror comprehension and recall of evidence. The parties should prepare the notebook with court supervision. The tabbed notebook may contain:

- a trial schedule of days and hours court will be in session
- a seating chart for the courtroom that identifies all trial participants
- preliminary jury instructions
- a summary of the parties claims and defenses
- witnesses names, biographies, or photographs
- a glossary of technical terms

- copies of key exhibits and an index of all exhibits
- paper for taking notes
- final jury instructions

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=279&committee_id=101

3. Juror Questions and Questioning of Witnesses

Washington State Jury Commission Report, July 2000 Recommendation 33

In every case, jurors should be permitted to submit written clarifying questions to witnesses, subject to careful judicial supervision. The decision of whether to permit a question rests with the judge, although counsel retain the right to object to the scope or content of any specific question. Jurors are not permitted to ask oral questions. The rules of civil procedure and criminal procedure should be amended accordingly.

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=279&committee_id=101

4. Juror Pay

Employer's Payment to Employee's in jury service

Payment is voluntary, not mandatory. State law does not currently require employers to continue paying the salary of employees who are absent because of jury service. Many employers, however, including state, federal, and many local governmental agencies, have a policy of compensating employees for at least part, if not all, of the time spent for jury service. If employers do pay, they have the right to require employees to remit to them the fees received for jury service.

http://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo_jury.employers

Washington State Jury Commission Report, July 2000 Recommendation 12

The Commission views a fee increase as its highest priority. Citizens required to perform jury service should be compensated fairly and appropriately. Legislation should be drafted requiring that current fees be raised, with the increase funded by the state. Local jurisdictions are encouraged to provide or pay for transportation and parking. Jurors could donate their fees and expenses to a court jury improvement fund.

Jurors in most jurisdictions have not received a raise since 1959 when the \$10 per day juror fee was first instituted. Adjusted for inflation, that \$10 fee would have increased to \$55 by 1999. The Commission considers it unacceptable that this states citizens are required to perform one of the most important civic duties at a rate that does not remotely approach minimum wage

In order to fairly compensate those most burdened by jury service, while still considering the current fiscal environment in the local jurisdictions, the Commission proposes the following:

Juror Fees:

1. The juror fee should remain at \$10 for the first day of service.
2. From the second day forward, juror fees should be increased to \$45 per day.
3. Localities will be responsible for paying the \$10 fee on the first day, and for funding \$10 of the \$45 fee from day 2 forward. The \$35 increase, starting with day 2 of service, should be funded by the state.
4. Any portion of a day in which a juror is required to report to a court facility should be considered a full day.

http://www.courts.wa.gov/programs_orgs/pos_jurycomm/?fa=pos_jurycomm.showreport&id=rec12

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. 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. An alternate juror who does not replace a regular juror may be discharged or temporarily excused after the jury retires to consider its verdict. When an alternate juror is temporarily excused but not discharged, the trial judge shall take appropriate steps to protect such juror from influence, interference or publicity which might affect that jurors ability to remain impartial, and the trial judge may conduct brief voir dire before seating such alternate juror for any trial or deliberations. An alternate juror may be recalled at any time that a regular juror is unable to serve, including a second phase of any trial that is bifurcated. If the jury has

commenced deliberations prior to the replacement of a regular juror with an alternate juror, the jury shall be instructed to disregard all previous deliberations and to begin deliberations anew.

Wash. CRLJ 38(e) (2005) and (Rule CR 47(b))

Washington State Jury Commission Report, July 2000 Recommendation 24

Alternate jurors should be told that they are alternates at the beginning of the trial.

Although it has been suggested that alternates are less attentive than jurors, no reliable research exists to support this conclusion. Not designating alternates until the end of trial is disrespectful and may cause juror frustration and resentment.

http://www.courts.wa.gov/programs_orgs/pos_jurycomm/?fa=pos_jurycomm.sho_wreport&id=rec24

6. Discussions pre-deliberation

N/A

7. Deliberation

During deliberations, the jury may be allowed to separate unless good cause is shown, on the record, for sequestration of the jury. Unless the members of a deliberating jury are allowed to separate, they must be kept together in a room provided for them, or some other convenient place under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the best of his or her ability, keep the jury separate from other persons. The officer shall not allow any communication to be made to them, nor make any himself or herself, unless by order of the court, except to ask them if they have agreed upon their verdict, and the officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on.

Rev. Code Wash. (ARCW) § 4.44.300 (2005)

Deliberation

After argument, the jury shall retire to consider its verdict. In addition to the written instructions given, the jury shall take with it all exhibits received in evidence, except depositions. Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession. Pleadings shall not go to the jury room. (Rule CR 51(h)).

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&rul eid=supcr51

Care of Jury While Deliberating.

Generally. During trial and deliberations the jury may be allowed to separate unless good cause is shown, on the record, for sequestration of the jury.” (Rule CR 47(i)(1)).

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr47

Communication Restricted

Unless the jury is allowed to separate, the jurors shall be kept together under the charge of one or more officers until they agree upon their verdict or are discharged by the court. The officer shall keep the jurors separate from other persons and shall not allow any communication which may affect the case to be made to the jurors, nor make any himself, unless by order of the court, except to ask the jurors if they have agreed upon their verdict. The officer shall not, before the verdict is rendered, communicate to any person the state of the jurors' deliberations or their verdict. (CR 47(2)).

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr47

8. Length of Service

N/A

9. Length of Time Restrictions on Trials

Washington State Jury Commission Report, July 2000 Recommendation 25

Trial judges should set reasonable overall time limits for each party at trial. To set time limits, the court should consider among other factors: the number of witnesses; the number and complexity of issues; the respective evidentiary burdens of the parties; the nature of evidence to be presented; the feasibility of shortening trial by stipulations; and pre-admitting exhibits.

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=279&committee_id=101

Washington State Jury Commission Report, July 2000 Recommendation 8

Courts should require jury service for the shortest period possible. Therefore, the statute should be amended to shorten the jury term to a maximum of one week and jury service to a maximum of two days or one trial.

In addition, the Washington State Jury Standards and Washington statutes currently state that the optimal jury term is two weeks or less and that optimal juror service is one day or one trial, whichever is longer.

http://www.courts.wa.gov/programs_orgs/pos_jurycomm/?fa=pos_jurycomm.showreport&id=rec8

10. Judge's Responses to Jury Questions

Questions for Jury During Deliberations.

The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff without any indication of the status of the jury's deliberations. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing. (Rule CR 51(i))

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr51

Washington State Jury Commission Report, July 2000 Recommendation 38

Trial judges should make every effort to respond fully and fairly to questions from deliberating jurors. Judges should not merely refer them to the instructions without further comment or tell them to rely upon their memories of the evidence. In doing so, judges should be careful not to pressure the jury or state or imply any view of the case's merits.

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11. Jury Size

Juries of fewer than six

The parties may at any time stipulate that the jury shall consist of at least three but fewer than six jurors, or that a verdict of a stated majority shall be taken as the verdict or finding of the jury.

CRLJ 38(f) (2005)

Number of jurors required to render verdict

In all trials by juries of six in the superior court, except criminal trials, when five of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the presiding juror, and the verdict shall stand as the verdict of the whole jury, and have all the force and effect of a verdict agreed to by six jurors. In cases where the jury is twelve in number, a verdict reached by ten shall have the same force and effect as described above, and the same procedures shall be followed.

Rev. Code Wash. (ARCW) § 4.44.380 (2005)

Juries of Less than Twelve

The parties may stipulate that the jury shall consist of any number less than 12 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. (Rule 48)

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr48

12. Number of Jurors Needed to Return a Verdict

Number of jurors required to render verdict

In all trials by juries of six in the superior court, except criminal trials, when five of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the presiding juror, and the verdict shall stand as the verdict of the whole jury, and have all the force and effect of a verdict agreed to by six jurors. In cases where the jury is twelve in number, a verdict reached by ten shall have the same force and effect as described above, and the same procedures shall be followed.

Rev. Code Wash. (ARCW) § 4.44.380 (2005)

13. Juror Admonition

The court may admonish the jurors that they must not discuss among themselves any subject connected with the trial until they begin their deliberations. The court may also admonish the jurors that they must not discuss with nonjurors any subject connected with the trial until the jurors have been dismissed from the case.

Rev. Code Wash. (ARCW) § 4.44.280 (2005)

14. Jury Nullification

N/A

15. The Use of Plain English

Washington State Jury Commission Report, July 2000 Recommendation 26

Judges should encourage all trial participants to use plain language likely to be understood by the jury. Judges should also take steps to minimize juror confusion.

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16. Absence of the Jury

Motions

Any motions or proceedings concerning the separation or sequestration of the jury shall be made out of the presence of the jury.

Rule CR 47(i)(3)

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr47

17. Jury Instructions

Instructing the Jury and Argument.

After counsel have completed their objections and the court has made any modifications deemed appropriate, the court shall then provide each counsel with a copy of the instructions in their final form. The court shall then read the instructions to the jury. The plaintiff or party having the burden of proof may then address the jury upon the evidence, and the law as contained in the courts instructions; after which the adverse party may address the jury; followed by the rebuttal of the party first addressing the jury.

Rule CR 51(g)

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr51

Washington State Jury Commission Report, July 2000 Recommendation 27

In both civil and criminal cases, after the jury is impaneled, the judge should instruct the jurors as to the basic elements of the claims, charges, and defenses. The judge must inform the jurors that the instructions are preliminary only and that their deliberations must be governed by the final instructions.

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Washington State Jury Commission Report, July 2000 Recommendation 35

To the greatest extent feasible, each juror should be given a copy of the jury instructions before oral instruction by the court.

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Washington State Jury Commission Report, July 2000 Recommendation 36

Jury instructions should be readily comprehensible by jurors. They should be case specific and stated in plain language. The number and length of instructions should be reduced to a minimum.

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Washington State Jury Commission Report, July 2000 Recommendation 37

Washington's Pattern Jury Instructions should provide jurors with suggested deliberation procedures. The suggested procedures should include selecting a presiding juror, organizing the discussion, encouraging full participation by all jurors, handling disagreements, and taking votes.

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Washington State Jury Commission Report, July 2000 Recommendation 39

The final jury instructions should explain the procedures for requesting clarification of instructions. The judge should advise the jury to submit any questions about instructions in writing to the bailiff.

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=280&committee_id=101

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

N/A

24. Various Recommendations

Washington State Jury Commission Report, July 2000 Recommendation 28

When the procedure will assist jurors, the court should distribute place cards, name tags, or seating charts identifying parties, witnesses, counsel, and other pertinent individuals in the courtroom.

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Washington State Jury Commission Report, July 2000 Recommendation 32

When a witness appears by written or videotaped deposition, the testimony proposed for admission should be identified and objections to admission resolved before potential jurors arrive at the courtroom. When

deposition testimony is read to the jury, each juror should be provided, to the extent feasible, with a redacted transcript of the testimony for the juror's use during the reading. Redactions should not be apparent to the jury.

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Washington State Jury Commission Report, July 2000 Recommendation 34

In long trials, the court should consider allowing periodic mini-opening statements to improve juror understanding.

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Washington State Jury Commission Report, July 2000 Recommendation 40

When a jury question arises during deliberations regarding the evidence, the judge should notify the parties or their counsel of the question. The judge should read the question and solicit comments regarding the appropriate response. The response and any objections to it should be made a part of the record. This process should be mandated by court rule.

The judge should, after consulting with the parties or counsel, respond to all jury questions, even if the response is no more than a directive to rely upon their memories of the evidence. The court may allow the jury to review evidence (e.g., replaying audio or video tapes) if such review is not unfairly prejudicial to either party. The court may grant a jury's request to rehear or replay trial testimony, but should do so in a way that is least likely to constitute a comment on the evidence and that minimizes the possibility that jurors will give undue weight to the selected testimony.

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=280&committee_id=101

Washington State Jury Commission Report, July 2000 Recommendation 41

When deliberating jurors in a civil case report that they cannot reach a verdict, the judge should take additional steps after confirming that the jury is, in fact, deadlocked. The judge should invite the jury to state, in writing, the points of law or evidence upon which it cannot agree and desires help. The judge should discuss the jury's response with counsel before deciding how to proceed. The judge can provide additional instructions, permit additional closing arguments, reread or replay testimony, reopen the trial for more evidence, or allow a combination of these. In communicating with jurors, the judge must avoid any appearance of coercing a verdict.

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=280&committee_id=101