

# Best Practices for Jury Selection and Service in Pennsylvania



THE PENNSYLVANIA  
INTERBRANCH  
COMMISSION FOR  
GENDER, RACIAL  
AND ETHNIC  
FAIRNESS

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# INTRODUCTION

Since the early days of the republic, jury service has been a mark of citizenship and a touchstone of civic duty. Indeed, for those who are called, jury service can be what Thomas Jefferson referred to as “the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution.” Widespread public participation in the jury system is critical to establishing public confidence in the system. Without that confidence, the rule of law, as well as the health of our democracy, is endangered.

In 2003, the Supreme Court Committee on Racial and Gender Bias in the Justice System found widely differing jury selection procedures in judicial districts across the state. These procedures not only differed from one another but were often found to be ineffective and inefficient. In some jurisdictions, jury commissioners or administrators regularly summoned far more jurors than were needed, at great expense to the counties; the jury source lists tapped far too few minority jurors; and thousands of summons were returned on a daily basis with outdated addresses.

With this in mind, then Pennsylvania Supreme Court Chief Justice Ralph J. Cappy requested that the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness (“Commission”) search for the best practices among judicial districts in Pennsylvania and nationally, and provide recommendations to the Court incorporating those practices in a standardized set of procedures for selecting juries across the state. The goals were to improve the efficiency of the process of jury selection and to increase public participation and diversity on juries statewide.

On September 12, 2007, the Commission submitted the results of its study to the Court, entitled *Suggested Standardized Procedures for Jury Selection in Pennsylvania*. The report covered thirteen areas of jury practice, including the Juror Summons Process; Juror Utilization; Jury Source Lists; Juror Qualifications; Juror Exemptions, Deferrals and Excusals; Juror Failure to Appear; Juror Compensation; Terms of Jury Service; Jury *Voir Dire*; Peremptory Challenges; Juror Privacy; Juror Security; and Jury Education and Appreciation Campaigns. The Commission consulted national experts and studies on jury service, reports on jury reform produced by other states and information about practices utilized by individual counties in Pennsylvania.

The current report, entitled *Best Practices for Jury Selection and Service in Pennsylvania*, is a revised version of the 2007 report. We have updated the information and resources for each of the above-mentioned areas of jury practice and also added the following four topics: Juror Childcare; Juror Stress; Jury Service Scams; and Social Media and Jury Instructions.

The report addresses the elements of the process most likely to influence citizens’ willingness to serve and to determine who is selected to serve. Our goal was to uncover the most efficient and progressive practices in jury selection around the country and provide that information to the Supreme Court and to judicial districts throughout Pennsylvania.

# 1 JURY SUMMONS PROCESS

A jury summons is often confusing and difficult for the layperson to understand. This lack of clarity contributes to the failure of potential jurors to respond to summonses. In addition to clarity, a jury summons must contain the most recent contact information for the potential juror in order to maximize juror turnout. Using correct addresses also reduces the costs associated with jury operations by decreasing the incidence of returned summonses due to expired addresses.

## RECOMMENDATIONS

1. It is recommended that the Pennsylvania Supreme Court advise each judicial district to draft clear and practical jury summonses and qualification questionnaires that avoid appearing overly “legalistic,” as follows:

- Jury summonses and qualification questionnaires should be mailed to prospective jurors at the same time - the “one-step process” of summoning prospective jurors.<sup>1</sup>
- Jury summonses and qualification questionnaires should be adapted into a combined document with three principal parts of the new combined form: (1) Jury Summons (the legal document that requires the prospective juror to appear for jury duty at a specific location on a specified date and time)<sup>2</sup>; (2) Juror Information; and (3) General Information.<sup>3</sup>
- The “Juror Information” section should include the qualification questionnaire to determine the person’s eligibility for jury service, as well as any additional information the court needs to obtain from jurors before they report for jury service. Examples of additional information may include the person’s intent to seek an exemption, hardship excusal, or deferral; name or address changes; contact information such as home, cell or work telephone number or email address; and demographic information (race, gender, and ethnicity).
- The “General Information” section should include information about the manner in which jurors are to respond to the summons – including address of courthouse, website of courthouse, telephone numbers and email addresses – and the exact time and date of their appearance. This should also include information about the standards for and how to request an exemption, a hardship excusal, or a deferral. Additionally, the materials should include a pamphlet or notice with introductory court information – such as call-in instructions before reporting, appropriate dress, court amenities, a map to orient jurors to the courthouse and parking facilities (if available) – and answers to frequently asked questions, including the amount of juror compensation and the maximum term of service.<sup>4</sup>
- Design of jury summonses and qualification questionnaires should emphasize readability. Consistent use of fonts and styles, limited use of color (no more than two colors, including black) and wise use of space (including use of blank space) all contribute to readability.<sup>5</sup>



- The summons should include a notice indicating that compliance with the juror summons is not only an obligation of citizenship but is required by law. In addition, the summons should make clear the consequences for failing to respond to the jury summons and/or failure to appear for jury service.<sup>6</sup> (See Section Six, Juror Failure to Appear).

2. It is recommended that the Pennsylvania Supreme Court require each judicial district to establish procedures for resending the summons to those citizens who do not respond initially to a jury summons.<sup>7</sup>

3. It is recommended that the Pennsylvania Supreme Court support new or amended legislation necessary to permit the four contributing government agencies to share Social Security numbers with the Administrative Office of Pennsylvania Courts ("AOPC") and to permit the AOPC to share that information with the judicial districts. This would enable the districts to update and maintain an accurate statewide juror list and to avoid duplication of names on the list.<sup>8</sup> Alternatively, a memorandum of understanding could be entered into between the agencies and the AOPC, that establishes a cooperative agreement allowing the agencies to provide full Social Security number information to the AOPC. Such agreement should include provisions relating to the confidentiality of the Social Security number provided and specific measures to be followed to protect the privacy of the citizens of Pennsylvania.

## ENDNOTES

<sup>1</sup> Paula L. Hannaford-Agor & Nicole L. Waters, *Tripping Over Our Own Feet: Two Steps are One Too Many in Jury Operations*, Future Trends in State Courts, p. 115 (2010); Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 15 (April 2006).

<sup>2</sup> See Appendix A (“JUROR SUMMONS MAILER WITH SUMMONS FORM, JUROR QUALIFICATION QUESTIONNAIRE, MAP OF COURTHOUSE AND PARKING INSTRUCTIONS, AND IMPORTANT JUROR INFORMATION”).

<sup>3</sup> Hannaford-Agors & Waters, *supra* at 115.

<sup>4</sup> See *id.*; Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, pp. 15-16 (April 2004).

<sup>5</sup> Jonathan Lippman & Ann Pfau, *Best Practices for Jury System Operations*, New York Unified Court System Operations, p. 30 (April 2009).

<sup>6</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, National Center for State Courts, p. 47 (4th Ed., 2006).

<sup>7</sup> National Center for State Courts, *Jury Managers’ Tool Box, Best Practice for Jury Summons Enforcement* (2009); Jonathan Lippman & Ann Pfau, *Best Practices for Jury System Operations*, New York Unified Court System Operations, pp. 24, 36 (April 2009); G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, National Center for State Courts, p. 49 (4th Ed., 2006); American Bar Association, *Principles for Juries & Jury Trials* (2005), p. 53.

<sup>8</sup> Act 37 established a statewide juror list of potential jurors from four state agency lists, effectively broadening the number of source lists used in creating jury pools. However, use of the statewide juror list is not mandatory and many judicial districts have reported problems with the statewide juror list due to duplications caused by a lack of a unique identifier, such as social security number, in the data submitted by the four state agencies. National Center for State Courts, *Jury Managers’ Tool Box, Best Practice for Jury Summons Enforcement* (2009); Jonathan Lippman & Ann Pfau, *Best Practices for Jury System Operations*, New York Unified Court System Operations, p. 30 (April 2009) (“Assure that the data file for each source list includes all fields that are useful for duplicate detection and proper addressing (e.g., social security number....).”).

## 2 JUROR UTILIZATION

The most effective way to obtain the cooperation of all citizens in fulfilling their obligation to perform jury service is to minimize the inconvenience to those citizens who are summoned. Our recommendation for a “one day/one trial” jury system (See Section Eight “Term of Jury Service”, *infra*) supports that goal because it is more efficient than a week-long term system and minimizes the time that jurors must spend at the courthouse. At the same time, however, the one day/one trial system requires more potential jurors to be called into the jury selection process. This has the unfortunate effect of calling more jurors than actually will be needed and costing the court system more money.

In an ideal world, courts would be able to anticipate the exact number of jurors needed on any given day and would summon and qualify jurors accordingly. Although such precision is not realistic in courts today, there are many improvements that administrators could make to their systems of juror utilization<sup>1</sup> that would pay for themselves entirely and could possibly generate additional savings that could be put to use in other areas of court operations.<sup>2</sup> One way to address this problem is to utilize standard panel sizes.

### RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court require each judicial district to follow the method recommended by the National Center for State Courts in its 2009 *Best Practices for Effective Juror Utilization* publication<sup>3</sup>, in order to more efficiently calculate the number of jurors to summon and qualify for jury service. A detailed description of the method is set forth below:

- Start with the jurors needed for any given trial and work backward. For example, a routine, non-violent felony trial in a jurisdiction requires a 12-person jury and provides each side with 6 peremptory challenges. A jury panel for that type of trial would need the following: 12 jurors, 1 to 2 alternates, 4 to 6 prospective jurors removed for cause or hardship, 12 prospective jurors removed by peremptory challenge, and a few more for unforeseen circumstances. See table below.

#### Optimal Jury Panel Size

<i>Reason Persons Needed</i>	<i>Number</i>
Jurors	12
Alternates	2
Prospective jurors removed for cause or hardship	6
Prospective jurors removed by peremptory challenge	12
Extras for other reasons not accounted for	3
Total persons needed	35

- Most courts should be able to impanel a jury with alternates from a panel of 35 prospective jurors. Lengthy or high-profile trials will normally require a larger panel as more jurors are excused for cause or hardship. In those cases, a panel of 40 to 45 prospective jurors might be more appropriate. Similarly, trials involving difficult or controversial evidence (e.g., sexual assault, crimes against children) may also require larger panels. In most instances, the trial judge will be sufficiently familiar with the case to predict when a larger panel is needed.



- Courts with good juror utilization rates often have strictly enforced panel sizes for different types of cases (e.g., felony, misdemeanor, civil) based on information about the number of jurors needed to impanel juries for those cases. Judges who want a larger panel must submit a written request explaining the need for a larger panel to the chief judge or court administrator (not the jury manager, who rarely has sufficient authority to deny a judge’s request with impunity).
- Once the court has determined the appropriate panel size for different case types, it is possible to calculate the number of jurors needed to report to the courthouse each day based on the number of trials scheduled. For example, if three felony trials (requiring panels of 35 jurors each) and one civil trial (requiring a panel of 45 jurors) are scheduled for a given day, the court will need 165 to 170 jurors to report for service that day (150 jurors for panels plus a few more for unforeseen circumstances).
- Judges may stagger the start time of *voir dire*s and trials so that courts may “recycle” prospective jurors; jurors not selected for trial as part of an initial *voir dire* may be considered for an additional trial that starts at a later time. This will help reduce the number of jurors called for trial each day.
- Courts typically summons jurors three to six weeks before the reporting date – well before the court has finalized its trial calendar. Consequently, they typically summons many more jurors than are needed to report, even after accounting for the expected jury yield.<sup>4</sup> To secure optimal juror utilization, it is necessary for the court to have a mechanism such as a telephone call-in system to cancel or “waive off” summonsed jurors or to place them on standby. This prevents the court from having more jurors report than are necessary to fill jury panels.

## ENDNOTES

<sup>1</sup> Juror utilization is the rate at which qualified and available jurors are used at least once in a trial or *voir dire*, expressed as a percentage of the total number of qualified and available jurors (yield). National Center for State Courts, *Effective Use of Jurors, Measurement Number 8 of the CourTopics Trial Court Performance Measurements* (2011).

<sup>2</sup> National Center for State Courts, *Jury Managers’ Toolbox, Best Practices for Effective Juror Utilization*, p. 1 (2009); Paula Hannaford-Agor, *Saving Money for Everyone: The Current Economic Crisis is an Opportunity to Get Serious about Improving Juror Utilization*, National Center for State Courts, *Future Trends in State Courts*, p. 50 (2009).

<sup>3</sup> National Center for State Courts, *Effective Use of Jurors, Measurement Number 8 of the CourTopics Trial Court Performance Measurements* (2011); Paula Hannaford-Agor, *Saving Money for Everyone: The Current Economic Crisis is an Opportunity to Get Serious About Improving Juror Utilization*, National Center for State Courts, *Future Trends in State Courts* (2009).

<sup>4</sup> Jury yield is a basic measure of efficiency in jury operations that describes the proportion of citizens who are qualified and available for jury service.

## 3 JURY SOURCE LISTS

The exclusive use of voter and vehicle registration lists for juror selection often leads to a panel of prospective jurors that is over-representative of older, middle and upper-income, well-educated, and non-minority members of the community.<sup>1</sup> Therefore, reliance on these lists alone can yield jury panels that may not be reflective of the community-at-large, particularly the minority community.<sup>2</sup>

In 2007, in order to broaden the number of source lists used in creating jury pools, then Governor Ed Rendell signed into law Act 37, which established a Statewide Juror List ("Juror List")<sup>3</sup> of potential jurors from the following four state agency lists:

- Department of Public Welfare
- Department of State
- Department of Revenue
- Department of Transportation<sup>4</sup>

Soon after Act 37 was signed, the Commission recommended that the Supreme Court encourage judicial districts throughout the Commonwealth to obtain their lists of prospective jurors from the Juror List in order to produce a jury pool that is more diverse, inclusive, and reflective of the community from which it is drawn.<sup>5</sup>

Thereafter, the Commission surveyed all 60 judicial districts in Pennsylvania to gauge their use of the Juror List and learn about any problems encountered in using it. Fifty-two of the 60 judicial districts responded to the survey. Only 17 of the 52 responding judicial districts indicated that they were utilizing the Juror List. Many of the remaining judicial districts identified duplication of names as the main barrier to their use of the list. The judicial districts recommended that a unique identifier – such as date of birth ("DOB") or Social Security number ("SSN") – be used by the agencies to resolve the duplication problem and to make the list more user-friendly.

In October of 2014, the Commission organized a meeting on the issue of the Juror List and the lack of unique identifier. The meeting was attended by representatives (both policy and IT/technology staff) from three of the four agencies, as well as representatives from the Commission and the AOPC. The attendees concluded that the best way to move forward is to seek amendments to the original legislation that would allow the state agencies to collect and provide full SSN information to the AOPC. This would enable the AOPC to adequately "scrub" the list before providing it to the judicial districts.

## RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court and other branches of government support the amendment of Act 37 to allow the state agencies to collect and provide full SSN information to the AOPC in order to permit the AOPC to remove duplicates from the list before providing it to the judicial districts. Alternatively, a memorandum of understanding could be entered into between the agencies and the AOPC that establishes a cooperative agreement allowing for the agencies to provide full SSN information to the AOPC. Such agreement should include provisions relating to the confidentiality of the SSN information provided and specific measures to be followed to protect the privacy of the citizens of Pennsylvania.

## ENDNOTES

<sup>1</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, National Center for State Courts. p. 29 (4th Ed., 2006).

<sup>2</sup> *Taylor v. Louisiana*, 419 U.S. 522 (1975) (stating that the selection of a jury from “a cross-section of the community is fundamental to the American system of justice”); *People v. Harris*, 679 P.2d 433 (Cal. 1984) (the state’s exclusive use of a voter registration list, which did not represent a fair cross-section of the community, deprived the defendant of his right to a jury trial).

<sup>3</sup> On July 17, 2007, after unanimous passage by the Pennsylvania Senate and House, Senate Bill 116, Printer’s Number 1038, which provides for such a master list and distribution scheme, was signed into law as Act 37 by Governor Rendell.

<sup>4</sup> See *Salameh v. Spossey*, 731 A.2d 649 (Pa. Commw. Ct. 1999) (concluding that the state’s use of other lists besides the mandatory voter registration list is only discretionary but that the use of other lists to find potential jurors is clearly statutorily permitted).

<sup>5</sup> The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness, *Suggested Standardized Procedures for Jury Selection in Pennsylvania* (September 12, 2007), Recommendation Three, p. 8 (citing Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, p. 11 (April 2004)).

## 4 JUROR QUALIFICATIONS

In order to demonstrate that all citizens are not only required but welcome to participate in the jury process, the qualifications for juror service should be presented in an inclusive manner and should be narrowly drawn. Pennsylvania's juror qualification statute generally meets that standard with the exception of the lifetime exclusion of those convicted of crimes punishable by imprisonment of more than one year. Such automatic exclusions excise a significant share of the citizenry from jury panels, including at least thirty percent of all African-American males.<sup>1</sup> Such wholesale exclusions often lead to jury panels unreflective of the community-at-large.<sup>2</sup>

### RECOMMENDATIONS

It is recommended that the current juror qualification statute in Pennsylvania – 42 Pa.C.S.A. § 4502(a)<sup>3</sup> – be revised to reflect the following policy regarding juror qualifications:

- §4502. Qualifications of jurors.
  - (a) General rule. -- Eligibility for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, sexual orientation/identity, or any other objective or subjective factor<sup>4</sup> that discriminates against a cognizable group<sup>5</sup> in the jurisdiction other than those people set forth in the section below.<sup>6</sup>
- All persons are eligible for jury service except those who:<sup>7</sup>
  - 1) Are less than eighteen years of age; or
  - 2) Are not citizens of the United States; or
  - 3) Are not residents of the jurisdiction in which they have been summoned to serve; or
  - 4) Lack sufficient command of the English language to be able to effectively communicate in it.

There are multiple methods by which potential jurors are excluded on the basis of criminal convictions: selective mailing of jury summonses, statutory disqualifications, challenges for cause, and peremptory challenges.<sup>8</sup> However, there has been a dramatic shift among states to permit citizens with criminal records to serve on juries; many states and the District of Columbia have lifted their lifetime bans for felons.<sup>9</sup>

Currently, in Pennsylvania, any person who has been convicted of a crime punishable by a term of imprisonment of more than one year and who has not been granted a pardon or amnesty is banned for life from serving as a juror. Thus, not only are felons banned for life in Pennsylvania but those convicted of misdemeanors of the first or second degree are banned as well. Such a stringent law is counter to the national trend away from felon disenfranchisement and toward promoting increased general participation on juries.<sup>10</sup>

Consequently, we join in the recommendation of the Jury Task Force Report, *Best Practices Recommendations*, of the Pennsylvania Association of Court Management<sup>11</sup> to replace Section (a) (3) of the present juror qualification statute in Pennsylvania, banning felons and those convicted of misdemeanors of the first or second degree from juror service, with a more inclusive statute that is more consistent with those of surrounding states and the nation in general.

In particular, it is recommended that the following Sections (a) (5) and (6) be added to the proposed statute set forth above:

- 5) Have been convicted of a felony of any degree or a misdemeanor of the first degree;
- 6) Have been convicted of a misdemeanor of the second degree and have been confined or on probation, parole, or otherwise under court supervision within the previous five years.

These reasons should be the exclusive bases for juror ineligibility. Preliminary information regarding juror qualification should be obtained via the Juror Qualification Form mailed to prospective jurors along with the Jury Summons (the one-step jury summons process).<sup>12</sup>

## ENDNOTES

<sup>1</sup> Christopher Uggen, et al., *Citizenship, Democracy and the Civic Reintegration of Criminal Offenders*, The Annals of the American Academy of Political and Social Science 605, pp. 281, 283 (2006); Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 Am. U. L. Rev. 65, p. 113 (October 2003).

<sup>2</sup> Anna Roberts, *Casual Ostracism: Jury Exclusion on the Basis of Criminal Convictions*, 98 Minn. L. Rev 592, 602 (December 2013) (“The exclusion of those with criminal records brings the risk of exacerbating racial disparity within the jury system. Because rates of criminalization vary according to race, jury exclusion relying on criminal records have a disparate impact, thus offering an illustration of the notion that American criminal justice ‘systematically excludes racial minorities from its decision-making processes while disproportionately imposing its burdens on them.’”).

<sup>3</sup> (a) General rule. – Every citizen of this Commonwealth who is of the required minimum age for voting for State or local officials and who resides in the county shall be qualified to serve as a juror therein unless such citizen:

- (1) is unable to read, write, speak and understand the English language;
- (2) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or
- (3) has been convicted of a crime punishable by imprisonment for more than one year and has not been granted a pardon or amnesty therefor.

(b) Definition. – For purposes of this section, “convicted of a crime punishable by imprisonment for more than one year” does not include a conviction for any offense under or violation of the former act of May 1, 1929 (P.L. 905, No. 403), [FN1] known as The Vehicle Code, or the former act of April 29, 1959 (P.L. 58, No. 32), [FN2] known as The Vehicle Code, which offense or violation, if it had been committed after July 1, 1977:

- (1) would have been substantially similar to an offense currently graded as a summary offense under 75 Pa.C.S.A. (relating to vehicles); or
- (2) would not have been a violation of law.

1980, June 26, P.L. 266, No. 78, § 3, imd. effective. Amended 2001, Dec. 17, P.L. 944, No. 113, § 2, imd. effective.

<sup>4</sup> As of September, 2016, only three states (Alabama, Arkansas, and Illinois) retain any vestiges of the once prominent use of subjective factors in selecting jurors. See Ala. Code §§ 12-16-60(a) (qualifying for jury service only one who “is generally reputed to be honest and intelligent and is esteemed in the community for integrity, good character and sound judgment” and who “[h]as not lost the right to vote by conviction for any offense involving moral turpitude”); Ark. Code Ann. § 16-31-102(a)(4) (disqualifying from grand or petit jury service those who are “not of good character or approved integrity, are lacking in sound judgment or reasonable information, are intemperate, or are not of good behavior”); 705 Ill. Comp. Stat. 305/2(3) (requiring jurors to be “[f]ree from all legal exception, of fair character, of approved integrity, of sound judgment”).

<sup>5</sup> *U.S. v. Duran De Amesquita*, 582 F. Supp. 1326 (S.D. Fla. 1984) (In determining whether a group is cognizable for the purposes of a challenge to a jury selection plan, the following considerations are pertinent: (1) there must exist some quality or attribute which defines or limits the alleged group; (2) there must exist cohesiveness of attitudes, ideas, or experience which distinguishes the group from the general social milieu; and (3) a community of interest must be present which may not be represented by other segments of the population).

<sup>6</sup> See 28 U.S.C.A. § 1862. (“No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States or in the Court of International Trade on account of race, color, religion, sex, national origin, or economic status.”) (June 25, 1948, c. 646, 62 Stat. 952; Mar. 27, 1968, Pub.L. 90-274, § 101, 82 Stat. 54; Oct. 10, 1980, Pub.L. 96-417, Title III, § 302(c), 94 Stat. 1739).

<sup>7</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, National Center for State Courts, p. 35 (4th Ed., 2006).

<sup>8</sup> Anna Roberts, *Casual Ostracism: Jury Exclusion on the Basis of Criminal Convictions*, 98 Minn. L. Rev 592, 594-95 (December 2013). As of 2010, in twenty-nine states and the federal court system, a convicted felon can practice law but cannot serve on a jury. James M. Binnall, *Convicts in Court: Felonious Lawyers Make a Case for Including Convicted Felons in the Jury Pool*, 73 Alb. L. Rev. 1379, 1379 (2010).

<sup>9</sup> Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 Am. U. L. Rev. 65, pp. 150-57 (October 2003).

<sup>10</sup> *Id.*

<sup>11</sup> Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 8 (April 2006).

<sup>12</sup> See Appendix A (“JUROR SUMMONS MAILER WITH SUMMONS FORM, JUROR QUALIFICATION QUESTIONNAIRE, MAP OF COURTHOUSE AND PARKING INSTRUCTIONS, AND IMPORTANT JUROR INFORMATION”).



## 5 JUROR EXEMPTIONS AND EXCUSALS

While the justice system is required to provide defendants and litigants with an unbiased jury reflective of their community, many “real-world” factors impact whether potential jurors actually participate in the system. Potential jurors often have personal responsibilities, such as child or eldercare, or health conditions which render them temporarily unable to perform jury service; others ask to be removed from jury service for reasons of inconvenience or perceived hardship.

In Pennsylvania, a person is excused from jury duty by, among other reasons, “demonstrating to the court ‘undue hardship or extreme inconvenience.’” A person demonstrating such “undue hardship or extreme inconvenience may be excused for a limited period, and at the end of the period be assigned to the next jury array.” Pa.C.S. § 4503 (“Exemptions from Jury Duty”). However, many prospective jurors are not aware that they may be excused from or have their service postponed for these reasons. Moreover, even if they are aware of the possibility of being excused from or postponing jury service, they may be unclear about the specifics of what constitutes “undue hardship or extreme inconvenience” and how to apply for an excusal or postponement on the basis of it.

Research has shown that while an effective excusal/postponement policy reduces jury yield in the short term, this temporary reduction is cancelled out, due to the tendency of deferred jurors to appear for service in higher proportions than jurors responding on the first summons date. Thus, excusal/postponement policies that minimize the potential hardship that individuals experience as a result of jury service ultimately can significantly reduce excusal rates, increase jury yield, and expand the pool of prospective jurors. Similarly, such policies reduce the potential for disproportionate impact on lower-income and minority populations, which improves the demographic representation of the jury pool.<sup>1</sup>

As a part of its examination of this issue, the Commission also reviewed information published by Pennsylvania judicial districts on their websites with respect to granting excusals or postponements from jury duty. The research revealed a broad range of practices among the districts, with some providing a wealth of information to jurors and others providing very little or none.

On the basis of this research, in order to promote broad citizen participation and to send a message that courts respect the time commitments of citizens, judicial districts should consider establishing practices to enforce and strictly limit the granting of permanent excusals, while liberally granting juror requests for temporary excusals or postponements.

### RECOMMENDATIONS

1. It is recommended that the Pennsylvania Supreme Court require each judicial district in the Commonwealth to adopt standard procedures such as those recommended in the National Center for State Courts’ *Jury Managers’ Toolbox, Best Practices for Excusal Policies*,<sup>2</sup> to be followed in the event of a request by a juror for an exemption, excusal or postponement from jury service. The standard procedures should include the following:

- Provide a clear written procedure for exemption, excusal and postponement requests, on both the juror questionnaire and the court’s website.

- Provide the statutory language for excusal for “undue hardship or extreme inconvenience.” See Pa.C.S. Section 4503 (“Exemptions from Jury Duty”).
- Establish a written excusal and postponement policy that articulates clear, objective criteria that jurors must show to demonstrate “undue hardship or extreme inconvenience.” This should include a non-exclusive list of types of “undue hardship or extreme inconvenience.”
- In the case of “undue hardship or extreme inconvenience,” liberally and routinely grant postponement to a more convenient start date when the request is made in a timely manner.
- Provide jurors with a prompt response, in writing or by email, upon their submission of excusal/postponement requests.
- Absent extenuating circumstances, limit postponements to a narrow period of time (e.g., not to exceed six months).
- Include questions related to juror excusal/postponement in the “Frequently Asked Questions” or “FAQs” section of the website.<sup>3</sup>

2. It is recommended that Section 4503 (“Exemptions from jury duty”) of Title 42 of the Pennsylvania Consolidated Statutes be amended, as follows, to increase jury yield and allow for a more accurate demographic representation of the jury pool:

- Distinguish between *permanent* “exemption” and *temporary* “excusal” by: (1) changing the title of section 4503 to specifically refer to “exemptions” and “excusals”; and (2) creating two corresponding subsections - “(a) Exemptions” and “(b) Excusals.” See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503(a)(b)”).
- Specifically categorize items within “exemptions” or “excusals.” Items listed under “exemption” are those that are permanent in nature. Items listed under “excusal” are those that are temporary in nature. See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503(a)(b)”).
- Add the language “*who are called to serve on a criminal jury*” to the end of section 4503 (a) (1). See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503(a)(1)”).
- Distinguish between state judges and federal judges by creating two separate categories for “Judges and magisterial district judges of the Commonwealth” and “Judges of the United States.” See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503(a)(4 and 5)”).
- Further define “Judges” and “magisterial district judges” of the Commonwealth by making specific reference to 42 Pa.C.S. § 102 (relating to definitions). See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503(a)(4)”). This more closely mirrors the language regarding federal judges (see Appendix B “Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503(a)(5)”) and also provides further clarity on the definition of “judge” (e.g., includes Justices).

- Add the language “*who opt not to serve*” to sections 4503(a)(4 and 5) regarding judges, to allow judges the option to serve on a jury, and to more accurately reflect the legislative intent.<sup>4</sup> See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503(a)(4 and 5)”).
- Allow for the three categories of caregivers to be temporarily excused from jury duty, but not permanently exempt. See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503 (b)(5-7)”).
- In addition to the three caregiver categories listed above, allow for the following other categories to be temporarily excused from jury duty, but not permanently exempt:
  - Persons in active service of the armed forces of the United States or of the Commonwealth of Pennsylvania. See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503 (b)(2)”).
  - Persons who have served within three years next preceding on any jury except a person who served as a juror for fewer than three days in any one year in which case the excusal period shall be one year. See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503 (b)(3)”).
  - Breastfeeding women who opt not to serve. See Appendix B (“Proposed Modifications to 42 Pa.C.S. § 4503, at § 4503 (b)(4)”).<sup>5</sup>

## ENDNOTES

<sup>1</sup> Pennsylvania Joint State Government Commission, Staff Report, *Minority Representation in the Jury Selection Process in Pennsylvania*, p. 84 (May 2003).

<sup>2</sup> See National Center for State Courts, *Jury Managers’ Toolbox, Best Practices for Excusal Policies* (2009).

<sup>3</sup> Attached are documents containing sample language that can be incorporated into each judicial district’s website and/or Juror Questionnaire. See Appendix B (“PROPOSED REVISIONS TO SECTION 4503 OF TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED STATUTES: RULES FOR EXEMPTION, EXCUSAL AND POSTPONEMENT, JURORS FAILING TO REPORT TO DUTY, JUROR EXCUSAL & POSTPONEMENT REQUEST FORM AND JURY FAQs”).

<sup>4</sup> See SB 210 (Exemptions from Jury Duty) Co-Sponsorship Memo (from Senator Stewart J. Greenleaf, dated 12/9/14) (“The legislation allows Pennsylvania judges and magisterial district judges, and judges of the United States as defined under federal law, to request an exemption if they are called for jury duty.”). SB 210 was signed into law as Act 54 by Governor Wolf on October 30, 2015.

<sup>5</sup> Appendix B (“PROPOSED REVISIONS TO SECTION 4503 OF TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED STATUTES: RULES FOR EXEMPTION, EXCUSAL AND POSTPONEMENT, JURORS FAILING TO REPORT TO DUTY, JUROR EXCUSAL & POSTPONEMENT REQUEST FORM AND JURY FAQs”).

## 6 JUROR FAILURE TO APPEAR

The right to a jury is one of the fundamental rights that our founding fathers provided to us and is a vital part of our guaranteed liberties. It includes the right to trial by jury before our peers, in both civil and criminal matters, and the corresponding right and duty to act as jurors in the cases of other citizens. Without the participation of each of us, this very basic right would be diminished, depriving all of us of its benefits and protection.

The importance of jury duty is often not understood and many potential jurors see no imminent consequences for ignoring their summonses. According to one study, the single biggest predictor of failure-to-appear rates was whether prospective jurors believed that failing to appear would result in negative consequences.<sup>1</sup> The reality is that jurors who fail to appear for jury service place heavy burdens on court administration and members of the public who regularly answer the call to serve.<sup>2</sup> The failure-to-appear rate can significantly affect the quality and makeup of Pennsylvania juries. Moreover, the cost associated with juries is projected to increase substantially, partially driven by the need to send multiple mailings to potential jurors.<sup>3</sup>

### RECOMMENDATIONS

In order to reduce the failure-to-appear rate of prospective jurors, it is recommended that the Pennsylvania Supreme Court require each judicial district to formulate a written policy addressing the steps and consequences (including show-cause hearings) for jurors who fail to follow proper procedures, respond to a jury summons, and/or appear for jury service.<sup>4</sup> This written policy should be mailed to prospective jurors along with their summonses and should state that failure to respond to jury duty is a summary criminal offense punishable by up to a \$500 fine and ten days in jail.<sup>5</sup> In addition, on each qualification questionnaire, the Supreme Court should require a signature line, which requires prospective jurors to acknowledge that they have read and understood the consequences of the failure to complete the questionnaire or to respond to a jury summons.

Consistently applied follow-up procedures will convey to the community that courts are aware of citizens' failure to respond to jury summonses and that the courts will take appropriate action. It is very important that judicial districts follow up on non-responders at all stages of the jury summoning process. A typical progression of follow-up steps includes the following:

- A follow-up letter or second summons
- Issuance of a Failure-to-Appear (FTA) Notice<sup>6</sup>
- Issuance of an Order-to-Show Cause (OSC) Notice<sup>7</sup>
- Issuance of Civil Contempt Citation and/or Sanctions

Due to the high cost and other problems associated with the administration of a coercive enforcement policy, however, it is recommended that enforcement policies be carefully crafted. Possible enforcement techniques may include:

- The issuance of a small number of show-cause warrants per year that are well-publicized to demonstrate to the general public that there is a penalty for failing to respond to a summons.
- Amendments to the Rules of Civil Procedure and Motor Vehicle Code to provide procedures for placing a hold upon driver license renewals of those persons who fail to respond to jury summonses, and subsequent correspondence regarding jury service. Holds may be removed for those who genuinely failed to receive their jury summonses by providing current address information for the issuance of a new summons<sup>8</sup> and agreeing to serve when summoned.

## ENDNOTES

<sup>1</sup> Robert G. Boatright, *Improving Citizen Response to Jury Summonses: A Report with Recommendation*, American Judicature Society (1998).

<sup>2</sup> Judicial Council of California, Administrative Office of the Courts, Fact Sheet, Jury Improvement Program, Failure to Appear (FTA) Toolkit (March 2010), available at <http://www.courts.ca.gov/documents/jurysys.pdf>.

<sup>3</sup> Mensah M. Dean, *Dozens hauled into court for skipping jury duty*, philly.com (May 23, 2014), available at [http://articles.philly.com/2014-05-23/news/50033077\\_1\\_jury-duty-jury-duty-herron](http://articles.philly.com/2014-05-23/news/50033077_1_jury-duty-jury-duty-herron).

<sup>4</sup> Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 7 (April 2006).

<sup>5</sup> See Appendix B (“PROPOSED REVISIONS TO SECTION 4503 OF TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED STATUTES: RULES FOR EXEMPTION, EXCUSAL AND POSTPONEMENT, JURORS FAILING TO REPORT TO DUTY, JUROR EXCUSAL & POSTPONEMENT REQUEST FORM AND JURY FAQs”).

<sup>6</sup> See Appendix C (“FAILURE TO APPEAR NOTICE”).

<sup>7</sup> The Los Angeles County Superior Court assessed its follow-up program and found that 29% of persons who failed to respond to the first summons did respond to the second summons; an additional 6% responded after receiving the FTA notice, and 18% responded after receiving the OSC notice. Thus, the overall effect of the Los Angeles follow-up program was that more than half (53%) of non-responders eventually responded to the jury summons. Some of the nonresponses might have been caused by the non-receipt of the jury summonses or the failure to properly return them to the court. Linkage to and use of the National Change of Address System (NCOA) should help to significantly reduce this number of non-responders.

<sup>8</sup> Judicial Council of California, Task Force on Jury System Improvements, *Final Report*, p. 13 (April 2004).

## 7 JUROR COMPENSATION

Jury service often imposes economic hardships which significantly reduce juror participation rates. Since economic hardship excusals tend to disproportionately affect minorities, this results in jury pools that do not accurately reflect Pennsylvania's growing diversity.<sup>1</sup> To compound the problem, Pennsylvania's juror compensation scale, unlike those of most other states, has remained effectively unchanged.<sup>2</sup> Pennsylvania's \$9 per day juror compensation was adopted in 1959 when the minimum wage was \$1 per hour. \$9 paid the jurors for a full day's work. This compensation package was amended in 1980 to provide \$25 per day after the third day of service. The 1980 amendment reflected the existing \$3.10 minimum wage, and again paid the jurors for a full day's work. The same 1980 amendment provided jurors with a \$.17 mileage compensation, which also reflected the existing per diem rate.

Approximately 40 states compensate jurors for their service. The compensation packages range from \$5 to \$60 per day. The average is \$25.77 plus mileage. The median payment is \$30. Only three states pay less than Pennsylvania's \$9.<sup>3</sup> In addition, some employers have the option to pay jurors during service and deduct this expense from their taxes.<sup>4</sup> Neither the juror nor the employer incurs a loss.

In addition, many studies connect an ability to serve with issues that appear to be gender-related.<sup>5</sup> The responsibility for childcare predominately falls upon women and the relative lack of childcare services for jurors is a major impediment to women serving as jurors.

### RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court support legislation designed to compensate jurors adequately for their service to the courts. Such legislation should encompass the following principles:

- Employers should be encouraged to pay their employees and continue to recover the payments as part of their ordinary expenses.
- When the jury service entails only a short period of time (e.g. three days or less), either the daily fee should be sufficient, at a minimum, to reimburse jurors for reasonable out-of-pocket expenses (transportation, parking, meals, and childcare) or vouchers should be provided to jurors in reasonable amounts to cover those expenses.<sup>6</sup>
- For longer trials, jurors should be compensated for reasonable expenses and lost wages by raising the juror compensation scale for trials lasting over three days, including the possible implementation and creation of a lengthy trial fund.<sup>7</sup>

Possible programs to fund increased juror compensation that have been used successfully elsewhere include:<sup>8</sup>

- A \$5 civil case filing fee to be paid into the jury compensation fund.
- Raise "jury demand" fees.<sup>9</sup>
- Compensate jurors from fees paid for the reinstatement of state driver's licenses.

42 Pa.C.S.A. §4563(a) prohibits most employers from depriving "an employee of his employment, seniority position or benefits, or threaten or otherwise coerce him with respect thereto, because the employee receives



a summons, responds thereto, serves as a juror or attends court for prospective jury service.”<sup>10</sup> This protection should be extended to all employees.

Where possible, court administrators should try to establish childcare facilities in courthouses by utilizing the funding through Title 42 Pa.C.S.A. § 3721 for the start-up and daily operating costs of such facilities. See Appendix D (“Juror Childcare Information”).

## ENDNOTES

<sup>1</sup> PA Joint Comm. Rpt. 2300, *Minority Representation in the Jury Selection Process in Pennsylvania*, p. 84 (May 2003).

<sup>2</sup> Pennsylvanians for Modern Courts, *Report on Juror Compensation in Pennsylvania*, p. 1 (August 2006). The \$9 per day rate for the first three days of juror service, in fact, has remained unchanged since 1959. In 1980, juror compensation was increased to \$25 per day AFTER the first three days of service.

<sup>3</sup> Pennsylvania Committee for the Analysis & Reform of Our Criminal System, *Juror Compensation: the Pennsylvania Example*, (June 2016)

<sup>4</sup> <https://www.irs.gov/businesses/small-businesses-self-employed/deducting-business-expenses>

<sup>5</sup> The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report*, p. 104 (March 2003).

<sup>6</sup> American Bar Association, *Principles for Juries & Jury Trials*, p.8 (2005). 21

<sup>7</sup> See G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p.71 (Summer 2003); see similar language in statutes authorizing Lengthy Trial Funds in the following states: Arizona (A.R.S. §21-222), Oklahoma (28 O.S. 86) and Mississippi (Miss. Code Ann. § 25-7-61); and similar proposed legislation in Missouri (House Bill No. 1143, 2004 Session) and Georgia (House Bill 1323, 2004 Session), among others.) In 2005, the Texas Legislature passed and the governor signed into law Senate Bill 1704 increasing compensation for jurors from \$6 a day to \$40 a day, starting on the juror’s second day of service. The bill also provided for state reimbursement to counties for juror pay and for the funding of juror reimbursement through court costs that are deposited into a Jury Service Fund, not unlike the Lengthy Trial Funds referenced above.

### Rules for the Establishment of the Fund:

- 1) The selection and appointment of an administrator of the fund;
- 2) Procedures for the administration of the fund, including payments of salaries of the administrator and other necessary personnel;
- 3) Procedures for the accounting, auditing and investment of money in the fund;
- 4) The administrator should report annually on the administration of the Lengthy Trial Fund to the Supreme Court and the General Assembly, setting forth the money collected for and disbursed from the fund.

### Collection of Money for the Fund:

- 1) Each trial court in this Commonwealth should collect from each attorney who files a civil case, unless otherwise exempted under the provisions of this section, a fee of \$5 per case to be paid into the Lengthy Trial Fund. A lawyer should be deemed to have filed a case at the time the first pleading or other filing on which an individual lawyer’s name appears is submitted to the court for filing and opens a new case. All fees should be forwarded to the administrator of the Lengthy Trial Fund for deposit.

### Wage Replacement or Supplementation:

- 1) The fees deposited in the Lengthy Trial Fund should be used to pay wage replacement or supplementation to any juror in civil litigation beginning on the fourth day of service. The amount paid from the fund should be no more than is needed to relieve financial hardship and, in no event, should exceed \$100 per day per juror.

2) The fees deposited in the Lengthy Trial Fund should also be used to pay wage replacement or supplication not to exceed \$300 per day to jurors, beginning on the tenth day of service.

3) The amount of disbursements from the Lengthy Trial Fund may be limited, based on the availability of financial resources.

#### Requests for Payment:

1) A juror who is serving or has served on a jury that qualifies for payment from the Lengthy Trial Fund should submit a request for payment from the fund on a form provided by the administrator. Payment should be limited to the difference between the State-paid jury fee and the actual amount of wages a juror earns, up to the maximum level payable minus any amount the juror actually receives from the employer during the same time-period.

2) The form should disclose the juror's regular wages, the amount the employer will pay during the term of jury service, the amount of replacement or supplemental wages requested and any other information the administrator deems necessary.

3) The juror should be required to submit verification from the employer as to the wage information provided to the administrator prior to payment from the fund. The employee's most recent earnings statement or similar document should qualify as wage information.

4) If an individual is self-employed or receives compensation other than wages, the individual should provide a sworn affidavit attesting to his or her approximate gross weekly income, together with such other information as the administrator may require in order to verify weekly income.

#### Exemptions: The following attorneys and causes of action should be exempt from payment of the Lengthy Trial Fund fee:

1) Government attorneys appearing in the course of their official duties;

2) Pro se litigants;

3) Cases in small claims court.

4) Claims seeking Social Security disability determinations, individual veterans' compensation or disability determinations, recoupment actions for government-backed educational loans or mortgages, child custody and support cases, actions brought in forma pauperis, and any other filings designated by rule that involve minimal use of court resources and that customarily are not afforded the opportunity for a trial jury.

<sup>8</sup> Paula Hannaford-Agor, *The Laborer is Worthy of His Hire and Jurors Are Worthy of Their Juror Fees*, *The Court Manager*, p. 39 (Vol. 21, Issue 2, Summer 2006). 22

<sup>9</sup> Jury demand fees are quite numerous in jurisdictions around the country. Although the actual fee structures vary widely, taking into account factors such as the type of case involved and whether the petitioner is demanding a six or a twelve person jury, the basic idea is quite similar: those parties that are not indigent and request a jury for their civil trial are required by the court to pay a fee for that jury.

<sup>10</sup> Pennsylvania Committee for the Analysis and Reform of Our Criminal System, *Juror Compensation: the Pennsylvania Example* (June 2016); G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p.71 (Summer 2003); Employers should be prohibited from requiring jurors to use leave or vacation time for the time spent on jury service or to make up the time they served.

1) Job preservation – A person who is summoned to serve as a juror and who notifies his or her employer of the summons within a reasonable period of time after receipt of the summons and prior to his or her appearance for jury duty should not be removed or otherwise be subject to any adverse employment action as a result of the jury duty.

2) Benefits protection – An employee should not be required or requested to use annual, vacation or sick leave for time spent responding to a summons for jury duty, participating in the jury selection process or serving on a jury. This provision should not be construed to require an employer to provide annual, vacation or sick leave to employees under the provisions of this act who are not entitled to such benefits under company policies.

NOTE: In Pennsylvania, there is a statutory exception to these prohibitions for small businesses that states: "Subsection (a) [prohibiting an employer from depriving an employee of his employment, seniority position or benefits, or from threatening or otherwise coercing an employee because of jury service] shall not apply to any employer in any retail or service industry employing fewer than 15 persons or any employer in any manufacturing industry employing fewer than 40 persons." [42 Pa.C.S.A. §4563 (d)]

## 8 TERM OF JURY SERVICE

Respect for jurors and their commitments should be the guiding principle of all judicial districts. Research indicates that juror satisfaction is directly linked to how effectively juror time is managed. Reducing the amount of time jurors wait before being assigned or dismissed not only increases juror satisfaction, but also significantly reduces the number of deferrals and hardship excusals.

The one-day or one-trial system is designed to reduce unproductive waiting time and the potential for lost income for jurors, as well as assist the courts in selecting panels of jurors who are prepared to serve.<sup>1</sup>

### RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court require judicial districts to use a “one day/one trial” or a “one day/multiple trial” process of summoning jurors.<sup>2</sup> This recommendation is based upon the national trend toward a one-day process that is more cost-efficient and more convenient to the jurors.<sup>3</sup> The specific details of that process can be established by each judicial district, although essentially a “one-day/ one-trial” system works as follows:

The court summonses the jurors to serve for a period of one day. On that first day, the person is either:

- Selected as a juror who serves until the case is complete, in which case the juror is not summoned again for three years if the length of the trial was four or more days, or one year if the length of the trial was three days or less; or
- Not selected as a juror, in which case the juror is considered to have fulfilled his/her obligation of service for a period of one year.<sup>4</sup>

Courts should use on-call telephone standby notice systems<sup>5</sup> to prevent unnecessary appearances of potential jurors as a critical part of operating a “one-day/one-trial” system.<sup>6</sup>

## ENDNOTES

<sup>1</sup> Judicial Council of California, Administrative Office of the Courts, Fact Sheet, Jury Improvement Program, Failure to Appear (FTA) Toolkit (March 2010), available at <http://www.courts.ca.gov/documents/jurysys.pdf>.

<sup>2</sup> Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 6 (April 2006); G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p. 71 (Summer 2003); The Supreme Court of Ohio Task Force for Jury Service, *Report*, p. 231 (February 2004).

<sup>3</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, National Center for State Courts, p. 25 (4th Ed., 2006).

<sup>4</sup> 42 Pa.C.S.A. § 4503(a) (2).

<sup>5</sup> Allegheny County is one county that utilizes a “one day/one trial” process with an on-call telephone standby system. A telephone number and website appear on the summons issued to a potential juror. The potential juror must call the automated telephone system or log on to the website after 4:00 p.m. the night before he/she is due to serve. A group number is also listed on the summons. The automated system lists the group numbers that must report for jury service the following day, and gives the building, room number, and time the potential juror should report. If his/her group number is not mentioned, the potential juror is excused from jury duty, but is still credited for one day of service.

<sup>6</sup> Judicial Council of California, Task Force on Jury System Improvements, *Final Report*, p. 32 (April 2004).

## 9 JURY VOIR DIRE

The challenge of *voir dire* is to elicit meaningful information about prospective jurors' abilities to maintain fairness and impartiality and to obtain that information with reasonable efficiency.<sup>1</sup> Yet there is much debate about the best practices to achieve that goal. No other stage of the jury trial varies so dramatically from jurisdiction to jurisdiction and judge to judge as *voir dire*.

A cursory *voir dire* examination may fail to obtain information necessary for the judge to make rulings on challenges for cause and for the parties to exercise their peremptory challenges. A *voir dire* examination that fails to make sufficient inquiry does not fulfill the purpose of the procedure. Without sufficient information for the court and counsel to evaluate jurors, juries are selected based on intuition, speculation, and stereotyping.

It should be noted that in many courtrooms judges are currently conducting *voir dire* in a thorough and meaningful manner. Others, however, are doing so in a rather perfunctory manner or not at all which is inconsistent with the goal of *voir dire*.

### RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court require all judicial districts to follow the same general practices, as set forth below, when conducting *voir dire*. Statements to, and questioning of, prospective jurors should be done initially by the judge, followed by questions, if necessary, by counsel for each side under the supervision of the judge. In some cases, compliance with these recommendations will take additional time. Research shows, however, that those states whose practices conform with these recommendations report that the result is well worth the minimal extra time expended.

- General explanation of *voir dire* by the judge to all prospective jurors present:
  - Explain the concept of *voir dire* to the prospective jurors.<sup>2</sup>
  - Explain to the prospective jurors why some of them may be selected and others will not.<sup>3</sup>
  - Introduce the parties and attorneys.
  - Identify witnesses: name the witnesses who may be called or referred to by other witnesses. The judge should inform the prospective jurors of the anticipated length of the trial and ask if there is any reason why they could not serve as jurors for this time period.
- *Voir dire* opening:<sup>4</sup> In both criminal and civil trials, the judge should have the discretion to either give a short summary of the case to the entire panel of prospective jurors or to allow each counsel, with the input of both parties, to give a short statement describing the case to the panel – a so-called “*voir dire* opening or mini-opening.” Such statements can help jurors respond more candidly during *voir dire*, especially with regard to possible bias issues. The recommended procedures for implementing *voir dire* openings by counsel are:

- Each counsel should be allotted a brief period of time (no more than five minutes) to summarize the case from their side’s point of view.
- *Rosario*<sup>5</sup> material in criminal cases should be provided to the defense before counsel is asked to deliver a *voir dire* opening.
- A criminal defense attorney’s decision to make a *voir dire* opening does not preclude exercising the defendant’s right not to make an opening statement at the start of the trial.
- The prosecution’s *voir dire* should be first and there should be no rebuttal.
- Where the judge decides to permit counsel to give a *voir dire* opening, it is suggested that the judge provide introductory remarks to the potential jurors before the commencement of the *voir dire* openings. Such a statement could be as follows:

*Before we begin the process of asking you questions about your qualifications to serve on this case, each attorney will give a brief statement about the case. I’ve asked them to limit their remarks to a brief presentation. Of course, what the attorneys say to you by way of opening remarks both now, and again later just before we begin hearing from the witnesses, is not evidence. These statements are offered to you now as a kind of ‘preview’ of the case. The purpose in doing so is to allow us a greater opportunity to explore with you anything that might impact your ability to serve fairly and impartially as a juror in this case.*

- Juror background information and private disclosure: Jurors should complete a background questionnaire before they are assigned to a panel.<sup>6</sup> The judge should tell the jurors that they have a duty to disclose possible bias or prejudice. If there are indications, either on the Juror Information Questionnaire or elsewhere, that a prospective juror has beliefs or personal experiences that raise concerns about his/her ability to be impartial, the *voir dire* should include open-ended questions which allow the prospective juror to explain these opinions and beliefs.<sup>7</sup> The court should allow counsel for both sides to question jurors individually about the extent of their beliefs, preconceptions, and sensitivities.<sup>8</sup> Under no circumstances, however, should the resulting *voir dire* be limited to the juror’s subjective self-assessment of his or her ability to be fair and impartial.<sup>9</sup> In addition, the judges and attorneys have become more aware of jurors’ reluctance to disclose sensitive or embarrassing information in the presence of the entire jury panel and courtroom observers. Therefore, jurors should be given the opportunity to disclose information privately at sidebar or in chambers.<sup>10</sup>
- Questions regarding the case: Questions should be directed to the entire group of prospective jurors, and jurors should be asked to answer verbally or to raise their hands. On sensitive matters or prior exposure to potentially prejudicial material,



it is recommended that jurors be examined outside the presence of other jurors.<sup>11</sup> Sensitive matters are those matters that potentially might be embarrassing or intrusive into the juror's private life, beliefs, or those matters which if discussed in the presence of the jury panel, might prejudice or influence the panel by exposing other potential jurors to improper information. The judge should direct any follow-up questions to particular jurors based on their answers to either general questions about themselves or to questions regarding the case-at-bar. After examination of the prospective jurors by the judge, there may be additional questioning by counsel for each side, under the supervision of the judge and subject to reasonable time limits.

- Conduct Pilot Program: Judicial districts should design and implement pilot projects that would:
  - Draft model *voir dire* questionnaires to be used in a sampling of cases and evaluated over a specified time period.
  - Undertake individualized *voir dire* in some courtrooms, followed by an evaluation by participating judges that would be shared with other judges and bar associations.
  - Experiment with balanced judge/lawyer *voir dire* questioning of prospective jurors.
  - Try out new procedures for the elimination of unfit venire members using a clearly defined concept of “for cause.”

## ENDNOTES

<sup>1</sup> Gregory E. Mize & Paula Hannaford-Agor, *Building a Better Voir Dire Process*, The Judges' Journal, American Bar Association, Volume 47, Number 1 (Winter 2008); National Center for State Courts, *The State-of-the-States Survey of Jury Improvement Efforts*, p. 6 (April 2007).

<sup>2</sup> Possible comments to the jurors could include the following: “*The attorneys for the parties in this case and I will be asking you questions to determine if you will be the jurors in this case. If any of these questions embarrass you or cause you discomfort, please raise your hand and tell me you prefer to respond to the question in private. You will then do so outside the presence of other potential jurors, with just the court reporter, the attorneys and me present.*”

<sup>3</sup> Possible comments to the jurors could include the following: “*Based on your responses to the questions we ask, we may conclude that this may not be the best case for you to serve on, and we may excuse you with our thanks, to return to the jury assembly room for assignment to jury service on another case.*”

<sup>4</sup> In 2003, New York State, under the leadership of Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman, established the Jury Trial Project that piloted, among other innovations, *voir dire* openings by attorneys in 22 trials. The project gathered significant data from all participants in these trials. Judges presiding over trials where *voir dire* openings were used reported that the procedure was enormously successful, improving not only the jurors' candor but also their willingness to serve and, in addition, increasing their understanding of why they were being questioned. In fact, one judge reported the following: At first, I was skeptical. After using *voir dire* openings in several criminal trials, and then sitting on a trial where they were not used, I can't envision a case in which I would not like the attorneys to give brief *voir dire* openings. Jury selection is clearly improved by letting attorneys tell the venire a little bit about the case before question begins.

In addition, both the New York State Association of District Attorneys and the New York State Public Defense Bar endorse the use of *voir dire* openings. See New York Jury Trial Project, *Final Report of the Committees of the Jury Trial Project*, pp. 19-25 (April 2005).

<sup>5</sup> *People v. Rosario*, 173 N.E.2d 881 (N.Y. 1961) (statements of witnesses must be turned over to defense counsel prior to opening statements - and in this case, prior to *voir dire* openings).

<sup>6</sup> American Bar Association, *Principles for Juries & Jury Trials* (2005), at Principle 11A (“Written questionnaires are especially useful when questions involve sensitive topics (for example, substance abuse or criminal history) that prospective jurors would understandably feel uncomfortable disclosing orally in a room full of strangers.”); Gregory E. Mize & Paula Hannaford-Agor, *Building a Better Voir Dire Process*, *The Judges’ Journal*, American Bar Association, Volume 47, Number 1 (Winter 2008).

<sup>7</sup> See American Bar Association, *Principles for Juries & Jury Trials* (2005), at Principle 11B; American Bar Association, *Criminal Justice Standards for the Defense Function* (4th Ed), at Standard 4-7.3 (“Selection of Jurors”); American Bar Association, *Criminal Justice Standards for the Prosecution Function* (4th Ed), at Standard 3-6.3 (“Selection of Jurors”); National Jury Project, *Jurywork Systematic Techniques* (2nd Ed.), p. 2-56.5:

Reliance on fixed-response or closed-ended questions alone in the *voir dire* presents a barrier to effectively eliminating bias or prejudice. A closed-ended question is one in which the answer is limited to a single response such as yes, no, agree, disagree. Such fixed-response or leading questions will not be useful in gaining information about a prospective juror’s attitudes, prejudices, or prejudgment. Every lawyer and judge knows that leading questions are designed to suggest or control the content of the response elicited. A leading *voir dire* question, for example, ‘Is there anything about the race or background of the defendant that would prevent you from being fair and impartial?’ informs the prospective juror that the ‘correct’ answer is ‘no’ and provides the court with no information regarding the subtle impact of the juror’s biases. Indeed, many prejudiced individuals consider themselves fair-minded people who simply are ‘aware of the inferiority of certain minority groups.’ Only open-ended questions requiring jurors to formulate their thoughts in their own words will separate those jurors who are actually without unfair prejudice from those who are merely unaware of their unfair prejudices. Open-ended, non-leading questions encourage respondents to explain their opinions and attitudes in their own words, thus penetrating stereotyped and socially desirable responses. Only non-leading questions will uncover underlying attitudes and prejudices unlikely to surface in perfunctory responses to closed-ended questions.

See also National Jury Project, *Jurywork Systematic Techniques*, pp. 2-28 (2nd Ed.) (“Questions requiring jurors’ subjective evaluation of their ability to be fair and impartial have consistently been held to be an inadequate basis upon which to assess jurors’ qualifications.”).

<sup>8</sup> American Bar Association, *Principles for Juries & Jury Trials*, Principle (2005), at Principle 11B.

<sup>9</sup> See *People v. Tyburski*, 445 Mich. 606, 518 N.W. 2d 441, 448, 449 (Supreme Court of Michigan, 1994) (lead opinion of Court) (“It is imperative, in securing the rights of the parties to an impartial jury, for the court to allow the elicitation of enough information so that the court itself can make an independent determination of a juror’s ability to be impartial.” Courts indeed should be allowed wide discretion in the manner they employ to achieve the goal of an impartial jury. However, a court does not have discretion to simply fail to elicit enough information during *voir dire* to make an intelligent assessment of bias.”); *Young v. State*, 407 A. 2d 517, 521 (Supreme Court of Delaware, 1978) (“Consequently, the trial judge should not merely go through the form of obtaining jurors’ assurances of impartiality, but rather, he should conduct an examination designed to elicit answers which provide an objective basis for his evaluation.”); *Rosales-Lopez v. United States*, 451 U.S. 182, 101 S. Ct. 1629, 1634, 68 L.Ed. 2d. 22 (1981) (“Without an adequate *voir dire* the trial judge’s responsibility to remove prospective jurors who will not be able impartially to follow the court’s instructions and evaluate the evidence cannot be fulfilled.”); *People v. Williams*, 29 Cal.3d 392, 402, 628 P.2d 869, 873, 174 Cal. Rpt. 317, 321 (Supreme Court of California, 1981) (“Our Courts have become increasingly aware that bias often deceives its host by distorting his view not only of the world around him, but also of himself. Hence although we must presume that a potential juror is responding in good faith when he asserts broadly that he can judge the case impartially [citation omitted], further interrogation may reveal bias of which he is unaware or which, because of his impaired objectivity, he unreasonably believes he can overcome.”); see also *Silverthorne v. United States*, 400 F.2d 627, 639 (9th Cir. 1968), cert. den. 400 U.S. 1022 (1971) (“But whether a juror can render a verdict based solely on evidence adduced in the

courtroom should not be adjudged on the juror's own assessment of self-righteousness *without something more.*"); *Murphy v. Florida*, 421 U.S. 794, 95 S. Ct. 2031, 2036, 44 L.Ed.2d 589 (1975) ("[The juror's assurances that he is equal to the task [of impartiality] cannot be dispositive of the accused's rights..."); *People v. Tyburski*, 445 Mich. 606, 518 N.W. 2d 441, 452 n. 16 (Supreme Court of Michigan, 1994) (lead opinion of Court) ("Courts have long recognized that juror self-assessment of bias is inherently untrustworthy. Questions that do not go beyond juror self-assessment do not adequately cover the area of potential bias."); American Bar Association, *Criminal Justice Standards for the Defense Function* (4th Ed), at Standard 4-7.3 ("Selection of Jurors"); American Bar Association, *Criminal Justice Standards for the Prosecution Function* (4th Ed), at Standard 3-6.3 ("Selection of Jurors"); National Jury Project, *Jurywork Systematic Techniques* (2nd Ed.), pp. 2-17 ("Attorney participation in the questioning lessens the social distance between questioner and respondents, thus minimizing evaluation apprehension and minimizing the prospective jurors' tendency to try to please the interviewer.").

<sup>10</sup> National Center for State Courts, Center for Jury Studies, *The State-of-the-States Survey of Jury Improvement Efforts*, p. 7 (April 2007).

<sup>11</sup> American Bar Association, *Criminal Justice Standards for the Defense Function* (4th Ed), at Standard 4-7.3 ("Selection of Jurors"); American Bar Association, *Criminal Justice Standards for the Prosecution Function* (4th Ed), at Standard 3-6.3 ("Selection of Jurors"); National Jury Project, *Jurywork Systematic Techniques* (2nd Ed.), p. 2-16.1 ("Examining individual jurors outside the presence of other jurors is preferable to examining jurors in the presence of a large group. Individualized examination promotes candor by eliminating pressure to conform and minimizing the possibility of public embarrassment.").

## 10 PEREMPTORY CHALLENGES

A peremptory challenge is an opportunity for a party to a lawsuit to dismiss or excuse a potential juror during jury selection without having to give a reason, as would be the case when a juror is challenged for cause. Depending on court rules, each party typically is given from five to 15 peremptory challenges to exercise. Although parties may generally use their peremptory challenges as they see fit, the United States Constitution has been interpreted to prohibit their use to eliminate all jurors of a particular race or gender from a jury.<sup>1</sup> The United States Supreme Court recently heard argument in a case involving an allegation of just such an improper use of peremptory challenges in Georgia.<sup>2</sup> This case and others preceding it have revealed the continuing problems with preventing the unconstitutional use of peremptory challenges.

The problem of the improper use of peremptory challenges to eliminate minorities from juries has given rise to calls to eliminate or substantially reduce the number of peremptory challenges in civil and criminal trials around the country.<sup>3</sup> In 2005, the Honorable Judith Kaye, Chief Judge of the New York Court of Appeals, proposed to reduce by half New York's then existing twenty peremptory challenges in criminal cases. Similarly, the Arizona Supreme Court Committee on the More Effective Use of Juries recommended a reduction in the number of peremptory challenges by one-half, and a Court Committee in the District of Columbia called for the elimination or drastic reduction of peremptory challenges.<sup>4</sup>

Rather than call for the elimination or a reduction in the number of peremptory challenges in this report, it was decided, instead, to set forth a series of principles by which the exercise of peremptory challenges should be guided and recommend that the Supreme Court Criminal and Civil Procedure Rules Committees be assigned to review the issue, in light of the abuses recently brought to light.<sup>5</sup>

### RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court require all judicial districts to follow the same standard procedures for peremptory challenges, guided by the following principles:<sup>6</sup>

- Peremptory challenges should be available to each of the parties.
  - The number of and procedure for exercising peremptory challenges should be uniform.
  - The number of peremptory challenges should be limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury and to provide the parties with confidence in the fairness of the jury.<sup>7</sup>
  - Courts should have the discretion to provide additional peremptory challenges when justified.
  - Following completion of the examination of jurors, the parties should exercise their peremptory challenges by alternately striking names from the list of panel members until each side has exhausted or waived the permitted number of challenges.

- Fair procedures should be utilized in the exercise of challenges.
  - All challenges, whether for cause or peremptory, should be exercised so that the jury panel is not aware of the nature of the challenge, the party making the challenge, or the basis of the court’s ruling on the challenge.
  - After completion of the examination of jurors and the hearing of and determination of all challenges for cause, the parties should be permitted to exercise their peremptory challenges as set forth above. A party should be permitted to exercise a peremptory challenge against a member of the panel who has been passed for cause.
  - The court should not require a party to exercise any challenges until the attorney for that party has had sufficient time to consult with the client and, in cases with multiple parties on a side, with co-parties.
  - No juror should be sworn in to try the case until all challenges have been exercised or waived, at which point all jurors should be sworn in as a group.
- No party should be permitted to use peremptory challenges to dismiss a juror for constitutionally impermissible reasons.<sup>8</sup>
  - Judges should exercise increased scrutiny to ensure that peremptory challenges are not used improperly based on race in the *voir dire* process.<sup>9</sup>
  - A *Batson* challenge (*i.e.*, a party objecting to the challenge of a juror on the grounds that the challenge has been exercised on a constitutionally impermissible basis) establishes a *prima facie* case of purposeful discrimination by showing that the challenge was exercised against a member of a constitutionally cognizable group; and by demonstrating that this fact, and any other relevant circumstances, raise an inference that the party challenged the juror because of the juror’s membership in that group.
  - When a *prima facie* case of discrimination is established, the burden shifts to the party making the peremptory challenge to show a nondiscriminatory basis for the peremptory challenge.
  - The court should evaluate the credibility of the reasons proffered by the party as a basis for the peremptory challenge. If the court finds that the reasons stated are not pretextual and otherwise constitutionally permissible and are supported by the record, the court should permit the peremptory challenge. If the court finds that the reasons for the challenge are pretextual, or otherwise constitutionally impermissible, the court should deny the peremptory challenge and, after consultation with counsel, determine whether further remedy is appropriate.
  - All *Batson* and other similar challenges should be made part of the official court record. The court should state on the record the reasons, including whatever factual findings are appropriate, for sustaining or overruling the challenge.<sup>10</sup>
  - When circumstances suggest that a peremptory challenge was used in a constitutionally impermissible manner, the court on its own initiative, if

necessary, shall advise the parties on the record of its belief that the challenge is impermissible, and its reasons for so concluding and shall require the party exercising the challenge to make a showing of a nondiscriminatory basis for the challenge.

- The court should establish a database regarding every *Batson* challenge and other similar challenges. The database should contain the name and race of each juror, the basis for the challenge, the names of the striking and challenging attorneys and trial judge, and all other information pertinent to the challenge. All courts should use comparable codes to create and maintain such a database.<sup>11</sup>

## ENDNOTES

<sup>1</sup> Black's Law Dictionary (2nd Ed.), available at <http://dictionary.thelaw.com/peremptory-challenge/>.

<sup>2</sup> Adam Liptak, *Supreme Court to Decide if Georgia Went Too Far in Excluding Black Jurors*, New York Times (Nov. 2, 2015); see also Linda Greenhouse, *Op Ed: The Supreme Court's Gap on Race and Juries*, New York Times (August 6, 2015); Equal Justice Initiative, *Illegal Discrimination in Jury Selection: A Continuing Legacy* (2010), available at <http://www.eji.org/raceandpoverty/juryselection>.

<sup>3</sup> Three United States Supreme Court Justices have called for the abolishment of peremptory challenges. Kathleen Shambaugh, *Reducing Peremptory Challenges in California*, Institute for Court Management, pp. 9-10 (May 2014). The Special Committee of the New Jersey Supreme Court on Peremptory Challenges and Jury *Voir Dire* recommended that the number of peremptory challenges presently allowed in criminal trials in New Jersey be substantially reduced. It found that "in courtrooms where judges liberally grant challenges for cause, the jury selection process moves along more quickly, the use of a large number of peremptory challenges is avoided, and the parties' satisfaction with the final composition of the jury is high." Although the New Jersey Supreme Court did not act on the Committee's recommendation to reduce the number of peremptory challenges, instead holding it in for a year, "a significant factor informing that recommendation was the anticipated improvement of the quality of the *voir dire* process that will be achieved by the implementation of certain improved standards. The two work hand-in-hand. With improved and more expansive *voir dire* and more liberal excusals for cause, the need for peremptory challenges should be significantly diminished." Administrative Office of the Courts in the State of New Jersey, *Directive #21-06* (Dec. 11, 2006), pp. 2, 3, 8.

<sup>4</sup> Mary Catherine Campbell, *Black, White and Grey: The American Jury Project and Representative Juries*, Georgetown Journal of Legal Ethics, p. 14 (2005).

<sup>5</sup> In its Jury Task Force Report, *Best Practices Recommendations*, the Pennsylvania Association of Court Management recommended that the Pennsylvania Supreme Court Criminal Rules Committee be assigned the task of "examining the number of peremptories awarded to each side in civil and criminal cases and possibly reducing the number of peremptories for each side." Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 6 (April 2006). It is recommended that the Pennsylvania Supreme Court Criminal Rules Committee work jointly with the Pennsylvania Supreme Court Civil Rules Committee on this task.

<sup>6</sup> American Bar Association, *Principles for Juries & Jury Trials* (2005), pp.66-68.

<sup>7</sup> In Pennsylvania, all judicial districts are bound by Pa.R.C.P. 634 that sets forth the number of peremptory challenges permitted to be exercised by each party as follows:

(A) Trials Involving Only One Defendant:

(1) In trials involving misdemeanors only and when there is only one defendant, the Commonwealth and the defendant shall each be entitled to 5 peremptory challenges.



(2) In trials involving a non-capital felony and when there is only one defendant, the Commonwealth and the defendant shall each be entitled to 7 peremptory challenges.

(3) In trials involving a capital felony and when there is only one defendant, the Commonwealth and the defendant shall each be entitled to 20 peremptory challenges.

(B) Trials Involving Joint Defendants:

(1) In trials involving joint defendants, the defendants shall divide equally among them that number of peremptory challenges that the defendant charged with the highest grade of offense would have received if tried separately; provided, however, that each defendant shall be entitled to at least 2 peremptory challenges. When such division of peremptory challenges among joint defendants results in a fraction of a peremptory challenge, each defendant shall be entitled to the next highest number of such challenges.

(2) In trials involving joint defendants, it shall be within the discretion of the trial judge to increase the number of peremptory challenges to which each defendant is entitled up to the number of peremptory challenges that each defendant would have received if tried alone.

(3) In trials involving joint defendants, the Commonwealth shall be entitled to peremptory challenges equal in number to the total number of peremptory challenges given to all of the defendants.

<sup>8</sup> The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report* (March 2003), p. 97.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

# 11 JUROR PRIVACY

The issue of juror privacy has received greater attention over the past decade, particularly as courts have come to recognize the complexity of the issue. Jurors legitimately desire to avoid disclosure of sensitive or embarrassing information. In addition, jurors may fear that disclosure of personal information to a criminal defendant may lead to harassment or harm.<sup>1</sup> When jurors understand that courts take the issue of protecting their privacy seriously (without interfering with the parties' right to a fair trial), they are often more open, forthright, and understanding of the necessity of answering questions that may result in the release of personal information.

## RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court require judicial districts to balance juror privacy interests against party and public interests in court proceedings.<sup>2</sup> To achieve that balance, judicial districts should adopt the following guidelines.<sup>3</sup>

- Juror *voir dire* should be open and accessible for public view except as provided herein. Closed *voir dire* proceedings should only occur after a finding by the court that there is a threat to the safety of the jurors or evidence of attempts to intimidate or influence the jury.
- Judges should have the discretion to redact juror identifying information, such as date of birth and/or home address and telephone number, from the materials provided to the defendant.
- Requests to jurors for information should differentiate among information collected for the purpose of juror qualification, jury administration, and *voir dire*.
- Judges should ensure that jurors' privacy is reasonably protected, and that questioning is consistent with the purpose of the *voir dire* process.
- Courts should explain to jurors how the information they provide will be used, how long it will be retained, and who will have access to it.
- Courts should consider juror privacy concerns when choosing the method of *voir dire* (open questioning in court, private questioning at the bench, or a jury questionnaire) to be used to inquire about sensitive matters.
- Courts should inform jurors that they may provide answers to sensitive questions privately to the court and the parties.
- Jurors should be examined outside the presence of other jurors with respect to questions of prior exposure to potentially prejudicial material.
- Following jury selection and conclusion of the trial, the court should keep all juror identifying information confidential unless good cause is shown to the court which would require disclosure.<sup>4</sup> Original records, documents and transcripts relating to juror summoning and jury selection may be destroyed when the time for appeal has passed or the appeal is complete, whichever is longer, provided that, in criminal proceedings, the court maintains for use by the parties and the public exact replicas (using any reliable process that ensures their integrity and preservation) of those items.<sup>5</sup>

- Without express court permission, surveillance of jurors and prospective jurors outside the courtroom by or on behalf of a party should be prohibited.
- If cameras are permitted to be used in the courtroom, they should not be allowed to record or transmit images of the jurors' faces.

## ENDNOTES

<sup>1</sup> Chief U.S. District Court Judge Glen E. Conrad, Western District of Virginia ordered that a semi-anonymous jury be empaneled in *U.S. v. Mathis, Shelton, Shelton, Uhuru, Uhuru and Stokes*. The defendants were allegedly members of the 99 Goon Syndicate, which is an affiliate of the Bloods gang. The indictment stated that they participated in a pattern of racketeering which included assaults, robberies, burglaries, kidnapping, murder, and drug trafficking. Several defendants allegedly kidnapped and killed a police officer. On May 4, 2015, a jury was selected to hear the case. The following day, one of the defendants took a jury list back to his cell for the night. The jury list contained the jurors' names, mailing addresses, employers, occupations, etc. When this was discovered, Agent Cullins of the FBI expressed concern for the jurors' safety given the violent nature of the defendant's alleged criminal conduct. The court decided to send the jurors a letter describing the breach of security. The defendants moved for a mistrial based on the contents of the letters, which was granted. Upon retrial, the government moved for an anonymous jury based on the facts of the case. Judge Conrad ordered a semi anonymous jury after a detailed analysis of existing case law and applying the facts of this case to it. The judge established the following protocol for the selection of the jury:

- The defense attorneys will have access to all juror information but will be prohibited from sharing the juror's names, addresses, places of employment, etc. from third parties, including their clients. Jurors will be referred to by numbers in court.
- Defendants can review the juror questionnaires with appropriate redactions.
- Defendants can request a neutral explanation for the jury as to why they are being referred to by numbers. The explanation will essentially inform them that it is for their protection from unwanted contact by members of the media.

The above protocol was developed by the judges in the Eastern District of Michigan. See National Center for State Courts, Jur-E Bulletin, *Semi-Anonymous Jury Authorized* (August 28, 2015).

<sup>2</sup> See Paula Knudsen Burke & Scott Blanchard, *Protecting Public Access to Judicial Records and Proceedings*, The Pennsylvania Lawyer (Jan/Feb 2015).

<sup>3</sup> Many, but not all, of the recommended guidelines were found in the American Bar Association's *Principles for Juries & Jury Trials* (2005), pp. 35-36.

<sup>4</sup> In *Commonwealth v. Karl Long*, 922 A.2d 892 (Pa. 2007), the Pennsylvania Supreme Court reversed the decision of the Pennsylvania Superior Court denying the press the right of access to jurors' names and addresses in a highly publicized and sensationalized murder case. The Court held that the First Amendment provides "a qualified right of access to jurors' names but not addresses." In describing the qualified nature of the right of access to jurors' names, the Court stated that a court may be justified in withholding jurors' names but "[such] closure must be supported by specific findings demonstrating that there is a substantial probability that an important right will be prejudiced by publicity and that reasonable alternatives to closure cannot adequately protect the right."

<sup>5</sup> Paula L. Hannaford, *Safeguarding Juror Privacy: A New Framework for Court Policies and Procedures*, 85 Judicature 18 (2001), p. 44.

## 12 JUROR SECURITY

Jurors give their time and service to render verdicts in cases that sometimes arise from highly dangerous activities. Courthouses must provide jurors with not only the physical safety they deserve but with the peace-of-mind necessary to preserve the integrity of the jury process.

In 2013, the National Center for State Courts (“NCSC”) published a document entitled “Steps to Best Practices for Court Building Security.” These “best practices” include a section specifically related to the safety of jurors.<sup>1</sup> Many of the recommendations of the NCSC are included in our recommendations below.

### RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court require judicial districts to formulate a plan to address security in the courthouse for jurors, as well as security for jurors in their transit to and from parking facilities or public transportation to the courthouse. These include the following:

- Provide jurors with court security information before they report for duty by placing information on the jury summons they receive, including identifying where to enter the court building; the items (e.g., knives, nail files, scissors) that may not be brought into the court building; the prohibition of discussing cases with anyone before and during jury service; the prohibition on wearing ID badges outside the court building; and who to contact regarding security and safety concerns or jury tampering.
- Screen jurors as they enter the court building or before they report to the jury assembly area.
- Give a basic security and building evacuation orientation and ID badge to jurors at the assembly area before going to the courtroom. Cover such matters as what to do in case of an emergency and how to respond to a coded emergency announcement. Instruct jurors to not wear or display the ID badge off-site; and whom to notify if it is missing or lost.
- Assign a court security officer to remain with the jury during the entire trial/deliberation.
- Assign a court security officer to escort jurors to and from the courtroom. This should also include escorting jurors to and from parking areas, especially in high profile cases or after normal business hours.<sup>2</sup>
- Consider the same recommendation regarding juror privacy (See Section Eleven “Juror Privacy,” *infra*) in devising judicial districts’ juror security plans.

### ENDNOTES

<sup>1</sup> National Center for State Courts, *Steps to Best Practices for Court Building Security* (January 2013), at Topic C-5 (available at <http://ncsc.contentdm.oclc.org/cdm/ref/collection/facilities/id/170>).

<sup>2</sup> Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations* (April 2006), p. 14.

# 13 JURY EDUCATION AND APPRECIATION CAMPAIGNS

Since widespread citizen participation is essential to achieving a diverse and fully functional jury system, the importance of a citizen education campaign promoting jury service cannot be overstated. Citizen education campaigns provide an opportunity for the judicial branch to teach important values of citizenship, such as a trial by jury. In addition, they provide an effective vehicle for fostering positive court relations with the community.

The ABA Commission on the American Jury published a document related to jury appreciation in an effort to reinforce public confidence in the justice system, improve communication with jurors and employers, and disseminate an important and positive message to the public about jury service.<sup>1</sup> Many of the recommendations from that publication are incorporated into our recommendation below.

## RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court encourage judicial districts to adopt a variety of public outreach strategies<sup>2</sup> through which the community learns about the concept and importance of trial by jury, including the following:

- Annual Pennsylvania Jury Appreciation Week Strategies
  - Hold press conferences announcing Juror Appreciation Week with leaders of all branches of government, and ask local public officials to issue resolutions or proclamations supporting Juror Appreciation Week.
  - Ask newspapers to publish editorials in support of Juror Appreciation Week and to donate advertising space to publish any local government resolutions or proclamations during that week.
  - Conduct essay or poster design contests emphasizing the critical role of juries in our justice system for high school, college and graduate students.
  - Plan presentations during Juror Appreciation Week about the roles played by the judge, prosecutor, defense attorney, court clerk, court reporter and sheriff in the justice system.
  - Provide jurors during Juror Appreciation Week with simple gift items or refreshments, such as juror appreciation certificates; mugs, pens, or bookmarks imprinted with a juror appreciation message; or free tickets to a local sporting event.
- Day-to-Day Strategies:  
Public Outreach and Education
  - Air public-service advertising campaigns/announcements via newspapers, television, mass transit, public buildings, libraries, grocery stores, courthouses, and schools regarding the important role of the jury.
  - Use targeted media outreach to publish op-ed pieces, articles and interviews about litigation, jury service experiences, or the important role of the jury.<sup>3</sup>
  - Use targeted educational outreach to conduct classes/presentations to high schools, local colleges and community centers (in classes related to government, speech, American history, or civics), whereby judges, court administrators and bar associations explain the role of the jury.<sup>4</sup>

- Develop educational videos that put student audiences in the role of a simulated jury, hearing evidence and jury instructions and deciding cases.
- Conduct mock trials at local colleges or high schools with students as jurors.
- Show juror orientation videos at local centers, high schools and colleges.
- Provide coffee, donuts, and other refreshments for jurors during their waiting period.
- Provide a free daily newspaper to jurors.

#### Outreach to Jurors

- Develop jury pages on court websites that highlight the importance of trial by jury in the American justice system and discuss recent efforts by courts to improve the conditions of jury service.<sup>5</sup>
- Facilitate post-trial discussions in which judges express their appreciation to jurors who have just completed their service.
- Ask judges to express their appreciation to citizens who have shown up in response to a jury summons but who have not been chosen to serve on a particular case.
- Provide certificates of appreciation to those who serve on juries.
- Develop websites that are linked to videos on juror education, enabling jurors to view the video from home.

#### Outreach to Employers

- Encourage employers to pay jurors' salaries during service.
- Present awards to employers who make performing jury service easier for their employees.
- Host employer luncheons to thank them for supporting the jury system.

## ENDNOTES

<sup>1</sup> ABA Commission on the American Jury, *Juror Appreciation Kit*, available at <http://www.americanbar.org/content/dam/aba/migrated/jury/moreinfo/jurorkit.authcheckdam.pdf>.

<sup>2</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, National Center for State Courts, p. 22 (4th Ed., 2006); The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report* (March 2003), p. 98.

<sup>3</sup> See, e.g., Andrew Guthrie Ferguson, *The Joy of Jury Duty: Why Americans should stop complaining and learn to appreciate this constitutional obligation*, *Atlantic Monthly* (May 3, 2013).

<sup>4</sup> See ABA Judicial Division, *Dialogue on the American Jury* (available at [http://www.americanbar.org/groups/judicial/american\\_jury/resources/dialogue\\_on\\_the\\_american\\_jury.html](http://www.americanbar.org/groups/judicial/american_jury/resources/dialogue_on_the_american_jury.html)) for a teaching tool – The Dialogue on the American Jury – that is designed to help high school students and community groups explore the many issues related to trial by jury.

<sup>5</sup> See, e.g., California Courts, The Judicial Branch of California, *Juror Appreciation Week* (website), available at <http://www.courts.ca.gov/18005.htm> for an example of such a jury page.



## 14 JUROR CHILDCARE

A hallmark of American constitutional democracy is the right to an impartial jury. The courts have generally interpreted this to mean that defendants are entitled to a jury of their peers, or to a jury that accurately represents a cross-section of the community. U.S. Supreme Court rulings over the past century have gradually expanded interpretation of this provision to mean that discrimination in jury selection against African Americans, Latinos, and women is impermissible. In particular, white and diverse young women are often unable to serve on juries because of childcare or eldercare responsibilities. Instead of excusing them from jury duty, which may reduce jury representativeness, some courts sponsor childcare programs in the courthouse or nearby, or provide reimbursement for the childcare expenses incurred by prospective jurors. The Commonwealth has taken steps to provide the means to enable courts to provide such programs.<sup>1</sup>

### RECOMMENDATIONS

It is recommended that the Pennsylvania Supreme Court encourage each judicial district in Pennsylvania to provide childcare for jurors. This may be accomplished through the following steps:

- Providing judicial districts with information on court childcare based on existing programs, such as the model programs in Montgomery County<sup>2</sup> and Allegheny County.<sup>3</sup>
- Encouraging court administrators to utilize Title 42 Pa. C.S.A. § 3721 – which provides for funding for the start-up and daily operating costs of licensed childcare facilities in courthouses across the Commonwealth – and other available sources of funding.<sup>4</sup>

### ENDNOTES

<sup>1</sup> The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report* (March 2003), at Chapter 3 (“Gender Bias in Jury Selection”).

<sup>2</sup> See Appendix D (“JUROR CHILDCARE INFORMATION”).

<sup>3</sup> Fifth Judicial District of Pennsylvania, County of Allegheny, *Jury/Childcare* (website), available at <https://www.alleghenycourts.us/jury/childcare.aspx>.

<sup>4</sup> See Appendix D (“JUROR CHILDCARE INFORMATION”).

## 15 JUROR STRESS

An issue with which trial courts struggle is how to assist jurors who have served in lengthy trials, high-profile trials, and particularly difficult trials, especially those involving gruesome evidence or emotional testimony. These types of trials can provoke serious stress-related symptoms in jurors, some of whom continue to experience symptoms for weeks or even months after the trial has concluded. Juror stress is caused by a number of factors, including: disruptions to daily routine; the invasiveness of *voir dire*, trial evidence and testimony; restrictions on jurors' behavior; and the difficulty of jury deliberations. In other words, stress accumulates over the course of jury service.<sup>1</sup>

### RECOMMENDATIONS

Courts should strive during every contact with jurors to recognize the stress associated with jury service and make efforts to reduce it. It is recommended that the Pennsylvania Supreme Court urge judicial districts to take steps to prevent juror stress by providing the following to jurors:<sup>2</sup>

- Information about daily expectations. Judges and court personnel should receive training on the importance of communication with the jurors at every stage of jury service. It is especially important for them to explain as much as possible, the reasons for delays and waiting periods and to use jurors' time efficiently and effectively.
- Tools to facilitate informed decision-making.
- Informational brochures that alert jurors to the potential symptoms of juror stress during and after the trial, particularly in high-profile or traumatic trials. Court administrators should develop a brochure for jurors who are showing signs of stress that suggest common-sense coping techniques (See Appendix E "Tips for Coping After Jury Duty") for an example of the juror stress brochure distributed by Maricopa County, Arizona).<sup>3</sup> Additionally, training should be provided to judges and court personnel to recognize when specific jurors are experiencing unusually high levels of stress.
- Debriefing sessions consisting of a short group counseling session in which jurors have the opportunity to explore and better understand their emotional reaction to the trial and to jury service. The debriefings should include a description of symptoms commonly associated with juror stress and recommendations about appropriate stress-management techniques.
- Referrals to local mental health agencies.<sup>4</sup>
- Courts should also develop a written plan addressing juror stress issues for high-profile or especially violent cases.

## ENDNOTES

<sup>1</sup> Paula Hannaford-Agor, *Jury News: A New Option for Addressing Juror Stress?* National Association for Court Management, *The Court Manager* (Vol. 26 Issue 2).

<sup>2</sup> Minnesota Supreme Court Jury Task Force, *Final Report*, at Recommendation #35 (December 20, 2001); Paula Hannaford-Agor, *Jury News: A New Option for Addressing Juror Stress?* National Association for Court Management, *The Court Manager* (Vol. 26 Issue 2).

<sup>3</sup> See, e.g., Superior Court of Arizona, Maricopa County, *Tips for Coping After Jury Duty* (website), available at <http://www.superiorcourt.maricopa.gov/JuryServices/GeneralInformation/coping.asp>.

<sup>4</sup> Beginning sometime in mid-2005, the federal courts initiated a program to provide assistance to jurors serving in high-stress trials in federal courts. That program extends a mental health benefit offered to federal employees through the Employee Assistance Program (EAP) administered by the U.S. Department of Health and Human Services to jurors serving in federal jury trials. The EAP can provide both “critical incident debriefing” services to jurors as well as up to six free counseling sessions annually with a licensed mental health worker. If jurors require additional assistance after the six counseling sessions, the EAP can help identify other local mental health agencies. According to the eligibility criteria, EAP counseling services can be provided as long as the jurors are serving, but they are not available once jurors have been dismissed from service. Most states have equivalent EAP programs for state employees through their state HHS agencies, so this approach might be replicable for jurors serving in high-stress trials in state courts. See Paula Hannaford-Agor, *Jury News: A New Option for Addressing Juror Stress?*, National Association for Court Management, *The Court Manager* (Vol. 26 Issue 2).

## 16 JUROR SERVICE SCAMS

Over the past few years, numerous complaints have been reported by citizens who are being targeted by phone calls and emails that threaten them with prosecution and/or fines for failing to comply with jury service requirements in courts. In the calls and emails, recipients are pressured to provide confidential data, potentially leading to identity theft and fraud. These calls and emails are fraudulent and are not connected with the courts. The jury scam is a simple variation of the identity-theft ploys that have proliferated in recent years, as personal information and good credit have become thieves' preferred prey, particularly on the internet.<sup>1</sup>

There have been several media reports of such jury service scams in Pennsylvania. In Philadelphia, it was reported that individuals were trying to extort money from people by claiming that they represented the Sheriff's Office and/or the Courts, or the Jury Commissioner's Office. The following is a summary of one such example:

- A woman was told she had to pay a fine because she missed grand jury duty and there was an outstanding warrant for her arrest. The man who called her identified himself as Deputy Sheriff Strong. The woman was on her way to pay the fine, but contacted a City Councilman's Office first, which intervened and uncovered the scam. Also, no such "Deputy Sheriff Strong" worked at the Office of the Sheriff of Philadelphia City and County.<sup>2</sup>

### RECOMMENDATIONS

In order to reduce the proliferation of jury service scams and help protect the public, it is recommended that the Pennsylvania Supreme Court require the following of each judicial district:<sup>3</sup>

- Issue public warnings about jury service scams in general or specific scams as soon as they are uncovered. Such public warnings should be in the form of press releases or website notices on the "Jury" section of the judicial district's website, including the Frequently Asked Questions (FAQs) portion. This warning should include a statement that "court employees do not, under any circumstances, request confidential information such as credit card or bank account information."
- Provide contact information for a specific assigned person in the Court Administrator's Office, District Attorney's Office and/or the Sheriff's Office for those who suspect they are being scammed or are suspicious of anyone claiming to be from one of those offices.

## ENDNOTES

<sup>1</sup> See FBI, *The Verdict: Hang Up, Don't Fall for Jury Duty Scam* (website) (June 2, 2006), available at [https://www.fbi.gov/news/stories/2006/june/jury\\_scam060206](https://www.fbi.gov/news/stories/2006/june/jury_scam060206).

<sup>2</sup> See The Philadelphia Courts, *Jury Service: Sheriff's Office Warns of Extortion Scams Targeting Individuals in Philadelphia and Surrounding Counties* (website), available at <http://courts.phila.gov/jury-service/>; Fifth Judicial District of Pennsylvania. County of Allegheny, *Jury: Identity Theft/Jury Duty Scam* (website), available at [https://www.alleghenycourts.us/jury/scam\\_alert.aspx](https://www.alleghenycourts.us/jury/scam_alert.aspx); United States Courts, *Juror Scam, WARNING: Phone Calls, Emails on Jury Service May Lead to Fraud* (website), available at <http://www.uscourts.gov/services-forms/jury-service/juror-scams>.

<sup>3</sup> Examples of press releases related to jury service scams are located on the website of the National Center for State Courts (NCSC). See National Center for State Courts, *Newsroom, Courts issue warning about scams, Jury Service Scams*, (website), available at <http://www.ncsc.org/juryscams>.

## 17 SOCIAL MEDIA AND JURY INSTRUCTIONS

During trial and deliberations, jurors have been found to have: (1) performed their own Internet research concerning the case; (2) communicated with parties, witnesses, experts and/or counsel using social media; (3) used emails, blogs, texts, tweets, and chat rooms, among other electronic media, to communicate their opinions and prejudices about the case on which they are sitting; (4) not followed jury instructions as evidenced by their social media communications; (5) intentionally or unwittingly failed to disclose “prejudicial” connections to parties, witnesses, counsel or others as evidenced by jurors’ social media communications; and (6) otherwise engaged in misconduct through the use of social media technology. Such conduct, which is now easily discoverable, may make its way to trial counsel who then may question the integrity of jury verdicts. As such, the use of the Internet and social media by jurors has increasingly resulted in mistrials and jurors being held in contempt.<sup>1</sup>

In addition to hundreds of anecdotal accounts, numerous documented cases have surfaced in which jurors violated the rules against communicating with others during a trial or performing research about a case. For example, in Pennsylvania, concerns about substantial prejudice arose during the Vince Fumo trial after a juror posted information about the hearing on Facebook and Twitter. As a result, the Pennsylvania Supreme Court Suggested Standard Civil Jury Instructions Committee recently revised the standard instruction admonishing jurors from performing extrinsic research and communicating with anyone about a case. The instruction now cautions jurors about tweeting, posting on Facebook or performing Internet research.<sup>2</sup> See Appendix F (“Section 1.180 of the Suggested PA Standard Civil Jury Instructions”).

### RECOMMENDATIONS

To reduce the potential impact of improper social media communications on jury trials, it is recommended that the Pennsylvania Supreme Court advise courts to:

- Utilize Section 1.180 of the Suggested Pennsylvania Standard Civil Jury Instructions, addressing social media. See Appendix F (“Section 1.180 of the Suggested PA Standard Civil Jury Instructions”).
- Display in the jury deliberation room a social media usage poster warning of the consequences of improper social media communications.<sup>3</sup>
- Consult with counsel prior to jury selection concerning the potential review and/or monitoring of “public” juror social media communications during jury selection, trial and/or deliberations.



## ENDNOTES

<sup>1</sup> See New York State Bar Association, *Social Media Jury Instructions Report of the Commercial and Federal Litigation Section of the New York State Bar Association* (December 8, 2015), available at [http://www.nysba.org/Sections/Commercial\\_Federal\\_Litigation/Com\\_Fed\\_PDFs/Social\\_Media\\_Jury\\_Instructions\\_Report.html](http://www.nysba.org/Sections/Commercial_Federal_Litigation/Com_Fed_PDFs/Social_Media_Jury_Instructions_Report.html). The use of social media by jurors and attorneys has also been addressed in a 2014 Federal Judicial Center Report. See Meghan Dunn, *Jurors' and Attorneys' Use of Social Media During Voir Dire, Trials, and Deliberations, A Report to the Judicial Conference Committee on Court Administration and Case Management*, Federal Judicial Center (May 1, 2014).

<sup>2</sup> Jeannine Turgeon, *Avoiding Tweeting Troubles, Facebook Fiascos and Internet Imbroglios: Adapting jury instructions for the age of social media*, *The Pennsylvania Lawyer* (September/October 2014).

Moreover, in 2015, Rule 626 of the Pennsylvania Code ("Preliminary Instructions to Prospective and Selected Jurors") was adopted "in recognition of the fact that the proliferation of personal communications devices has provided individuals with an unprecedented level of access to information. This access has the potential for abuse by prospective jurors who might be tempted to perform research about a case for which they may be selected. Therefore, the rule requires that prospective jurors be instructed at the earliest possible stage as to their duty to rely solely on information presented in a case and to refrain from discussion about the case, either in person or electronically." See Rule 626 of the Pennsylvania Code ("Preliminary Instructions to Prospective and Selected Jurors"), available at <http://www.pacode.com/secure/data/234/chapter6/s626.html>. Rule 627 of the Pennsylvania Code ("Sanctions for Use of Prohibited Electronic Devices") was also adopted at that time "to make clear that in addition to the penalties for contempt that may be imposed upon an individual who violates these rules or a court-imposed restriction on the use of electronic devices during court proceedings, such devices may be temporarily or permanently confiscated by the court." See Pennsylvania Code Rule 627 ("Sanctions for Use of Prohibited Electronic Devices"), available at <http://www.pacode.com/secure/data/234/chapter6/s627.html>.

<sup>3</sup> New York State Bar Association, *Social Media Jury Instructions Report of the Commercial and Federal Litigation Section of the New York State Bar Association* (December 8, 2015), available at [http://www.nysba.org/Sections/Commercial\\_Federal\\_Litigation/Com\\_Fed\\_PDFs/Social\\_Media\\_Jury\\_Instructions\\_Report.html](http://www.nysba.org/Sections/Commercial_Federal_Litigation/Com_Fed_PDFs/Social_Media_Jury_Instructions_Report.html).

# A JUROR SUMMONS MAILER WITH SUMMONS FORM, JUROR QUALIFICATION QUESTIONNAIRE, MAP OF COURTHOUSE AND PARKING INSTRUCTIONS, AND IMPORTANT JUROR INFORMATION



Fifth Judicial District of Pennsylvania  
Office of Jury Management  
414 Grant St, Room 701-A  
Pittsburgh, Pennsylvania 15219

## JUROR SUMMONS

\*\*\*\*\*

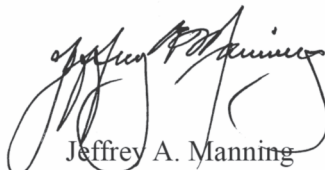
Time Sensitive Document

\*\*\*\*\*

Dear Citizen:

You have been chosen to participate in the juror selection process for the Allegheny County Court of Common Pleas. Enclosed you will find a **Juror Qualification Questionnaire** and a **Summons to Appear for Jury Service** indicating the date, time and location of your jury service.

We thank you for your participation in our system of justice and for providing this vital service to our community.



Jeffrey A. Manning  
President Judge  
President Judge



Claire C. Capristo, Esq.  
District Court Administrator

### WHAT TO EXPECT

If you are required to report on the service date shown on your summons, upon your arrival you will be checked in by an officer of the court and receive a brief orientation of your service. You may then be interviewed to serve as a juror for a trial scheduled to begin that day. If you are interviewed but not selected to serve on a particular case, you might then be interviewed a second time and selected on a different case. Even if you are not selected to serve on a case you should expect to be in Court until the close of business at 4:30 P.M. Proof of your service will be provided.

### LENGTH OF JURY SERVICE

If selected to serve on a jury trial, you will serve for the duration of that one trial. The average jury trial lasts 2-4 days and usually will begin following jury selection. Ordinarily, if you are not selected by the end of your first day you will be dismissed from your service.

### PROPER ATTIRE

Business attire appropriate to the dignity and serious nature of court proceedings must be worn. Shorts, tank-tops, t-shirts, beach shoes, revealing clothing or clothing with offensive language or language that may impede the fair and impartial manner of the proceedings demanded in any court proceeding should not be worn.

### CHILDCARE

In cooperation with the National Council of Jewish Women, the Court of Common Pleas offers childcare to summoned jurors at no cost. You must reserve a space for your child upon receipt of this summons. To make a reservation, please call The Children's Room at (412) 350-4588 as soon as possible. Walk-ins will not be accepted.

### POSTPONEMENTS

Requests for the postponement of jury service are considered for many reasons including but not limited to adult care, work issues, vacation, or pursuit of educational opportunities but must be presented at least seven (7) business days prior to your service date by any of the following means:

- A. Online at [www.alleghenycourts.us/postponements](http://www.alleghenycourts.us/postponements)
- B. E-mail: [jurycoordinator@alleghenycourts.us](mailto:jurycoordinator@alleghenycourts.us);
- C. Mail: Office of Jury Management  
414 Grant St, 701-A  
Pittsburgh, PA 15219
- D. FAX: (412) 350-3043

### DISABILITIES

Consistent with the Americans with Disabilities Act (ADA), the Court provides reasonable accommodations for those with disabilities. Please contact the Office of Jury Management at (412) 350-5336 for assistance. [TTY hearing impaired: (412) 350-4259]

### PARKING

The Court does not provide nor reimburse parking fees for jurors, however, the Chatham Parking Garage offers a reduced daily rate for jurors. Entry to the Chatham Garage is on the 800 block of Fifth Avenue and your parking ticket must be brought to your reporting location. Public transportation information can be obtained by calling Port Authority Transit (PAT) at (412) 442-2000 or visiting PAT's website at [www.portauthority.org](http://www.portauthority.org).

### ADDITIONAL INFORMATION

You may visit the Court's web site at [www.alleghenycourts.us/jury](http://www.alleghenycourts.us/jury) for answers to other frequently asked questions and other detailed information regarding jury service.



*The right to a trial by jury is guaranteed by the United States Constitution and Pennsylvania Constitutions. It is one of the essential safeguards of our justice system. Without the participation of all qualified citizens serving as jurors, this basic element of our democratic society would be diminished, depriving all of us of its benefits and protections.*

*Trial by a fair and impartial jury, in both civil and criminal cases, ensures that the people, and not the government, determine the outcome of matters where the freedom of the accused or the property rights of any citizen are at issue.*

**YOU MUST SUBMIT THIS JUROR QUALIFICATION QUESTIONNAIRE WITHIN 10 DAYS BY EITHER:**

- (A) Completing the questionnaire online at [www.alleghenycourts.us/jury](http://www.alleghenycourts.us/jury); OR,  
 (B) Completing the form below and returning it by US Mail in the attached, pre-paid envelope or by FAX at (412) 350-3043

The failure to submit responses to this questionnaire and any required documentation will NOT excuse you from reporting on [SERVICE DATE] if your group number, [GRP#], is required to appear and may result in having your jury service rescheduled to a later date. Answers to frequently asked questions can be located on the reverse side of the Juror Summons included with this questionnaire.

Please provide name and/or address corrections here:

Name \_\_\_\_\_

Address \_\_\_\_\_

JUROR NUMBER:

SERVICE DATE:

1. Summoned jurors 75 years of age and over are invited to serve but are not required to do so. If you qualify for this exemption and are choosing not to serve, mark the box on the right, skip questions 2-8, enter your date of birth on line 9, sign and return this form.	<b>Age-Related Excusal</b> <input type="checkbox"/>	
2. Are you a resident of Allegheny County? If "No" please sign and date the bottom of this form and return this Questionnaire with a photocopy of your driver's license, state issued I.D., deed, lease agreement, OR voter's registration indicating your new address.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Are you a United States citizen?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Are you 18 years of age or older?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Are you able to read, write, speak and understand the English language?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Do you have a physical or mental condition that would prohibit you from rendering efficient jury service? If so, an affidavit will be mailed to you requiring a medical physician's assessment and signature.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Have you ever been convicted of a crime punishable by imprisonment for more than one (1) year (a misdemeanor I, misdemeanor II or any felony) and never been granted amnesty? This refers to the maximum permissible sentence for such crimes and not the actual sentence received.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. Are you active in the military service? If so, please complete the active military information section below, sign, date, and return the Questionnaire. If the active service member is not in the United States, a family member may complete the Questionnaire and active military information section.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Enter your date of birth:	/ /	

**I DECLARE, UNDER PENALTY OF PERJURY, THE ANSWERS PROVIDED ARE TRUE AND CORRECT.**

<b>Active Military Information</b>	
ETS	_____
Branch	_____
Unit	_____
City	_____
State	_____
Country	_____
Rank/Grade	_____

\_\_\_\_\_  
**Signature of Prospective Juror**

(If signature is not that of the prospective juror, a reason must be provided)

Reason for Alternate Signature ☐ Deceased ☐ Active Military ☐ Student ☐ Other

Description of Other Reason: \_\_\_\_\_

**EXEMPTIONS**

- If the prospective juror is unable to complete this form, another person may complete and sign the Questionnaire; however, the reason for the substitution must be provided.
- The Court apologizes for the summons received for a household member who is deceased. Updated information is not always provided by state agencies from which jury lists are compiled. If this is the case, please skip questions 1-8, enter the summoned juror's date of birth on line 9, sign the form and mark the reason for the alternate signature.
- Children, grandchildren, spouses, siblings, parents, and grandparents of a victim of criminal homicide may be eligible for jury service excusal. Please contact the Office of Jury Management at (412) 350-5336 for more information.



**SUMMONS TO APPEAR FOR JURY SERVICE**  
**Fifth Judicial District of Pennsylvania**  
Court of Common Pleas of Allegheny County

**JUROR NUMBER:**  
**REPORTING GROUP:**  
**SERVICE DATE:**

By order of the Honorable Jeffrey A. Manning, President Judge, you are hereby summoned for selection as a potential juror in the Court of Common Pleas of Allegheny County. Please follow the steps below to determine if you must appear on your service date.


<b>1</b>	<b>AFTER                      ON                      YOU MUST EITHER:</b>	
	<b>(A) VISIT THE COURT'S WEB SITE AT <u>WWW.ALLEGHENYCOURTS.US/REPORTING_STATUS</u>; OR,</b>	
	<b>(B) CALL (412) 350-688</b>	
	<b>TO LEARN IF YOUR REPORTING GROUP IS REQUIRED TO APPEAR.</b>	

<b>2</b>	<b>IF REPORTING GROUP                      IS INSTRUCTED TO APPEAR, YOU MUST APPEAR AT THE TIME AND LOCATION PROVIDED BELOW:</b>		
	<b>LOCATION →</b>	<b>DATE →</b>	
		<b>TIME →</b>	


**Bring this summons with you when you report and allow enough time to pass through security screening.**

If an emergency arises within 48 hours of your summoned date that will prevent you from serving, please notify the Office of Jury Management. You may call the Office of Jury Management at (412) 350-5336 or email [jurycoordinator@alleghenycourts.us](mailto:jurycoordinator@alleghenycourts.us) with any questions. Failure to comply with this summons is punishable by fine, imprisonment, or both.


1. Complete and detach the Questionnaire at the perforations




2. Detach envelope at the perforations




3. Slide finger along envelope edge to create opening



4. Fold Questionnaire in half twice and insert into envelope



5. Remove strip to expose adhesive. Fold, seal and mail





NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



**BUSINESS REPLY MAIL**  
FIRST-CLASS MAIL PERMIT NO. 185000 PITTSBURGH, PA  
POSTAGE WILL BE PAID BY ADDRESSEE

FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA  
OFFICE OF JURY MANAGEMENT  
542 FORBES AVE STE 201  
PITTSBURGH PA 15219-9514



# **B PROPOSED REVISIONS TO SECTION 4503 OF TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED STATUTES: RULES FOR EXEMPTION, EXCUSAL AND POSTPONEMENT, JURORS FAILING TO REPORT TO DUTY, JUROR EXCUSAL & POSTPONEMENT REQUEST FORM AND JURY FAQs**

4503. Exemptions and Excusals from Jury Duty.

(a) Exemptions. – No person shall be exempt from jury duty except for the following persons who opt not to serve:

- (1) Spouses, children, siblings, parents, grandparents and grandchildren of victims of criminal homicide under 18 Pa.C.S. § 2501 (relating to criminal homicide) who are called to serve on a criminal jury.
- (2) Persons who have previously served for a term of 18 months on a Statewide investigating grand jury, including any extensions thereof.
- (3) Persons 75 years of age or older.

(b) Excusals. – No person shall be excused from jury duty except the following:

- (1) Persons demonstrating to the court undue hardship or extreme inconvenience.
- (2) Persons in active service of the armed forces of the United States or of the Commonwealth of Pennsylvania.
- (3) Persons who have served more than three days on any jury within the previous three years and who opt not to serve.
- (4) Persons who have served less than three days on any jury within the previous year and who opt not to serve. The term of excusal shall be one year.
- (5) Sitting judges and magisterial district judges of the Commonwealth as defined in 42 Pa.C.S. § 102 (relating to definitions) who opt not to serve.
- (6) Sitting judges of the United States as defined in 28 U.S.C. § 451 (relating to definitions) who opt not to serve.
- (7) Breastfeeding women who opt not to serve.
- (8) Parents or guardians who have custody of a child under seven years of age, who are the primary caregivers of the child and who opt not to serve.
- (9) Parents or guardians who are providing alternative education to a child who has been excused from attending public school and who opt not to serve.



(10) Persons who are primary caregivers of an elderly or disabled family member and who opt not to serve.

(c) Term of Excusal. – Persons may be excused for such period as the court determines necessary. At the end of the period, they may be assigned to the next jury array.

(d) Challenges. – This subchapter shall not affect the existing practice with respect to peremptory challenges and challenges for cause.

## **RULES FOR EXCUSALS/POSTPONEMENTS**

- Persons who can prove to the court that they have a special hardship or extreme inconvenience may be excused permanently or for such time as the court determines is necessary, and if excused for a limited period shall, at the end of the period, be assigned to the next jury array.
- If you are unable to serve on a summoned date, a first request for postponement of jury service may be granted for many reasons, including but not limited to, active service of the armed forces of the United States or Pennsylvania, served within last three years on any jury, breastfeeding, childcare, adult care, work related issues, economic hardship, vacation, school responsibilities if you are a student, family death, or lack of transportation.
- If you wish to be excused or receive a postponement from jury service, you must indicate the reason for your request in the Juror Questionnaire. You should also indicate a date within the next 4-5 months when you will be available to serve.
- If you have already completed and returned your Juror Questionnaire and find you need to request a postponement, you should submit your request online (using the Juror Excusal & Postponement Request Form) or by contacting \_\_\_\_\_ at \_\_\_\_\_, Monday through Friday, from 8:30 a.m. to 4:00 p.m., at least seven (7) business days prior to the scheduled service date.
- You will receive a prompt response in writing or by email upon submitting excusal/postponement requests.
- Postponement of jury service means that you are not required to report on the summoned date, but will be summoned at a later date.

## **JURORS FAILING TO REPORT TO DUTY**

Jurors who fail to report for jury service and have not been excused or postponed from service are accountable to the court. Jurors are scheduled for a contempt hearing before the court and may be fined for failure to report. Failure to respond to jury duty is a summary criminal offense punishable by up to a \$500 fine and 10 days in jail.

# JUROR EXCUSAL & POSTPONEMENT REQUEST FORM

***You MUST complete the Juror Questionnaire BEFORE submitting this form***

Juror # \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Date You Were Asked to Report for Jury Duty \_\_\_\_\_

Date in the Next 4-5 Months You Will Be Able To Serve \_\_\_\_\_

Daytime Phone \_\_\_\_\_

Email \_\_\_\_\_

Reason for Request (Select One):

- ☐ Active service of the armed forces of the United States or Pennsylvania
- ☐ Served within last three years on any jury
- ☐ Breastfeeding
- ☐ Childcare (e.g., parent of young child)
- ☐ Adult Care (e.g., caregiver of ill or disabled parent or other adult)
- ☐ Work-Related (your employer must certify the hardship in "Remarks" section, below)
- ☐ Economic Hardship
- ☐ Vacation
- ☐ Student (Full-Time)
- ☐ Family Death
- ☐ No Transportation
- ☐ Other (please provide written explanation in "Remarks" section below)

For each reason selected, please give more detail under the Remarks section below. Medical requests require that a doctor's excuse be mailed to \_\_\_\_\_. Student excusal requests require that a copy of your class schedule be mailed to \_\_\_\_\_.

Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## JURY FAQs

**1. What if I no longer permanently reside in \_\_\_\_\_ County?** You must be a resident of \_\_\_\_\_ County to serve as a juror in the Court of Common Pleas. If you are no longer a permanent resident, you will be required to complete and submit an **Affidavit of Non-Residency** form along with supporting documentation within 20 business days after the submission of your Juror Questionnaire. Persons failing to complete and submit the form will be deemed qualified and will be required to appear as summoned. If you return your completed Juror Questionnaire by mail, a form will be mailed to you immediately upon receipt. If you complete the Juror Questionnaire or Juror Excusal & Postponement Form online, the **Affidavit of Non-Residency** form and instructions will be provided immediately after your paperwork is submitted.

**2. What if I have a medical condition that prohibits me from serving as a juror?** If you are unable to serve as a juror due to a physical or mental illness, you may be excused or your jury service may be postponed. To qualify for an excusal, you will be required to complete and submit a **Medical/Mental Infirmary Certificate** within 30 business days after the submission of your Juror Questionnaire. If you fail to complete and submit this form, you will be deemed qualified and will be required to appear as summoned. If you return your completed Juror Questionnaire by mail, a form will be mailed to you immediately upon receipt. If you complete the Juror Questionnaire or Juror Excusal & Postponement Form online, the **Medical/Mental Infirmary Certificate** and instructions will be provided immediately after your paperwork is submitted.

**3. I am in the military. Am I excused?** Under most circumstances, you may be excused from jury service if you are in the active military. To qualify for this excusal, you will be required to complete and submit a **Military Certificate** within 45 business days after the submission of your Juror Questionnaire. Persons failing to complete and submit this form will be deemed qualified and will be required to appear as summoned. If you return your completed Juror Questionnaire by mail, a form will be mailed to you immediately upon receipt. If you complete the Juror Questionnaire or Juror Excusal & Postponement Form online, the **Military Certificate** and instructions will be provided immediately after your paperwork is submitted.

**4. How often must I serve?** If you serve as a juror for one or two days, you need not serve again for a period of one year. If the jury service is for three or more days, you do not have to serve for another three years.

**5. What if the date I'm called to serve is not convenient?** If you are unable to serve as a juror on a summoned date, a first request for postponement of jury service may be granted for many reasons, including but not limited to, caring for an ill or disabled adult, childcare, job-related reasons, vacation, or if you are a student. If you wish to be excused or receive a postponement from jury service, you must indicate the reason for your request in the Juror Questionnaire. You should also identify a date within the next 4-5 months when you will be available to serve. If you have already completed and returned your Juror Questionnaire and find you need to request a postponement, you may submit your request online (using the Juror Excusal & Postponement Form) or by contacting \_\_\_\_\_ at \_\_\_\_\_, Monday through Friday, from 8:30 a.m. to 4:00 p.m., at least seven (7) business days prior to the scheduled service date.

**6. What if I have a family vacation or business trip scheduled the same time as my summons date?** When filling out your Juror Questionnaire, fill in "yes" to question #\_\_\_\_ and provide a detailed explanation. An alternate jury date will be assigned and mailed to you.

**7. I am a college student. Do I have to miss class?** No. Simply fill in "yes" to question #\_\_\_ on your Juror Questionnaire and further instructions will be mailed to you. If you are unable to fill out the form, someone may complete it for you.

**8. Is there an age limit for serving as a juror?** Every citizen 18 years of age or older residing in \_\_\_\_\_ County is eligible to serve as a juror, and participation of all citizens in jury service is strongly encouraged. The potential hardship that jury service may cause for elderly citizens is recognized by the Court. While there is no age limitation to participate in jury service, citizens who are 75 years of age or older, upon receipt of a Juror Questionnaire or Summons, may request an age-related excusal that will permanently remove them from the Court's list of prospective jurors. To request an age-related excusal, you may contact \_\_\_\_\_ by \_\_\_\_\_. You will receive a written response from the Court.

**9. Does the Court grant exemptions for certain occupations or professions?** There are no provisions for any specific exemption of jury service based on one's occupation, profession, or status. When appropriate, the Court will attempt to accommodate prospective jurors in determining the most suitable date for service.

**10. May I be excused due to my moral or religious beliefs?** No. Pennsylvania law does not provide for an excuse from jury duty due to moral or religious beliefs.

C

FAILURE TO APPEAR NOTICE

Date \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Jury Service

Dear \_\_\_\_\_,

I’ve been informed by the Jury Commission that you failed to appear for jury service on \_\_\_\_\_. This is your second unexcused absence.

A juror who fails to appear when summoned unless exempt or excused shall be punished for contempt of court and may be fined in an amount not to exceed \$500.00. (42 Pa.C.S.A. §4584).

You must appear in Courtroom No. \_\_, \_\_\_\_\_ County Courthouse on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. to explain why you should not be held in contempt of court and fined. Failure to appear at this date and time will result in the issuance of a bench warrant.

Very truly yours,  
  
\_\_\_\_\_

## MONTGOMERY COUNTY COURT CARE PROGRAM

The Montgomery County Court Care Program is a licensed drop-in childcare center established in 1996 and operated by Executive Director, Linda Awarski, on behalf of the Montgomery County Commissioners. The facility, located in a government-owned building directly across the street from the courthouse, provides short-term childcare for county families who have court-related business. The service is provided at no cost to families who need it. Most of the children utilizing the program are either pre-school aged, home-schooled, and/or at home during summer vacation from school. The childcare room holds up to 22 children at one time, and the total number of children served per month is between 214 and 326. Each of the program's three full-time licensed employees earns at least \$22 per hour and receives medical and other employment benefits. The center is open Monday through Friday from 8:00 a.m. to 4:30 p.m. daily.

## COST TO THE COUNTY

The program's yearly costs are approximately \$200,000. However, Montgomery County estimates that this program saves the court hundreds of thousands of dollars per year, at relatively no cost to the courts. Among the savings are the approximately two hours per day that the jury staff spends dealing with jury excusal phone calls.

## COMMUNITY INVOLVEMENT

Montgomery County judges and court staff are very supportive of the Montgomery County Court Care program, even stopping by at lunch to read to the children, etc. More information about the program is available at <http://www.montcopa.org/index.aspx?NID=117> and "Parent Handbook" available at <http://www.montcopa.org/DocumentCenter/View/8>.

## FUNDING

Nearly all of the program's \$200,000 yearly costs are funded through Act 105 of 2000. In addition, the program receives an annual \$18,000 stipend through a domestic relations bill and a grant of \$10,000 per year from the Keystone Stars Program of Quality Assurance. The \$10,000 grant is used for center furnishings, learning materials, health and safety practices, staff training, education and community outreach. The program also receives donations of books and materials from corporations (e.g., Scholastic, Sesame Street) and local companies.

## FUNDING FOR COURT CHILDCARE PROGRAMS IN PENNSYLVANIA LEGISLATION

### Title 42 Pa. Cons. Stat. Ann. § 3721

In 2000, the Pennsylvania Legislature enacted legislation (Act 105) that provides for the start-up and daily operating costs of childcare facilities through the collection of a \$5 filing fee for civil or criminal proceedings in jurisdictions across the Commonwealth. The statute, set forth in Title 42 Pa. Cons. Stat. Ann. § 3721,



enables a county judicial center or courthouse to provide “a childcare facility for use by children whose parents or guardians are present at the county judicial center or courthouse, for a court appearance or other matter related to any civil or criminal action where the person’s presence has been requested or is necessary.” The facility must either be located within the county judicial center or courthouse or must be readily accessible to it, and the facility must be licensed and operated pursuant to the regulations of the Pennsylvania Department of Public Welfare.

## GRANTS

### Keystone STARS Program of Quality Assurance

Keystone STARS is an initiative of the Pennsylvania Office of Child Development and Early Learning (OCDEL) to improve, support and recognize the continuous quality improvement efforts of early learning programs in Pennsylvania. More information, including an application, is available at [http://www.pakeys.org/pages/get.aspx?page=Programs\\_STARS](http://www.pakeys.org/pages/get.aspx?page=Programs_STARS).

## DONATIONS

Court childcare programs may consider receiving donations of books, supplies, etc. from individuals, corporations or other entities within the community where they are based.

## **THE JURY DUTY EXPERIENCE**

Thank you for serving your community. Being on a jury is a rewarding experience which in some cases may be quite demanding. You were asked to listen to testimony and to examine facts and evidence. Coming to decisions is often not easy, but your participation is appreciated.

Serving on a jury is not a common experience and may cause some jurors to have temporary symptoms of distress.

Not everyone feels anxiety or increased stress after jury duty. However, it may be helpful to be aware of the symptoms if they arise.

Some temporary signs of distress following jury duty include: anxiety, sleep or appetite changes, moodiness, physical problems (e.g. headaches, stomach aches, no energy, and the like), second guessing your verdict, feeling guilty, fear, trouble dealing with issues or topics related to the case, a desire to be by yourself, or decreased concentration or memory problems.

Symptoms may come and go but will eventually go away. To help yourself, it is important to admit any symptoms you may have and deal with any unpleasant reactions.

## **COPING TECHNIQUES AFTER SERVING ON A JURY**

- Talk to family members and friends. One of the best ways to put your jury duty experience in perspective is to discuss your feelings and reactions with loved ones and friends. You may also want to talk with your family physician or a member of the clergy.
- Stick to your normal, daily routines. It is important to return to your normal schedule. Don't isolate yourself.
- Before you leave the court, you may wish to get the names and numbers of at least two of your fellow jurors. Sometimes it is helpful to talk to people who went through the experience with you. This can help you to remember that you were part of a group (jury) and are not alone.
- Remember that you are having normal responses to an unusual experience.
- You can deal with signs of distress by cutting down on alcohol, caffeine, and nicotine. These substances can increase anxiety and fatigue and make sleep problems worse.
- Relax with deep breathing.
- Breathe in slowly through your nose.
- Breathe out through your mouth.
- Slow your thoughts down and think about a relaxing scene.
- Continue deep breathing until you feel more relaxed.
- Cope with sleep problems.
- Increase your daily exercise, but do not exercise just before bedtime.
- Decrease your caffeine consumption, especially in the afternoon or evening.
- Do "boring" activities before bedtime.
- Listen to relaxation tapes or relaxing music before bedtime.

## FINAL THOUGHTS

- Remember that jury service is the responsibility of good citizens.
- Resist negative thoughts about verdict.
- No matter what others think about the verdict, your opinion is the only one that matters.
- You don't have to prove yourself to anyone.
- Sometimes it takes a lot of courage to serve on a jury.
- Some cases are very violent and brutal and hard to deal with. The case is now over and it is important for you to get on with your life.
- If you are fearful of retaliation or if you are threatened after the trial, tell the court and/or law enforcement immediately.

*If signs of distress persist for two weeks after the jury service has ended consider contacting your physician.*

# **F** SECTION 1.180 OF THE SUGGESTED PA STANDARD CIVIL JURY INSTRUCTIONS

*Revised Suggested Jury Instruction 1.180*

## **1.180 (CIV) RULES GOVERNING JUROR CONDUCT DURING TRIAL**

This case is very important to all the parties.

The parties are entitled to your full attention throughout the trial and to your fair and impartial consideration of the case.

To ensure fairness, you as jurors *must* follow certain rules that apply in every jury trial:

1. Keep an open mind throughout the trial.
2. Do not discuss the case with *anyone* during the trial and do not give out information or allow yourself to receive information about the case, outside the courtroom.
3. Do not read about the case or listen to stories about the case in newspapers, magazines, radio or TV shows, or Internet sites.
4. Do not visit the locations discussed in the case and do not conduct any independent research about the case.
5. Be fair to all the parties.
6. Turn off your cell phones.

If you disobey these rules, you will directly violate the oath you have taken as a juror.

If you break any of these rules, I may need to order an entirely new trial before another jury that would cost the parties and the court system a lot of time and money, as well as cause embarrassment to you. [It could result in *[insert contempt, costs, fines deemed appropriate by the court].*]

So, please listen carefully as I explain the rules again to you in more detail.

1. *Keep an open mind throughout the trial.* Do not make up your mind about what your verdict will be until the end of the trial when you have heard all the evidence and after I have explained the law you must follow.
2. *Do not give out information or receive information about the case outside the courtroom. Do not discuss the case with anyone during the trial.* Not with each other, not with any of the lawyers, parties, or witnesses, not with your friends and family, and not with anyone on social media or Internet sites.

I know you may be tempted to discuss with each other a witness's testimony you just heard or other evidence, but do not do so. Something you say may distract or improperly influence another juror. It is only fair to allow each juror to keep an open mind throughout the trial. So please, keep your comments and your thoughts to yourself until it is time to deliberate.

You must not talk with any of the parties, lawyers, witnesses, or anyone else involved in this trial. You must not even pass the time of day with them. A person from one side of the lawsuit who sees you talking to a person from the other side might legitimately doubt your fairness as a juror. It might be misinterpreted as jury tampering. Therefore avoid the parties, their lawyers, and all witnesses. Your juror badge identifies you as a juror – someone very special in our justice system who is not to be approached in any way.

You must not talk about the case with your family, friends, or anyone else. When you go home, you may only say that you have been selected as a juror in a civil case and that the trial is expected to last *[insert number of days]* days. You must not tell them anything more about the case. If anyone asks, explain to them you are not permitted to discuss anything about the trial, until your verdict has been recorded and the trial is over.

I am well aware that in daily life, you may regularly communicate with friends and family through text messaging, email, Twitter, social networking websites, chat rooms, Facebook, MySpace, LinkedIn, YouTube, blogs, or other websites *[insert any new social media examples]*. Remember – you must not communicate about this case in any way, even electronically (no texting, emailing, tweeting, or posting).

*3. Do not read or listen to stories about the case in newspapers, magazines, Internet sites, or on radio or television.* Avoid listening to TV or radio newscasts. Do not read any newspapers, journals, or Internet sites that might discuss the case. You may ask a friend or family member to save newspapers for you until you have reached your verdict and the trial is over.

*4. Do not visit the locations discussed in the case and do not conduct independent research or investigation about the case.* You must decide all questions of fact only based upon the evidence received in this trial and not from any other source. Do not conduct experiments. Do not read books, magazines, Internet sites, or other reference works for additional information. I am well aware that in daily life, many of you regularly use the Internet to obtain all types of information. Anyone can put anything on the Internet and that information may or may not be accurate or reliable, and probably would not be admissible as evidence during a trial. During this trial, I must decide that the information you hear and exhibits you see are sufficiently reliable to be admissible under the Rules of Evidence and the law. Relying on any information you obtain outside the courtroom is not only in violation of these rules, it is unfair because the parties would not have the opportunity to refute it, explain it, or correct it. Do not look up any legal terms or any other words you do not understand. I will explain all of them to you. If you do not understand, please just ask me to re-explain it in a better way.

*5. You must be fair to everyone.* Under our justice system, you must not consider the race, religion, national origin, or social status of the parties, witnesses, or their lawyers in deciding this case.

*6. Turn off all cell phones and electronic devices while you are in the courtroom.* All personal electronic devices must be turned off while you are in the courtroom. You must give your undivided attention to the trial.

## *[Conclusion]*

While these rules may seem unduly restrictive, you must carefully follow them. The reason is simple – the law requires it and the parties depend on you to fairly and impartially consider only the evidence admitted during the trial.

To do otherwise – to allow yourself to be distracted or to allow outside information to affect your judgment would be unfair and prejudicial to the parties.

I want you to understand the reasons for these rules I have given you. I know that, for some of you, it requires a change in the way you are used to communicating and perhaps even in the way you are used to learning.

In court, the role of jurors is to make important decisions that have consequences for the parties, and the decisions must be based on the evidence that you hear in this courtroom, not on anything else. For those of you who are used to looking up information on the Internet, I want you to understand why you are not permitted to do any research on anything having to do with this trial or the parties here.

The evidence that is presented in court is evidence that can be tested; it can be shown to be right or wrong by one side or the other; it can be questioned; and it can be contradicted by other evidence. What you would read or hear on your own could easily be wrong, out of date, or inapplicable to this situation. It is for these reasons that the courts have always limited the evidence to what can be tested here in court.

The whole point of a trial is to ensure that the facts on which jurors base their decisions have been fully and carefully tested by opposing parties, so limiting the evidence you consider in reaching a verdict to what they have been allowed to test and debate in this courtroom is the only way you can protect their right to receive a fair trial.

Another fundamentally important fact for you to bear in mind is that the presentation of evidence and the debate that occurs here in the courtroom about the meaning of the evidence is a public process. This allows everyone in our community, as well as the parties in this case, to know the evidence on which your verdict was based. Using information gathered in secret and discussed only by the jurors behind closed doors undermines the public process and violates the rights of the parties.

I want to be clear that this rule prohibiting any independent research applies to every kind of research – including asking someone a question related to the issues in the trial, discussing the trial with anyone outside of deliberations, and using electronic research tools as well as dictionaries, encyclopedias, and any other outside sources.

Your role as jurors is to make important decisions that have consequences for the parties, and your decisions must be based on the evidence that you hear in the courtroom, not on anything else.

As I have said before, violation of these rules could lead to an investigation of jury tampering and possibly require a new trial with a new jury. A new trial would be expensive to the parties, expensive to this court, and embarrassing to you.

If someone should try to communicate with you about the case during the trial, or if you find one of these rules was broken, please report it to me or the jury tipstaff immediately so I may evaluate the problem and decide what we must do.

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Fifth Judicial District of PA:  
<https://www.allegheny courts.us/jury/>

First Judicial District of PA:  
<http://courts.phila.gov/jury service/>

National Center For State Courts:  
<http://www.ncsc-jurystudies.org/>

Pennsylvanians for Modern Courts:  
<http://www.pmconline.org>

## NOTES







**The Pennsylvania Interbranch Commission  
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