

# THE COURTS

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that John P. Halvonik, having been suspended from the practice of law for a period of 7 months before the United States Patent and Trademark Office by Mandate of the United States Court of Appeals for the Federal Circuit issued November 3, 2006, and Notice of Suspension of the United States Patent and Trademark Office dated November 27, 2006, the Supreme Court of Pennsylvania issued an Order dated October 11, 2007, suspending John P. Halvonik from the practice of law in this Commonwealth consistent with the Mandate of the United States Court of Appeals for the Federal Circuit and the Notice of Suspension of the United States Patent and Trademark Office. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary*

*The Disciplinary Board of the  
Supreme Court of Pennsylvania*

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## INTERBRANCH COMMISSION FOR GENDER, RACIAL AND ETHNIC FAIRNESS

### Suggested Standardized Procedures for Jury Selection in Pennsylvania

The Interbranch Commission for Gender, Racial and Ethnic Fairness is hereby submitting for public comment the following Report on Suggested Standardized Procedures for Jury Selection in Pennsylvania. The report has been submitted to the Supreme Court of Pennsylvania and to the President Judge of each judicial district of Pennsylvania for their comments and suggestions, and is now open for public comment.

All communications in reference to the proposed recommendation should be sent no later than November 24, 2007 to:

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Interbranch Commission for Gender, Racial and  
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### SUGGESTED STANDARDIZED PROCEDURES FOR JURY SELECTION IN PENNSYLVANIA

#### The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness Jury Service Committee

September 12, 2007

### ACKNOWLEDGEMENTS

We want to express our appreciation to the Pennsylvania Supreme Court for having asked us to undertake this effort and we salute the Justices for their interest in developing the most fair and efficient method of selecting citizens to perform their jury service. We also wish to thank the members of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness and the Pennsylvania Commission on Justice Initiatives for their guidance. Finally, we are indebted to the staff of the Interbranch Commission for Gender, Racial and Ethnic Fairness for their expertise and diligence in researching and drafting this report.

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Support provided through technical funds of the NCSC.

## 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.”<sup>1</sup> 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, a committee appointed by the Supreme Court of Pennsylvania found, in its study of the state justice system, 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 are returned on a daily basis with outdated addresses.

With this in mind, Pennsylvania Supreme Court Chief Justice Ralph J. Cappy requested that the Interbranch Commission for Gender, Racial and Ethnic Fairness 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 are to improve the efficiency of the process of jury selection and to increase public participation and diversity on juries statewide.

The following report is the result of this study. It represents the combined effort of the Jury Service Committee of the Interbranch Commission and the Commission for Justice Initiatives. The Commissions 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 report covers thirteen areas of jury practice, including the Juror Summons Process; Juror Utilization; Juror 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.

This 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 apply that knowledge to the development of a standardized system for Pennsylvania.

## SECTION ONE

### Juror Summons Process

A juror summons is often confusing and difficult for the layperson to understand. This lack of clarity contributes

<sup>1</sup> Evan R. Seamone, *State Inaction to Increase Jury Compensation and the Need to Identify Forward-Looking Standards*, N.Y.U.J.Legis. & Pub. Pol’y, Vol. 5, Number 2, 291 (2002).

to the failure of potential jurors to respond to summonses. In addition to the need for clarity, a juror 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.

### Recommendation One

It is recommended that the Pennsylvania Supreme Court require each judicial district to draft clear<sup>1</sup> and practical jury summonses that avoid appearing overly “legalistic” and include the following:

- Jury summonses and qualification questionnaires should be mailed to prospective jurors at the same time—the “one-step process” of summoning prospective jurors.<sup>2</sup>
- The summons materials should include information about the manner in which jurors are to respond to the summons, including address of courthouse, telephone numbers, and the exact time and date of their appearance.
- The materials should also include a pamphlet or notice with introductory court information, such as appropriate dress, court amenities, and frequently asked questions, allowing for a more attractive and open layout for the summons itself.<sup>3</sup>
- The qualification questionnaire should be tailored to meet the screening and information needs of the jurisdiction.
- There should be standards for disqualification, deferral, and possible excusal from jury service.

• 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>4</sup> (See Section Six, Juror Failure to Appear)

In addition, it is recommended that the 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, as well as procedures for updating and maintaining accurate source lists (such as linkage to and usage of the National Change of Address System [NCOA] and the national deceased list) to help reduce the number of undeliverable summonses.<sup>5</sup> (See Appendix A for a sample Juror Summons.)

### Endnotes

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

<sup>2</sup> Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p.15 (April 2006).

<sup>3</sup> Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, pp. 15-16 (April 2004).

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

<sup>5</sup> *Id* at 49; American Bar Association, *Principles for Juries & Jury Trials*, p. 53 (2005); If the pending legislation regarding the creation of a statewide master jury list is enacted into law, the state administrative office of courts would be responsible for updating the lists used to create the master jury list. However, if a county decides to opt out of that system or if it supplements the master

jury list with other source lists, it is recommended that such a county be held responsible for updating and maintaining the source lists that it uses.

## SECTION TWO

### 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 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, that 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. One way to address this problem is to require standardized panel sizes in combination with a reduction in the term of service for jurors.

### Recommendation Two

It is recommended that the Pennsylvania Supreme Court require each judicial district to reduce the number of jurors summoned for a voir dire panel in order to decrease the number of excess prospective jurors summoned. Specifically, it is recommended that the Supreme Court follow the recommendation of the Jury Task Force of the Pennsylvania Association of Court Management ("PACM") that studied this problem and concluded in its Best Practices Report<sup>1</sup> that no more than 40 jurors per case be empanelled in a criminal case. This would allow the court to rule comfortably on ten challenges for cause. In a civil matter, a panel size of 30 is recommended by PACM. This would also give the court the potential for ten challenges for cause. Having ten successful challenges for cause in a civil or criminal matter would be extremely unusual. This system would permit the courts to plan more precisely for the proper number of jurors to be summoned to the courthouse on any one day. The judge should provide advance notice to the jury administrator to enable him or her to summon more persons in the event that more jurors are necessary for a particularly notable or complex case.

### Endnotes

<sup>1</sup> Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 8-9 (April 2006).

## SECTION THREE

### 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 leads to jury panels that may not be reflective of the community-at-large, particularly the minority community.<sup>2</sup>

### Recommendation Three

In order to produce a jury pool that is more diverse, inclusive, and reflective of the community from which it is drawn, it is recommended that the Supreme Court encourage judicial districts throughout the Commonwealth to obtain their lists of prospective jurors from a statewide master jury list,<sup>3</sup> drawn from the following sources:

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

This statewide master jury list will be generated by the Administrative Office of Pennsylvania Courts, and will include the most recent addresses of potential jurors. The list will be distributed to each judicial district on an annual basis.<sup>5</sup>

It is also recommended that the Supreme Court allow each judicial district to supplement its primary juror source lists with additional source lists that may include the following:<sup>6</sup>

- Lists of property owners
- State census lists
- Lists of state unemployment recipients
- Lists of newly naturalized citizens
- Lists of recently graduated high-school seniors
- Persons listed in telephone, city/municipal directories and similar directories
- Lists of holders of hunting and fishing licenses
- Lists of local tax payers

### Endnotes

<sup>1</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 29 (National Center for State Courts, 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> Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, p. 11 (April 2004).

<sup>4</sup> See *Salameh v. Spossey*, 731 A.2d 649 (Pa. Comwlth 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> On July 17, 2007, after unanimous passage by both 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 by Governor Rendell.

<sup>6</sup> Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, p. 10 (April 2004); G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 91 (National Center for State Courts, 4th Ed., 2006); The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report*, p. 97 (March 2003).

## SECTION FOUR

### 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 30% of all African-American males.<sup>1</sup> Such wholesale exclusions often lead to jury panels unreflective of the community-at-large.

#### Recommendation Four

It is recommended that the present juror qualification statute in Pennsylvania [42 Pa.C.S.A. § 4502(a)]<sup>2</sup> be revised to reflect the following policy regarding juror qualifications:

- 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, or any other objective or subjective factor<sup>3</sup> that discriminates against a cognizable group<sup>4</sup> in the jurisdiction other than those people set forth in the section below.<sup>5</sup>

- All persons are eligible for jury service except those who:<sup>6</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.

In the past ten years, there has been a dramatic shift among states to permit citizens with criminal records to serve on juries. In particular, seventeen states and the District of Columbia have lifted their lifetime bans for felons.<sup>7</sup>

Currently, in Pennsylvania, any person who has been convicted of a crime punishable by imprisonment for 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>8</sup>

Consequently, we join in the recommendation of the Jury Task Force Report *Best Practices Recommendations* of the Pennsylvania Association of Court Management<sup>9</sup> that section (a)(3) of the present jury qualification statute in Pennsylvania banning felons and those convicted of misdemeanors of the first or second degree from juror service be replaced by 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.<sup>10</sup>

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 juror summons process). (See Appendix A for a sample Juror Summons and Juror Qualification Form.)

#### Endnotes

<sup>1</sup> Christopher Uggen, et al., 2006. *Citizenship, Democracy and the Civic Reintegration of Criminal Offenders*, *The Annals of the American Academy of Political and Social Science* 605: 281, 283.

<sup>2</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>3</sup> Only three states (Alabama, Arkansas, and Illinois) retain any vestiges of the once prominent use of subjective factors in selecting jurors. Only fifty years ago, it was commonplace for there to be bans on “the wrong type of person” for jury service. Jurors were once required to be of “good character,” and “high integrity,” and to be free of “vicious habits” or “unclean thoughts.” See Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 Am. U. L. Rev. 65, 188 (October 2003).

<sup>4</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>5</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>6</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 35 (National Center for State Courts, 4th Ed., 2006).

<sup>7</sup> Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 Am. U. L. Rev. 65, 150-57 (October 2003).

<sup>8</sup> Id.

<sup>9</sup> Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 8 (April 2006).

<sup>10</sup> Interbranch Commission member Judge Elizabeth Doyle does not concur with the portion of this recommendation regarding this modification of the present juror qualification statute in Pennsylvania to lift the lifetime ban on jury service on those convicted of second degree misdemeanors.

## SECTION FIVE

### Juror Exemptions, Deferrals, 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 elder care, 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. These conflicts commonly lead to juror dismissals which disproportionately affect low-income and minority individuals, undermining the diversity of many jury pools.<sup>1</sup> Having clearly established and communicated criteria for granting releases from jury service reduces the incidence of discriminatory, inconsistent, or arbitrary standards.

#### Recommendation Five

It is recommended that the Supreme Court require each judicial district in the Commonwealth to adopt standard procedures to be followed in the event of a request by a juror for an exemption, deferral, or excusal from jury service. Such standard procedures should be guided by the following principles:

- The deferral of jury service shall always be preferred to excusing a prospective juror for a temporary or marginal hardship.<sup>2</sup>
- Mere inconvenience to a prospective juror or his or her employer is not an adequate reason to be excused from jury duty.
- A prospective juror’s responsibility for providing care for her/his children or elderly parents should not result in an automatic exemption or permanent removal of the person from the list of possible jurors.
- Financial burden, unless significant, is not sufficient.

Suggested standard procedures should include the following (in order of preference):

- **Deferrals**—Individuals scheduled to appear for jury service have the right to one automatic six-month deferral of each appearance, provided all of the following apply:

- 1) The juror has not previously been granted a deferral in that trial term.
- 2) The prospective juror appears in person or contacts an appropriate court official by telephone, electronic mail or in writing to request a deferral (See Appendix B for a sample Request for Deferral or Excusal Form.).
- 3) Prior to the grant of a deferral with the concurrence of an appropriate court official, the prospective juror fixes a date certain on which he or she will appear for jury service that is not more than six months after the date on which the prospective juror originally was called to serve and on which date the court will be in session.

*Note:* A subsequent request to defer jury service may be approved by a judicial officer only in the event of an emergency, such as a death in the family, grave illness, a natural disaster or a national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial deferral was granted. Prior to the grant of a second deferral, the prospective juror must fix a date certain on which the individual will appear for jury service within six months of the deferral on a date when the court will be in session.

*Note:* An individual who fails to appear in person on the date scheduled for jury service and who has failed to obtain a deferral in compliance with the provisions for requesting a deferral or who fails to appear on the date set is subject to civil contempt and/or sanctions. See Recommendation Six.

- **Excusals**—In cases of undue or extreme hardship,<sup>3</sup> instead of seeking a deferral, an individual may apply in writing to be excused from jury service for a period of up to 24 months (See Appendix B for a sample Request for Deferral or Excusal Form) if:

- 1) The prospective juror has a mental or physical condition that causes him or her to be incapable of performing jury service. The juror or the juror’s personal representative must provide the court with documentation from a physician on his/her letterhead verifying that a mental or physical condition renders the person unfit for jury service for a period of not less than the 24-month period for which the excuse is sought.

- 2) Jury service would cause undue physical or significant financial hardship to the prospective juror or a person under the prospective juror’s care or supervision:

- a. A judge of the court for which the individual was called to jury service shall make determinations of undue or extreme physical or significant financial hardship. The authority to make these determinations is delegable only to court officials.

- b. A person asking to be excused based on a finding of undue or extreme physical or significant financial hardship must take all actions necessary to obtain a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty.

- c. Undue or extreme physical or significant financial hardship is limited to circumstances in which an individual would:

- (i) Be required to abandon a person under the individual’s personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury;

- (ii) Incur costs that would have a substantial adverse impact on the payment of the individual’s necessary daily living expenses or on those for whom the individual provides the principal means of support; or

- (iii) Suffer physical hardship that would result in injury or illness.

- d. Undue or extreme physical or significant financial hardship does not exist based solely on the fact that a prospective juror will be required to be absent from the prospective juror’s place of employment.

- e. Persons asking a judge to grant an excusal based on undue extreme physical or significant financial hardship may be required to provide the judge with documentation, such as, but not limited to, medical statements from licensed physicians, proof of dependency or guardianship

and similar documents to support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused.

*Note:* After 24 months, a person excused from jury service shall again become eligible for qualification as a juror unless the person was excused permanently from service. A person is excused permanently from jury service only when the judge determines that the underlying grounds for being excused are permanent in nature.

*Note:* Upon reaching 70 years of age, an individual may notify the Court of Common Pleas of the county in which he or she resides that he/she wishes to permanently opt out of future jury service. The court, upon receipt of the notification, shall not call the individual to jury service. An individual who is under consideration to serve in a trial or has been selected to serve in a trial should not be permitted to use these procedures to opt out of that service.

• **Exemptions**—All automatic exemptions from jury service based upon profession should be eliminated as a matter of law.<sup>4</sup>

#### 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> California Center for Judicial Education and Research, *Jury Management Bench Handbook*, p. 11 (2002 Ed.).

<sup>3</sup> American Bar Association, *Principles for Juries & Jury Trials*, p. 52 (2005); Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 7 (April 2006); G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p. 71 (Summer 2003).

<sup>4</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 35 (National Center for State Courts, 4th Ed., 2006); G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p.72 (Summer 2003).

## SECTION SIX

### Juror Failure to Appear

The importance of jury duty is often not understood, and many potential jurors see no imminent consequences for ignoring their summonses. Yet the failure-to-appear rate can significantly affect the quality and makeup of Pennsylvania juries. 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>

#### Recommendation Six

In order to reduce the failure-to-appear rate of prospective jurors, it is recommended that the 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>2</sup> This written policy should be mailed to prospective jurors along with their summonses. 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 understand 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 is:

- A follow-up letter or second summons.
- Issuance of a Failure-to-Appear (FTA) Notice.
- Issuance of an Order-to-Show Cause (OSC) Notice.
- Issuance of Civil Contempt Citation and/or Sanctions.<sup>3</sup>

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 juror 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>4</sup> and agreeing to serve when summoned.

#### Endnotes

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

<sup>2</sup> Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p.7 (April 2006)

<sup>3</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 nonresponders eventually responded to the jury summons. Some of the nonresponses might have been caused by the nonreceipt 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 nonresponders.

<sup>4</sup> Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, p. 13 (April 2004).

## SECTION SEVEN

### Juror Compensation

Jury service can often impose economic hardships that significantly reduce juror participation rates. Economic hardship excusals tend to disproportionately affect minorities, leading to 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 since 1980.<sup>2</sup> In addition, many studies connect an ability to serve with issues that appear to be gender-related.<sup>3</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.

### Recommendation Seven

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

- 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>4</sup>

- For longer trials, jurors should be compensated for reasonable expenses and lost wages. This can be accomplished by either:

- 1) Raising the juror compensation scale for trials lasting over three days, including the possible implementation and creation of a lengthy trial fund<sup>5</sup>; and/or

- 2) Offering employers economic incentives to compensate employees summoned for jury duty.

- Possible programs to fund increased juror compensation that have been used successfully elsewhere include:<sup>6</sup>

- A \$5 civil case filing fee to be paid into the jury compensation fund.

- Raise jury demand fees.<sup>7</sup>

- Compensate jurors from fees paid for the reinstatement of state driver's licenses.

- No pay for first day of service, one-day trial or first day of longer trial, but increased pay for trials lasting over three days.

- All employers should be prohibited from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.<sup>8</sup>

- 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.

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

<sup>4</sup> American Bar Association, *Principles for Juries & Jury Trials*, p.8 (2005).

<sup>5</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 six dollars a day to 40 dollars 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 supplementation 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) 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>6</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).

<sup>7</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>8</sup> See 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 [see similar language in statutes in the following states: Arkansas (A.C.A. § 16-31-106), Kansas (K.S.A. 43-173), Kentucky (KRS 29A.160), Maine (14 M.R.S.A § 1218), and Nebraska (Neb. Rev. Stat. § 25-1640)].

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)]

## SECTION EIGHT

### 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.

### Recommendation Eight

It is recommended that the Supreme Court require judicial districts to use a "one day/one trial" or a "one day/multiple trial" process of summoning jurors.<sup>1</sup> This recommendation is made because the national trend is toward a one-day process that is more cost-efficient and more convenient to the jurors.<sup>2</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 calls the jurors to serve for a period of one day. On that first day, the person is either:

1) 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;

2) 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>3</sup>

• Courts should use on-call telephone standby notice systems<sup>4</sup> to prevent unnecessary appearances of potential jurors as a critical part of operating a "one-day/one-trial" system.<sup>5</sup>

### Endnotes

<sup>1</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>2</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 25 (National Center for State Courts, 4th Ed., 2006).

<sup>3</sup> 42 Pa.C.S.A. § 4503(a)(2).

<sup>4</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>5</sup> Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, p. 32 (April 2004).

## SECTION NINE

### Jury Voir Dire

No other stage of the jury trial varies so dramatically from jurisdiction to jurisdiction and judge to judge as voir dire. Although the purpose of jury selection is to identify and remove prospective jurors who could not serve fairly and impartially, there is much debate about the best practices to achieve that goal.

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.

### Recommendation Nine

It is recommended that the Supreme Court require all judicial districts to follow the same general practices 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 some of these recommendations will take some 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.

**1. General explanation of voir dire by the judge to all prospective jurors present:** The judge should ask the jurors who are not in the jury box to listen closely to the questions asked of jurors who are in the jury box.

- (a) Explain the concept of voir dire to the jurors.<sup>1</sup>
- (b) Explain to the prospective jurors why some of them may be selected and others will not.<sup>2</sup>
- (c) Introduce the parties and attorneys.
- (d) Identify witnesses: Name the witnesses who may be called or referred to by other witnesses.
- (e) 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.

**2. Voir dire opening:**<sup>3</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 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 openly during voir dire, especially with regard to possible bias issues. The recommended procedures for implementing voir dire openings by counsel are:

- (a) 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.

(b) Special considerations for criminal matters are:

- i. *Rosario*<sup>4</sup> material should be provided to the defense before counsel is asked to deliver a voir dire opening.
- ii. A 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.
- iii. The prosecution’s voir dire should be first and there should be no rebuttal.

(c) 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.”*

**3. Juror background information:** Jurors should complete a background questionnaire before they are assigned to a panel.<sup>5</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>6</sup> The court should allow counsel for both sides to question jurors individually about the extent of their beliefs, preconceptions and sensitivities.<sup>7</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>8</sup>

**4. Questions regarding the case:** Questions should be asked to the entire group of prospective jurors, asking them 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>9</sup> Sensitive matters are those matters that might be potentially 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 ask 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.

### Endnotes

<sup>1</sup> Possible comments to the jurors could including 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>2</sup> Possible comments to the jurors could including 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>3</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*, p. 19-25 (April 2005).

<sup>4</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 opening).

<sup>5</sup> American Bar Association, *Principles for Juries & Jury Trials*, Principle 11A (2005).

<sup>6</sup> See American Bar Association, *Principles for Juries & Jury Trials*, Principle 11B (2005); ABA Standards For Criminal Justice, § 15-2.6 (a); National Jury Project, *Jurywork Systematic Techniques* (Second Edition), 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 judgment.

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 requir-

ing 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* (Second Edition), p. 2-28.

“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>7</sup> American Bar Association, *Principles for Juries & Jury Trials*, Principle 11B (2005).

<sup>8</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 juror’s 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, 452n. 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.”).

See also ABA Standards for Criminal Justice, § 15-2.4 (a and b); National Jury Project, *Jurywork Systematic Techniques* (Second Edition), p. 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>9</sup>ABA Standards For Criminal Justice, § 15-2.4(d); ABA Standards For Criminal Justice, § 15-2.4 (e); National Jury Project, *Jurywork Systematic Techniques* (Second Edition), 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.”

## SECTION TEN

### 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>1</sup> Indeed, the Honorable Judith Kaye, Chief Judge of the New York Court of Appeals, acknowledged in her State of the Judiciary Address in 2005 that peremptory challenges are a grave threat to minority representation on juries and to jury service in general. Her subsequent proposal to reduce by half New York’s then existing twenty peremptory challenges in criminal cases mirrored the proposal of the Arizona Supreme Court Committee on the More Effective Use of Juries to reduce the number of peremptory challenges by one-half, and one of the thirty-two proposals for reform by a Committee in the District of Columbia calling for the elimination or drastic reduction of peremptory challenges.<sup>2</sup>

Some courts and jury innovation committees have attempted to resolve the problem of balancing the need for peremptory challenges against the risk of their misuse by expanding the voir dire process to permit liberal questioning of potential jurors. 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.<sup>3</sup>

### Recommendation Ten

It is recommended that the Supreme Court require all judicial districts to follow the same standard procedures for peremptory challenges, guided by the following principles:<sup>4</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 confidence in the fairness of the jury.<sup>5</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 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 to try the case until all challenges have been exercised or waived, at which point all jurors should be sworn as a group.

- No party should be permitted to use peremptory challenges to dismiss a juror for constitutionally impermissible reasons.<sup>6</sup>

- It should be presumed that each party is utilizing peremptory challenges validly, without basing those challenges on constitutionally impermissible reasons.

- 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 challenge to show a nondiscriminatory basis for the challenge.

- The court should evaluate the credibility of the reasons proffered by the party as a basis for the 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 challenge. If the court finds that the reasons for the challenge are pretextual, or otherwise constitutionally impermissible, the court should deny the challenge and, after consultation with counsel, determine whether further remedy is appropriate. The court should state on the record the reasons, including whatever factual findings are appropriate, for sustaining or overruling the challenge.

- 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.

## Endnotes

<sup>1</sup> 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.” Directive #21-06 of the Administrative Office of the Courts in the State of New Jersey, pp. 2, 3, 8, December 11, 2006.

<sup>2</sup> *Black, White and Grey: The American Jury Project and Representative Juries*, Mary Catherine Campbell, Georgetown Journal of Legal Ethics, p. 14 (2005).

<sup>3</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>4</sup> American Bar Association, *Principles for Juries & Jury Trials*, p.66-68 (2005).

<sup>5</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 chal-

lenges 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>6</sup> The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report*, p. 97 (March 2003).

## SECTION ELEVEN

### Juror Privacy

The issue of juror privacy has received greater attention over the past decade, particularly as courts have come to recognize how multifaceted and complex the issue really is. 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. 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.

### Recommendation Eleven

It is recommended that the Supreme Court require judicial districts to balance juror privacy interests against party and public interests in court proceedings. To achieve that balance, judicial districts should adopt the following guidelines:<sup>1</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>2</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>3</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> Many, but not all, of the recommended guidelines were found in the American Bar Association's *Principles for Juries & Jury Trials* at p. 35-36 (2005).

<sup>2</sup> In a recent decision, *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>3</sup> Paula L. Hannaford, *Safeguarding Juror Privacy: A New Framework for Court Policies and Procedures*, 85 *Judicature* 18, p. 44 (2001).

## SECTION TWELVE

### 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.

#### Recommendation Twelve

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

- In high profile trials, jurors should be informed of the availability of police or sheriff escorts who, upon request, can accompany them to and from parking areas.<sup>1</sup>

- Jurors empanelled for a case or in deliberations after the close of normal business hours should be escorted to their vehicles, if requested.<sup>2</sup>

- The same recommendation regarding juror privacy (Recommendation 11) should be considered by judicial districts in devising their juror security plans.

#### Endnotes

<sup>1</sup> Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p.14 (April 2006).

<sup>2</sup> *Id.*

## SECTION THIRTEEN

### 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 surrounding 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.

#### Recommendation Thirteen

It is recommended that the Supreme Court encourage judicial districts to adopt a variety of public outreach strategies<sup>1</sup> in which the community learns about the concept of trial by jury, including the importance of jury service. Examples include:

- 1) Juror appreciation activities held during Pennsylvania's Juror Appreciation Week in early May of each year;

- 2) Press conferences with leaders of all branches of government announcing a special day of appreciation for jurors;

- 3) Public-service advertising campaigns using newspapers, television, mass transit, public buildings, libraries, grocery stores, courthouses, and schools;

- 4) Targeted media outreach using radio and television interviews and opinion articles or editorials in print media;

- 5) Targeted educational outreach to high school government, speech, American history, or civics classes through which judges, court administrators and bar associations explain the role of the jury in the judicial process;

- 6) The development of educational videos that put student audiences in the role of a simulated jury, hearing evidence and jury instructions and deciding cases;

- 7) The development of jury pages on court web sites 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;

- 8) Post-trial discussions in which judges express their appreciation to jurors who have just completed their service;

- 9) Expressions of appreciation by judges to citizens who have shown up in response to a jury summons but who have not been chosen to serve on a particular case;

- 10) Certificates of appreciation distributed to those who serve;

- 11) Newspaper stories that are aimed at educating citizens about the litigation process;

- 12) The development of web sites that are linked to videos on juror education so that jurors can view the video from home; and

- 13) The development of moot court opportunities for high school students.

**Endnotes**

<sup>1</sup> G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 22 (National Center for State Courts, 4th Ed., 2006); The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report*, p. 98 (March 2003).

**Sources****Pennsylvania**

PA Joint Commission Report 2300, *Minority Representation in the Jury Selection Process in Pennsylvania* (May 2003).

Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations* (April 2006).

Pennsylvanians for Modern Courts, *Report on Juror Compensation in Pennsylvania* (August 2006).

The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report* (March 2003).

The Pennsylvania Supreme Court Judicial Council Committee on Judicial Safety and Preparedness (2002).

**National**

American Bar Association, *Principles for Juries & Jury Trials* (2005).

American Judicature Society, *Judicious Use of Juror Anonymity*, Editorial (January 2003).

California Center for Judicial Education and Research, *Jury Management Bench Handbook* (2002 Ed.).

Christopher Uggen, et al., 2006. *Citizenship, Democracy and the Civic Reintegration of Criminal Offenders*, *The Annals of the American Academy of Political and Social Science* 605: 281, 283.

Mary Catherine Campbell, *Black, White and Grey: The American Jury Project and Representative Juries*, *Georgetown Journal of Legal Ethics* (2005).

Directive #21-06 of the Administrative Office of the Courts in the State of New Jersey, December 11, 2006.

G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2 (Summer 2003).

G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations* (National Center for State Courts, 4th Ed., 2006).

Paula Hannaford-Agor, *Safeguarding Juror Privacy: A New Framework for Court Policies and Procedures*, 85 *Judicature* 18 (2001).

Paula Hannaford-Agor, *The Laborer is Worthy of His Hire and Jurors Are Worthy of Their Juror Fees*, *The Court Manager* (Vol. 21, Issue 2, Summer 2006).

Robert G. Boatright, *Improving Citizen Response to Jury Summonses: A Report with Recommendations*, American Judicature Society (1998).

Task Force on Jury System Improvements, Judicial Council of California, *Final Report* (April 2004).

The Supreme Court of Ohio Task Force for Jury Service, *Report* (February 2004).

**Additional Web Resources**

American Bar Association:	<a href="http://www.abanet.org/jury/">http://www.abanet.org/jury/</a>
American Judicature Society:	<a href="http://www.ajs.org/jc/index.asp">http://www.ajs.org/jc/index.asp</a>
California Juror Resources:	<a href="http://www.courtinfo.ca.gov/jury/">http://www.courtinfo.ca.gov/jury/</a>
Fifth Judicial District of PA Juror Resources:	<a href="http://www.alleghenycourts.us/jury/default.asp">http://www.alleghenycourts.us/jury/default.asp</a>
First Judicial District of PA Juror Resources:	<a href="http://courts.phila.gov/jury/service/">http://courts.phila.gov/jury/service/</a>
National Center For State Courts:	<a href="http://www.ncsconline.org/Juries/home.htm">http://www.ncsconline.org/Juries/home.htm</a>
New York Juror Resources:	<a href="http://www.nyjuror.gov/home/">http://www.nyjuror.gov/home/</a>
Pennsylvanians for Modern Courts:	<a href="http://www.pmconline.org">http://www.pmconline.org</a>

[Pa.B. Doc. No. 07-1977. Filed for public inspection October 26, 2007, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

**ERIE COUNTY**

**Rules of Criminal Procedure Nos. 106, 117, 310, 541, 570, 571, 590 and 600; No. AD-48-2007**

**Order**

*And Now, To-Wit*, this 19th day of September, 2007, the following Local Rules of Criminal Procedure having been consented to by the Criminal Practice Section and approved by the Court are hereby *Ordered* adopted and effective as to Erie County 30 days after publication of same in the *Pennsylvania Bulletin*.

*By the Court*

ELIZABETH K. KELLY,  
*President Judge*

**RULE 106 - Continuances**

A deadline shall exist for the filing of continuances by either the Commonwealth or a defendant for cases listed for a particular trial term. This deadline shall be the second business day of the week immediately preceding the trial term. The deadline may be extended by the Court. Any motions for continuance filed prior to the deadline shall be considered by the pre-assigned judge. After the deadline, all motions for continuance must be considered by the judge who will preside over the case at trial. Notice as to the last date for continuances shall be published by the court in its annual schedule.

**RULE 117 - Magisterial District Judge Coverage for Issuing Warrant; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail**

A. To the extent required by Pa.R.Crim.P. 117, Magisterial District Judges shall be available to provide continuous coverage for the issuance of search warrants, the issuance of arrest warrants, to accept and set bail, to conduct summary trials, and to conduct preliminary arraignments.

1. The provision of continuous coverage shall be by the traditional on-call system as presently established and exercised in Erie County. Specifically, the Magisterial District Judges shall remain on-call during non-regular business hours on a rotating basis. The Assistant Court Administrator shall maintain a copy of said rotating schedule.

2. The hours of 6:00 a.m. to 10:00 p.m. for conducting a summary trial or bench warrant hearing pursuant to Pa.R.Crim.P. 431 shall not be extended.

B. Magisterial District Judges, the Clerk of Courts and the Warden of the Erie County Prison shall be authorized to accept bail pursuant to, and subject to the limitations of, the Pennsylvania Rules of Criminal Procedure. The Warden's authority is limited to accepting the bail deposit, delivering the bail to the issuing authority or clerk of courts and, under Pennsylvania Rule of Criminal Procedure 525, releasing the defendant upon execution of the bail bond.

C. Regular business hours for each Magisterial District Judge Office shall be Monday through Friday from 8:30 a.m. until 4:30 p.m.

**RULE 177 - A.R.D.**

An original application for entry into the Accelerated Rehabilitative Disposition (A.R.D.) program shall be filed with the District Attorney, and a copy shall be filed at the Office of the Criminal Court Administrator. The Criminal Court Administrator shall mark the date of filing on the copy. A sample Application follows.

COMMONWEALTH	:	IN THE COURT OF COMMON
OF PENNSYLVANIA	:	PLEAS
	:	OF ERIE COUNTY,
	:	PENNSYLVANIA
	:	
v.	:	CRIMINAL DIVISION
	:	
	:	No. of
	:	OTN:

**APPLICATION FOR DISPOSITION UNDER PROGRAM OF ACCELERATED REHABILITATIVE DISPOSITION/PROBATION WITHOUT VERDICT**

Application is hereby made for disposition of this case under the Accelerated Rehabilitative Disposition/ Probation Without Verdict Program. To assist the District Attorney's Office in evaluating the suitability of this case for the ARD/PWOV Programs, the following information is provided: **INSTRUCTIONS:** Answer all questions that apply. If a question does not apply, answer it with the initials "N.A."

1. Full Name of the Defendant: \_\_\_\_\_
2. Maiden Name of Defendant; or other last names previously used: \_\_\_\_\_
3. Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_
4. Present Address: \_\_\_\_\_  
Phone (Home) (\_\_\_\_) \_\_\_\_\_ (Work) (\_\_\_\_) \_\_\_\_\_
5. Previous Addresses and length of time at each (go back 10 years): \_\_\_\_\_

6. Present Employment: \_\_\_\_\_

7. Education—Schools and Highest Year attained: \_\_\_\_\_

8A. Have you ever been found guilty or pleaded guilty or no contest to any criminal violation of any kind in any court other than for summary offenses, whether in Pennsylvania or anywhere else? If so, explain giving date, place, charge(s), and disposition. \_\_\_\_\_

8B. Do you have any other pending criminal charge(s) or have you ever been placed on ARD or PWOV? If so, explain giving date, place, charges and disposition. \_\_\_\_\_

8C. If charged with Driving Under the Influence: Have you ever been adjudicated a delinquent or entered into a consent agreement as a juvenile after being charged with Driving Under the Influence of Alcohol? If so, explain giving details. \_\_\_\_\_

9. Explanation of your present case, including all details (use reverse side if needed): \_\_\_\_\_

10. By applying for ARD/PWOV and by signing this application, I acknowledge, certify and understand each of the following rights and responsibilities:

A. I have been advised and I understand that I have a constitutional right to a speedy trial; that pursuant to Pa.R.Crim.P. 1100, the Commonwealth must bring my case to trial within 365 days from the date of the filing of the Criminal Complaint charging me. If my case is not brought to trial within 365 days from the filing of the Criminal Complaint, I understand that I can ask the Court to dismiss all charges against me. Furthermore, I understand that in the event I am incarcerated on these charges, the Commonwealth must bring my case to trial within 180 days from the date of the filing of the Criminal Complaint; if the Commonwealth fails to do so, I can ask the Court for nominal bail.

I hereby waive (give up) all of my constitutional rights to a speedy trial as set forth from the date I sign this Application until I either complete the ARD Program or am revoked from it, should I violate the conditions the Court imposes on me. In the event my Application for ARD is denied, I waive (give up) all of my constitutional rights to a speedy trial as set forth from the date I sign this Application until the last scheduled day of the term of Criminal Court next following the date of my rejection. I have been advised and I understand that by signing this waiver I am waiving (giving up) any and all rights I may have to be tried within 180th (if in jail) or 365th day following the filing of the Criminal Complaint against me. I am signing the waiver because I understand it is to my benefit to do so and to allow the District Attorney as much time as he needs to evaluate my suitability for the ARD Program. I have not been made any promises, nor have I been forced or coerced to sign this waiver.

B. I understand I have the right to be represented by an attorney on my charge(s) and also in connection with my ARD/PWOV Application, if I cannot afford counsel, the Court will provide me free counsel through the Erie County Public Defender's Office.

C. It is my responsibility to notify the District Attorney's Office, **in writing** of my arrest and/or conviction for **any** offense occurring after this Application is made and

before it is rejected or I am accepted into the Program by the Court. Failure to comply with this requirement is grounds for refusal of the Application and/or may be treated as a false statement subjecting me to prosecution and/or for removal from the Program.

D. If charged with Driving Under the Influence: I understand that it is my responsibility to arrange for a CRN evaluation. I understand that I cannot be placed in the A.R.D. program unless such evaluation is completed. I further understand that I am to contact D.W.I. Program, 36 North Park Row, Erie, PA 16501 at 814-454-3326 between 9:00 a.m. and 3:30 p.m. to arrange an appointment.

E. I acknowledge that I have completed (or will complete prior to my A.R.D. hearing) all processing (e.g. fingerprinting, etc.) required of me. I understand that failure to do so may delay my acceptance into the program.

F. **The information I have provided above is true and correct. I understand if I have provided false information on this Application, that reason alone is sufficient to refuse this Application. In addition, I understand that by providing false information I can be prosecuted for offenses including, but not limited to, perjury, false swearing and/or unsworn falsification to authorities.**

DATE: \_\_\_\_\_  
DEFENDANT

DATE: \_\_\_\_\_  
ATTORNEY FOR DEFENDANT

DATE: \_\_\_\_\_  
\*WITNESS

Revised 1/99 \*When defendant has no attorney

**RULE 181 - A.R.D.**

The filing deadlines imposed in Pa.R.Crim.P. 304, 305, and 307 shall be specially calculated in those instances where a defendant is either refused entry into the A.R.D. program or when revoked from the program.

(a) When the application is made BEFORE arraignment, all filing deadlines are preserved and calculations shall commence upon date of refusal or revocation.

(b) When the application is made AFTER arraignment, filing of the application shall toll the running of the deadlines. Any number of days remaining shall remain and calculations will re-commence upon date of refusal or revocation.

(c) When any filing deadline has passed before the filing of the A.R.D. application, that deadline shall be deemed missed and unavailable except upon motion and order of the court.

**RULE 184 - A.R.D.**

If properly waived by the defendant, as indicated in an application for A.R.D. or in an additional filing, each case which is refused entry into the A.R.D. program or revoked therefrom shall go to trial during the session of court determined by Court Administration based upon Rule 1100 calculations. Proper waiver, as indicated above, exists when the defendant signs a Rule 1100 waiver which specifically extends the period of waiver 60 days beyond the date of rejection or revocation. A sample application is set forth with sample waiver language included.

**RULE 300 - Case Assignments**

A. Pre-trial: All cases bound to Court will be assigned to one of the Judges in the Criminal Division. This will be

done by the Court Administrator at or about the time of arraignment or waiver thereof. The assigned judge will hear and resolve all pre-trial matters pertaining to the case.

B. Sentencing: In all cases disposed of by plea (except post-arraignment pleas) the assigned judge shall be the sentencing judge. In all cases wherein a jury trial has been held and a verdict entered, the trial judge shall be the sentencing judge. However, in any case where the designated judge may be unavailable for sentencing, another judge, designed by the President-Judge, may be substituted.

C. Sentencing Date: A sentencing date shall be set for all cases at the time of plea or verdict. Any change requested in this date must be made directly with the assigned sentencing judge and subject to his/her discretion.

**RULE 301 - Continuances**

A deadline shall exist for the filing of continuances by either the District Attorney or defendant for cases listed for a particular trial term. This deadline will not be sooner than the Wednesday prior to the first day of the trial session. Any motions for continuance filed prior to the deadline shall be filed with the pre-assigned judge. After the deadline, all motions for continuance must be filed with the Administrative Judge of the Criminal Division. Notice as to the last date for continuances shall be published by the court in its annual schedule.

**RULE 302 - Procedure for Attorney Changes**

1. If, prior to or at the arraignment, another attorney files an appearance, or files any papers on behalf of the defendant (including signing the rights sheet) that attorney will be listed as the attorney of record. It would not be necessary, in that instance, for the previous attorney to file a motion to withdraw as counsel. If no attorney files an appearance or represents the defendant at the arraignment, the previous attorney will need to file a motion to withdraw.

2. After the arraignment, any attorney who is listed as attorney of record will have to file a motion, with the Court, requesting permission to withdrawn from the case. If the original attorney has not presented a motion to withdraw, both his/her name and the name of any attorney filing an appearance will be listed on the daily court schedule.

3. This procedure will apply to the public defender except when the change is merely from one public defender to another.

4. When a new attorney takes over a case, it is the responsibility of the previous attorney to notify new counsel of any upcoming hearings, trial subpoenas, etc. If the defendant was previously pro se, it is the responsibility of the Criminal Court Administrator to notify new counsel of the above.

**RULE 303 - Arraignment**

The defendant and counsel (or a representative thereof) shall be required to appear at the scheduled time of arraignment. The presence of the defendant and/or counsel may be waived by the filing of a signed "Waiver of Arraignment" prior to the scheduled date of arraignment. A sample waiver is attached. Copies should be sent to the Clerk of Records, Trial Court Administrator, defense attorney and defendant.



IN THE COURT OF COMMON PLEAS,  
COUNTY OF ERIE, PENNSYLVANIA  
—CRIMINAL DIVISION—

COMMONWEALTH OF  
PENNSYLVANIA

No. (s) \_\_\_\_\_

vs.

**WAIVER OF ARRAIGNMENT**

You, as defendant, are hereby notified of your right to be formally arraigned on the above-captioned docket(s), and:

You, as defendant, are further advised that:

1. If you wish to plead guilty you should contact the Court Administrator's Office to schedule the date for your guilty plea;

2. If you are entering a plea of not guilty, you are hereby advised of the time limitations for the filing of the following motions:

(a) request for a bill of particulars under Pa.R.Crim.P. 572 must be made within 7 days thereafter, and

(b) motion for pre-trial discovery under Pa.R.Crim.P. 573 must be made within 14 days thereafter, and

(c) omnibus motion for relief under Pa.R.Crim.P. 578 must be filed and served within 30 days thereafter, NOTE: These time periods will commence the date of your scheduled arraignment.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, after having conferred with counsel of my choice, and after having been advised of my right to be arraigned on any all information(s) in this matter, I hereby waive my right to be so arraigned.

If you have a change in your address, please contact the Criminal Court Administrator's Office at (814) 451-6305.

DEFENDANT

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

ATTORNEY FOR DEFENDANT

**NOTE:**

Attorneys not members of the Erie County Bar, please provide address and telephone number.

**RULE 305 - Pre-Trial Discovery**

Within fourteen (14) days of arraignment, all parties shall send a written request to the opposing party for information required under Rule 305 of the Pennsylvania Rules of Criminal Procedure. When there are items requested by one party which the other party refuses to disclose, the demanding party may then make appropriate motion to the court as part of its omnibus pre-trial

motion. In such a motion the party must set forth the fact that a good faith effort to discuss the request of material has taken place and proved unsuccessful. Further, the motion shall set forth the fact that a written request was made to the other party within fourteen (14) days of arraignment.

**RULE 310 - A.R.D.**

A. An original application for entry into the Accelerated Rehabilitation Disposition (A.R.D.) program shall be filed with the Commonwealth, and a copy shall be filed at the Office of the Criminal Court Administrator. The Criminal Court Administrator shall mark the date of filing on the copy. The application shall include language that waives Pa.R.Crim.P. 600. A sample application is set forth herein.

B. The filing deadlines imposed by Pa.R.Crim.P. 304, 305, 307, 567, 568, 572, 573, 578 and 579 shall be specially calculated in those instances where a defendant applies for, is refused entry into, or is revoked from the A.R.D. program as follows:

1. When the application is made BEFORE arraignment, all filing deadlines are preserved and calculations shall commence upon date of refusal or revocation.

2. When the application is made AFTER arraignment, filing of the application shall toll the running of the deadlines. Any number of days remaining shall remain and calculations will recommence upon date of refusal or revocation.

3. When any filing deadline has passed before the filing of the A.R.D. application, that deadline shall be deemed missed and unavailable except upon motion and order of the court.

**RULE 319 - Plea Bargains**

A deadline shall exist, after which the Court will not accept a plea to lesser or reduced offenses. This deadline will not be sooner than the Wednesday prior to the first day of the trial session. After said date, if a case is called to trial by the Court Administrator, the District Attorney and defendant shall (1) proceed to trial; (2) enter a plea as charged; or (3) the court shall dismiss the case. Notice as to the last date for plea bargain shall be published by the court in its annual schedule.

**RULE 319A - Post Arraignment Pleas**

If a defendant enters a plea before the Court no later than ten (10) days after arraignment or refusal from the ARD/PWOV program, said defendant may have the option of assignment to another judge, other than the original assigned judge, for purposes of sentencing. The assignment of alternative sentencing judges under this section shall be determined by the President Judge.

**RULE 541 - Waiver of Preliminary Hearing: Filing for Expedited A.R.D.**

A. **Expedited A.R.D.** An Original application for entry into the Expedited Accelerated Rehabilitative Disposition ("Expedited A.R.D.") program may be filed with the Magisterial District Judge who is assigned to preside over the preliminary hearing. The Magisterial District Judge shall forward the application to the Clerk of Courts and the Criminal Court Administrator. A sample application is set forth herein.

Note—Expedited A.R.D. applies only to DUI cases that meet the following minimum criteria: (1) The BAC must be no greater than .30%; (2) The defendant must have no criminal history exclusive of summary offenses; and (3) The case must not involve a motor vehicle accident.

For Court Use Only DOCKET # \_\_\_\_\_

**APPLICATION FOR DISPOSITION UNDER PROGRAM OF ACCELERATED REHABILITATIVE DISPOSITION / PROBATION WITHOUT VERDICT (ARD/PWOV PROGRAM)**

<b>I. IDENTIFICATION</b>	DEFENDANTS NAME _____	MAIDEN NAME: (OTHER MARRIED NAMES) _____	D.O.B. _____
	CURRENT MAILING ADDRESS _____	S.S.# _____	
<b>II. PREVIOUS CRIMINAL HISTORY</b>	PREVIOUS ADDRESS, (LAST TEN YEARS) _____		
	PRESENT EMPLOYMENT: _____		
<b>III. EXPLANATION OF OFFENSE</b>	HAVE YOU EVER BEEN FOUND GUILTY OR PLEADED GUILTY OR NO CONTEST TO ANY CRIMINAL VIOLATION OF ANY KIND, IN ANY COURT, <u>WHETHER IN PENNA. OR ANYWHERE ELSE</u> (THIS DOES NOT INCLUDE SUMMARY OFFENSES) <input type="checkbox"/> NO <input type="checkbox"/> YES	DO YOU HAVE ANY OTHER PENDING CRIMINAL CHARGE(S) OR HAVE YOU EVER BEEN PLACED ON ARD OR PWOV? <input type="checkbox"/> NO <input type="checkbox"/> YES	
	EXPLAIN: (GIVE DATE, PLACE, CHARGE(S) and DISPOSITION) _____	EXPLAIN: (GIVE DATES, PLACES, CHARGES(S) & DISPOSITION) _____	
<b>IV. CERTIFICATION AND ACKNOWLEDGMENT</b>	EXPLANATION OF YOUR PRESENT CASE, INCLUDING ALL DETAILS: _____		
	THE INFORMATION I HAVE PROVIDED ABOVE IS TRUE AND CORRECT. I UNDERSTAND THAT IF I HAVE PROVIDED FALSE INFORMATION ON THE APPLICATION, THAT REASON ALONE IS SUFFICIENT TO REFUSE THE APPLICATION. IN ADDITION, I UNDERSTAND THAT BY PROVIDING FALSE INFORMATION, I CAN BE PROSECUTED FOR OFFENSES INCLUDING, BUT NOT LIMITED TO, PERJURY, FALSE SWEARING AND/OR UNSWORN FALSIFICATION TO AUTHORITIES. BY APPLYING FOR ARD/PWOV, AND BY SIGNING THIS APPLICATION I ACKNOWLEDGE, CERTIFY AND UNDERSTAND THE ABOVE STATED RESPONSIBILITY AND EACH OF THE RIGHTS STATED ON THE REVERSE OF THIS APPLICATION.		
<b>V. DATE OF REQUIRED COURT APPEARANCE</b>	DATE: _____	DEFENDANT: _____	
	DATE: _____	ATTY FOR DEFENDANT: _____	
	DATE: _____	*WITNESS (IF NO ATTY.): _____	
FOR COURT USE ONLY:			
YOUR HEARING TO BE PLACED ON THE ARD PROGRAM WILL BE HELD ON _____, 20__ AT _____			
BEFORE JUDGE _____			
IN COURTROOM # _____ AT ERIE COUNTY COURT HOUSE			
<b>YOU ARE REQUIRED TO BE PRESENT IN COURT AT THAT TIME.</b>			

**RULE 570 - Pretrial Conference**

A. **Treatment Court.** After the filing of a criminal information, an original application for entry into the Drug Court or Mental Health Court programs shall be filed with the Commonwealth, and a copy shall be filed with the Criminal Court Administrator. The Criminal Court Administrator shall mark the date of filing on the copy. A sample application is set forth herein.

B. **Case Assignments.** All cases bound to Court will be assigned to one of the Judges in the Trial Division by the Court Administrator at or about the time of arraignment or waiver thereof. The assigned judge will hear and resolve all pretrial matters pertaining to the case. If a case proceeds to trial before a judge other than the assigned judge, the trial judge shall entertain motions in limine and any other pretrial motions.

**RULE 571 - Arraignment**

The defendant and counsel (or a representative of counsel) shall be required to appear at the scheduled time of arraignment unless a waiver is filed. The defendant and counsel may waive appearance at arraignment by the filing of a signed "Waiver of Arraignment and Entry of Appearance" prior to the scheduled date of arraignment. A sample Waiver of Arraignment and Entry of Appearance is set forth herein.

**RULE 590 - Pleas and Plea Agreements**

A. In all cases disposed of by plea (except post-arraignment pleas), the assigned judge shall be the sentencing judge. However, in any case where the assigned judge is unavailable for sentencing, another judge designated by the President Judge shall conduct the sentencing. A sentencing date shall be set for all cases at the time of plea. Any change requested in this date must be made directly with the assigned sentencing judge and subject to his or her discretion.

1. **Post-Arraignment Pleas.** If a defendant enters a plea before the Court no later than ten (10) days after arraignment or refusal from the ARD/PWOV or Treatment Court programs, the defendant may have the option of assignment to another judge of the trial division, other than the original assigned judge, for purposes of sentencing. The assignment of alternative sentencing judges under this section shall be determined by the President Judge.

B. **Plea Agreements.** A deadline shall exist, after which the Court should not accept a plea to lesser or reduced offenses. This deadline shall be the second business day of the week immediately preceding the first day of the trial term. Said deadline may be extended by the Court upon good cause shown. If a case is called to trial by the Court Administrator after that date, the Commonwealth and defendant shall (1) proceed to trial; (2) enter a plea as charged (summary offenses may be withdrawn at any time); or (3) the Court shall dismiss the case. Notice as to the last date for plea agreements shall be published by the Court in its annual schedule.

**RULE 600 - Trial Term**

A. **Criminal Trial Calendar.** The Court calendar shall be divided into six (6) two-month sessions, each containing two (2) two-week trial terms.

B. **Separate Trial List.** All DUI cases and certain other cases where the most serious offense involves simple assault, bad checks, or identity theft or as may be necessary to comply with Rule 600 shall be handled as a separate trial list and scheduled during the second month of each session.

C. **Notice.** All cases listed for a trial session shall be subpoenaed by the Court Administrator at least one (1) month prior to the start of the session. Late additions may be made for Rule 600 problem cases or by Order of Court.

**RULE 1100 - Trial Term**

The Court calendar will be divided into six (6) two-month sessions, each (except for November) containing two (2) two-week trial terms with four (4) presiding judges. All cases listed for a trial session shall be subpoenaed by the Court Administrator at least one (1) month prior to the start of the session. Late additions may be made for Rule 1100 problem cases.

DUI cases will be handled as a separate trial list and scheduled during the second month of each session.

**RULE 1102 - Non-Jury Trials**

Effective with the September 1992 court term, one judge of the eight scheduled to preside over trials will initially be assigned to hear non-jury criminal trials. For a case to proceed non-jury during the trial session, the non-jury colloquy must take place no later than the Wednesday preceding the start of the trial session. Furthermore, the non-jury trial itself shall take place during the two-month period of the court session. The cases, if necessary, will be prioritized according to the date of the waiver of jury trial. Any cases not reached during the two-month period will be assigned to the judge hearing non-jury cases during the following court session. Any guilty pleas on cases prior to verdict shall be referred back to the assigned judge for sentencing. All rules regarding plea bargaining and continuances will still apply.

**RULE 9022 - Motion, Filing of**

1. In all court cases a specific judge of the criminal division shall be assigned to each case at or before the time of Common Pleas Court arraignment.

2. Unless otherwise specified within these rules, all pre-trial motions shall be presented to the assigned judge of the criminal division.

3. If the assigned judge is the current criminal duty judge at the time of motion filing, the motion shall be presented in motion court.

4. If the assigned judge is not the current presiding criminal duty judge at the time of motion filing, the motion shall be left with the assigned judge's secretary.

5. A rule to show cause must be attached to all criminal motions unless the motion is not objected to by the opposing party and the authorized original signature of counsel for the opposing party appears indicating the lack of objection thereto.

**RULE 9023 - Motion, Service**

1. Once a rule to show cause or a final order has been signed by the assigned judge, the original and a copy must be taken to the Criminal Court Administrator where a copy will be left and the original will be stamped as proof of service. A copy will not be accepted without the original.

2. The original should then be time stamped and filed with the Clerk of Courts.

3. Time stamped copies of the rule to show cause or final order should then be served on the opposing party personally or by United States First Class Mail.

[Pa.B. Doc. No. 07-1978. Filed for public inspection October 26, 2007, 9:00 a.m.]

## LEHIGH COUNTY

**Administrative Order Establishing a Partial Payment Processing Fee for Summary Cases Filed in the District Courts of the Thirty-First Judicial District; No. AD-15-2007****Order**

*Now*, this 5th day of October, 2007, *It Is Ordered*, that pursuant to the provisions of 42 Pa.C.S. 1725.1(c)(5), relating to unclassified costs, a ten (\$10.00) dollar partial payment processing fee to cover administrative costs related to such processing, be and is hereby imposed for all summary cases within the magisterial district courts of the Thirty-First Judicial District when the defendant in the summary case requests and is permitted to make installment payments as provided in Pa.R.Crim.P. 454 (E)(1), Trial in Summary Cases.

*It Is Further Ordered* that this fee shall be imposed as to each installment payment plan in effect on, or instituted on or after October 15, 2007.

*It Is Further Ordered* that all prior orders under this Docket Number are *Vacated*.

*By the Court*

ALAN M. BLACK,  
*President Judge*

[Pa.B. Doc. No. 07-1979. Filed for public inspection October 26, 2007, 9:00 a.m.]