

IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

Updated 08.08.2005

West Virginia State 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 and mileage of grand jurors

A grand juror shall be paid mileage, at the rate set by the commissioner of finance and administration for state employees, for travel expenses incurred in traveling from the grand juror's residence to the place of the holding of the grand jury and return, and shall be reimbursed for other expenses incurred as a result of required attendance at sessions of the grand jury at a rate of between fifteen and forty dollars, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance.

W. Va. Code § 52-2-13 (2005)

Reimbursement of jurors

(a) A juror shall be paid mileage, at the rate set by the Commissioner of Finance and Administration for state employees, for travel expenses from the juror's residence to the place of holding court and return and shall be reimbursed for other expenses incurred as a result of required attendance at sessions of the court at a rate of between fifteen and forty dollars, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance. Such reimbursement shall be based on vouchers submitted to the sheriff. Such mileage and reimbursement shall be paid out of the State Treasury.

(b) When a jury in any case is placed in the custody of the sheriff, he or she shall provide for and furnish the jury necessary meals and lodging while they are in the sheriff's custody at a reasonable cost to be determined by an order of the court; and the meals and lodging shall be paid for out of the State Treasury.

(c) Anytime a panel of prospective jurors has been required to report to court for the selection of a petit jury in any scheduled matter, the court

shall, by specific provision in a court order, assess a jury cost. In circuit court cases the jury cost shall be the actual cost of the jurors' service, and in magistrate court cases, the jury cost assessed shall be two hundred dollars. Such costs shall be assessed against the parties as follows:

(1) In every criminal case, against the defendant upon conviction, whether by plea, by bench trial or by jury verdict;

(2) In every civil case, against either party or prorated against both parties, at the court's discretion, if the parties settle the case or trial is to the bench; and

(3) In the discretion of the court, and only when fairness and justice so require, a circuit court or magistrate court may forego assessment of the jury fee, but shall set out the reasons therefor in a written order: Provided, That a waiver of the assessment of a jury fee in a case tried before a jury in magistrate court may only be permitted after the circuit court, or the chief judge thereof, has reviewed the reasons set forth in the order by the magistrate and has approved such waiver.

(d) (1) The circuit or magistrate court clerk shall by the tenth day of the month following the month of collection remit to the state treasurer for deposit as described in subdivision (2) of this subsection all jury costs collected, and the clerk and the clerk's surety are liable therefor on the clerk's official bond as for other money coming into the clerk's hands by virtue of the clerk's office.

(2) The jury costs described in subdivision (1) of this subsection shall upon receipt by the State Treasurer be deposited as follows: (A) One-half shall be deposited into the Parent Education and Mediation Fund created in section six hundred four [§ 48-9-604], article nine, chapter forty-eight of this code; and (B) one-half shall be deposited into the Domestic Violence Legal Services Fund created in section six hundred three [§ 48-26-603], article twenty-six, chapter forty-eight of this code.

(e) The sheriff shall pay into the State Treasury all jury costs received from the court clerks, and the sheriff shall be held to account in the sheriff's annual settlement for all such moneys.

W. Va. Code § 52-1-17 (2005)

When juror not entitled to reimbursement

No juror who departs without leave of the court or who, being summoned as a witness for the state, charges for attendance as such, may be entitled to receive any reimbursement for services as a juror.

W. Va. Code § 52-1-18 (2005)

5. Alternate Jurors

Alternate jurors for protracted civil cases; qualifications and challenges

In any civil case, whenever in the opinion of the court the trial is likely to be a protracted one, the court may direct that not more than four jurors, in addition to the regular jury, be called and impaneled to sit as alternate jurors. Said alternate jurors shall be chosen from a separate panel of six after the regular jury of six or twelve, as the case may be, has been selected. 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 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, and two peremptory challenges if three or four 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 this section may not be used against an alternate juror.

W. Va. Code § 56-6-12a (2005)

The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who 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 1 additional peremptory challenge if 1 to 3 alternate jurors are to be impanelled and 2 additional peremptory challenges if 4 to 6 alternate jurors are to be impanelled. 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.

WV R RCP Rule 47 (WEST 2005)

6. Discussions pre-deliberation

Contact with Jurors

No party, nor his or her agent or attorney, shall communicate or attempt to communicate with any member of the jury or any member of the juror's immediate family who resides in the same household, until that juror has been excused from further service for a particular term of court, without

first applying for (with notice to all other parties) and obtaining an order allowing such communication. The application shall contain a description of the proposed contact, and an executed certificate by each person involved that no inappropriate contact will be made. The circuit court shall liberally grant the request.

W. Va. T.C.R., Rule 4.09 (2004)

Note: Court Orders May Amend this Rule

7. Deliberation

N/A

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 juror more than thirty court days, except if necessary to complete service in a particular case;
- (2) To serve on more than one grand jury;
- (3) To serve as both a grand and petit juror; or
- (4) To serve as a petit juror at more than one term of court.

W. Va. Code § 52-1-23 (2005)

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 six; majority verdict

The parties may stipulate that the jury shall consist of any number fewer than six 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.

W. Va. R.C.P., Rule 48 (2004)

Note: Court Orders May Amend this Rule

Unless the court directs that a jury shall consist of a greater number, a jury shall consist of six persons

The plaintiff and the defendant shall each have two preemptory challenges which shall be exercised one at a time, alternately, beginning with the plaintiff. Several defendants or several plaintiffs may be considered as a

single party for the purpose of exercising challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

WV R RCP Rule 47 (WEST 2005)

12. Number of Jurors Needed to Return a Verdict

Juries of less than six; majority verdict

The parties may stipulate that the jury shall consist of any number fewer than six 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.

W. Va. R.C.P., Rule 48 (2004)

Note: Court Orders May Amend this Rule

In cases of trial by jury, a sufficient number of persons shall be notified, in accordance with the Administrative Rules for Magistrate Courts, so that, after dismissals for cause, a panel of 10 persons may be assembled who are legally qualified and free from prejudice. The magistrate may conduct the examination of potential members of the panel or may permit all or part of such examination to be conducted by the parties or their attorneys. Upon selection of the panel of 10 persons legally qualified and free from prejudice, each side shall exercise 2 peremptory challenges to reduce the number of jurors to 6. The verdict shall be unanimous, unless the parties stipulate that a verdict or finding of a stated majority shall be taken as the verdict or finding of the jury.

WV R MAG CTS RCP Rule 16 (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

Instructions to jury generally; form and manner of giving

Upon the trial of any case, civil or criminal, before a jury, either party may pray the court to give to the jury any instruction which has been reduced to writing and submitted to the other party. Such other party may object to the giving of such instruction. Every such instruction which shall propound correctly law applicable to the case not covered by other instructions shall be given by the court to the jury as a part of a written charge by the court to the jury, as hereinafter provided, in case such charge be given, and otherwise shall be given as an independent instruction. The court may, on its own motion, whether requested or not, in writing define to the jury the issues involved and instruct them on the law governing the case, but all such instructions shall first be submitted to counsel on each side with opportunity to object thereto. In lieu of the giving of separate instructions as herein provided, the court may in writing instruct upon the law governing the case, putting such instructions in the form of an orderly and connected charge, incorporating therein the substance and, as far as may be, the language of the instructions prayed upon either side or prepared by the court on its own motion, with correctly propounded law applicable to the case, which written charge shall first be submitted to counsel on each side with opportunity to specify and object to any part thereof. No objections shall lie to the action of the court upon any instruction if the law to which it relates shall have been correctly stated by the court in such charge. The action of the court upon every instruction prayed, whether such instruction be given as asked or as modified, independently or as part of the court's charge, or be refused, shall be noted upon the margin thereof by the judge over his signature. Either party may except to any and every ruling by the court adverse to the prayer or objection by him with respect to any such instruction.

W. Va. Code § 56-6-19 (2005)

Instructions to jury; objections

Either before or at the close of the evidence, any party may file written requests that the court instruct the jury on the law as set forth in the requests, and the court shall inform counsel of its proposed action upon the requests before it instructs the jury. The court shall instruct the jury before the arguments to the jury are begun, and the instructions given by the court, whether in the form of a connected charge or otherwise, shall be in writing and shall not comment upon the evidence; except that supplemental written instructions may be given later, after opportunity to object thereto has been accorded to the parties. The court may show the written instructions to the jury and permit the jury to take the written instructions to the jury room. No party may assign as error the giving or the refusal to give an instruction unless the party objects thereto before the arguments to the jury are begun, stating distinctly, as to any given instruction, the matter to which the party objects and the grounds of the

party's objection; but the court or any appellate court, may, in the interest of justice, notice plain error in the giving or refusal to give an instruction, whether or not it has been made the subject of objection. Opportunity shall be given to make objection to the giving or refusal to give an instruction out of the hearing of the jury.

W. Va. R.C.P., Rule 51 (2004)

Note: Court Orders May Amend this Rule

Reading instructions to jury; instructions part of record

All instructions given shall be read by the court to the jury as the action and ruling of the court, without reference to or disclosing the party by whom they may have been prayed. Every instruction or charge in writing read to the jury and every instruction or charge in writing prayed by any party and refused by the court, provided, in either case, that such instruction or charge have a notation thereon showing the action of the court with reference thereto over the signature of the judge, as provided in the preceding section [§ 56-6-19], shall, together with the objections and exceptions thereto, indorsed thereon, be a part of the record in the case and shall be included and copied in any transcript of the record without the formality of a bill of exceptions or any formal certification provided for in subsequent sections of this article.

W. Va. Code § 56-6-20 (2005)

In cases of trial by jury, at the close of the evidence, before arguments to the jury are begun, the magistrate shall instruct the jury regarding the law that is applicable to the case. Any party or counsel for any party may provide to the magistrate written requests that the magistrate instruct the jury on the law as set forth in the requests. The magistrate shall provide all parties or their counsel the opportunity, out of the presence of the jury, to argue for or against the giving or refusal to give any instruction.

WV R MAG CTS RCP Rule 16 (WEST 2005)).

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 taken by jury

Depositions or other papers read in evidence may, by leave of the court, be carried from the bar by the jury.

W. Va. Code § 56-6-23 (2005)

23. Various Rules

Juror Contact

No party, nor his or her agent or attorney, shall communicate or attempt to communicate with any member of the jury or any member of the juror's immediate family who resides in the same household, until after that juror has been excused from further service for a particular term of court, without first applying for (with notice to all other parties) and obtaining an order allowing such communication. The application shall contain a description of the proposed contact, and an executed certificate by each person involved that no inappropriate contact will be made. The circuit court shall liberally grant the request.

WV R TRIAL CT Rule 4.09 (WEST 2005)

Juror Privacy

prior approval by the presiding officer, no person shall broadcast or publish any written report, film, videotape, photograph, audio tape, or other report of any kind or character, taken or made in or out of the courtroom where the face of a juror is shown or the identity of any juror is stated or is otherwise discernable. Nothing herein shall be interpreted to prohibit a juror from voluntarily disclosing his or her identity to the media, after the completion of such juror's term of service.

WV R TRIAL CT Rule 8.10 (WEST 2005)

24. Various Recommendations

N/A