

# American Bar Association



## **Principles for Juries and Jury Trials**

### American Jury Project

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## **PREAMBLE**

**The American jury is a living institution that has played a crucial part in our democracy for more than two hundred years. The American Bar Association recognizes the legal community's ongoing need to refine and improve jury practice so that the right to jury trial is preserved and juror participation enhanced. What follows is a set of 19 principles that define our fundamental aspirations for the management of the jury system. Each principle is designed to express the best of current-day jury practice in light of existing legal and practical constraints. It is anticipated that over the course of the next decade jury practice will improve so that the principles set forth will have to be updated in a manner that will draw them ever closer to the principles to which we aspire.**

## GENERAL PRINCIPLES

### **PRINCIPLE 1– THE RIGHT TO JURY TRIAL SHALL BE PRESERVED**

- A. Parties in civil matters have the right to a fair, accurate and timely jury trial in accordance with law.
- B. Parties, including the state, have the right to a fair, accurate and timely jury trial in criminal prosecutions in which confinement in jail or prison may be imposed.
- C. In civil cases the right to jury trial may be waived as provided by applicable law, but waiver should neither be presumed nor required where the interests of justice demand otherwise.
- D. With respect to criminal prosecutions:
  - 1. A defendant’s waiver of the right to jury trial must be knowing and voluntary, joined in by the prosecutor and accepted by the court.
  - 2. The court should not accept a waiver unless the defendant, after being advised by the court of his or her right to trial by jury and the consequences of waiver, personally waives the right to trial by jury in writing or in open court on the record.
  - 3. A defendant may not withdraw a voluntary and knowing waiver as a matter of right, but the court, in its discretion, may permit withdrawal prior to the commencement of trial.
  - 4. A defendant may withdraw a waiver of jury, and the prosecutor may withdraw its consent to a waiver, both as a matter of right, if there is a change of trial judge.
- E. A quality and accessible jury system should be maintained with budget procedures that will ensure adequate, stable, long-term funding under all economic conditions.

**PRINCIPLE 2 – CITIZENS HAVE THE RIGHT TO PARTICIPATE IN JURY SERVICE AND THEIR SERVICE SHOULD BE FACILITATED**

- A. All persons should be eligible for jury service except those who:
  - 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. Are not able to communicate in the English language and the court is unable to provide a satisfactory interpreter; or
  - 5. Have been convicted of a felony and are in actual confinement or on probation, parole or other court supervision.
  
- B. 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 factor that discriminates against a cognizable group in the jurisdiction other than those set forth in A. above.
  
- C. The time required of persons called for jury service should be the shortest period consistent with the needs of justice.
  - 1. Courts should use a term of service of one day or the completion of one trial, whichever is longer.
  - 2. Where deviation from the term of service set forth in C.1. above is deemed necessary, the court should not require a person to remain available to be selected for jury service for longer than two weeks.
  
- D. Courts should respect jurors' time by calling in the minimum number deemed necessary and by minimizing their waiting time.
  - 1. Courts should coordinate jury management and calendar management to make effective use of jurors.
  - 2. Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both

the number of persons summoned for jury duty and the number assigned to jury panels.

3. Courts should ensure that all jurors in the courthouse waiting to be assigned to panels for the first time are assigned before any juror is assigned a second time.
- E. Courts should provide an adequate and suitable environment for jurors, including those who require reasonable accommodation due to disability.
- F. Persons called for jury service should receive a reasonable fee.
1. Persons called for jury service should be paid a reasonable fee that will, at a minimum, defray routine expenses such as travel, parking, meals and child-care. Courts should be encouraged to increase the amount of the fee for persons serving on lengthy trials.
  2. Employers should be prohibited from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.
  3. Employers should be prohibited from requiring jurors to use leave or vacation time for the time spent on jury service or be required to make up the time they served.

### **PRINCIPLE 3 – JURIES SHOULD HAVE 12 MEMBERS**

- A. Juries in civil cases should be constituted of 12 members wherever feasible and under no circumstances fewer than six members.
- B. Juries in criminal cases should consist of:
1. Twelve persons if a penalty of confinement for more than six months may be imposed upon conviction;
  2. At least six persons if the maximum period of confinement that may be imposed upon conviction is six months or less.
- C. At any time before verdict, the parties, with the approval of the court, may stipulate that the jury shall consist of fewer jurors than required for a full jury, but in no case fewer than six jurors. In criminal cases the court should not accept such a stipulation unless the defendant, after being advised by the court of his or her right to trial by a full jury, and the

consequences of waiver, personally waives the right to a full jury either in writing or in open court on the record.

#### **PRINCIPLE 4 – JURY DECISIONS SHOULD BE UNANIMOUS**

- A. In civil cases, jury decisions should be unanimous wherever feasible. A less-than-unanimous decision should be accepted only after jurors have deliberated for a reasonable period of time and if concurred in by at least five-sixths of the jurors. In no civil case should a decision concurred in by fewer than six jurors be accepted, except as provided in C. below.
- B. A unanimous decision should be required in all criminal cases heard by a jury.
- C. At any time before verdict, the parties, with the approval of the court, may stipulate to a less-than-unanimous decision. To be valid, the stipulation should be clear as to the number of concurring jurors required for the verdict. In criminal cases, the court should not accept such a stipulation unless the defendant, after being advised by the court of his or her right to a unanimous decision, personally waives that right, either in writing or in open court on the record.

#### **PRINCIPLE 5 – IT IS THE DUTY OF THE COURTS TO ENFORCE AND PROTECT THE RIGHTS TO JURY TRIAL AND JURY SERVICE**

- A. The responsibility for administration of the jury system should be vested exclusively in the judicial branch of government.
  - 1. All procedures concerning jury selection and service should be governed by rules and regulations promulgated by the state's highest court or judicial council.
  - 2. A unified jury system should be established wherever feasible in areas that have two or more courts conducting jury trials. This applies whether the courts are of the same or of differing subject matter or geographic jurisdiction.
  - 3. Responsibility for administering the jury system should be vested in a single administrator or clerk acting under the supervision of a presiding judge of the court.

- B. Courts should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:
  - 1. The representativeness and inclusiveness of the jury source list;
  - 2. The effectiveness of qualification and summoning procedures;
  - 3. The responsiveness of individual citizens to jury duty summonses;
  - 4. The efficient use of jurors; and
  - 5. The reasonableness of accommodations being provided to jurors with disabilities.

**PRINCIPLE 6 – COURTS SHOULD EDUCATE JURORS REGARDING THE ESSENTIAL ASPECTS OF A JURY TRIAL**

- A. Courts should provide orientation and preliminary information to persons called for jury service:
  - 1. Upon initial contact prior to service;
  - 2. Upon first appearance at the courthouse; and
  - 3. Upon reporting to a courtroom for juror voir dire.
- B. Orientation programs should be:
  - 1. Designed to increase jurors' understanding of the judicial system and prepare them to serve competently as jurors;
  - 2. Presented in a uniform and efficient manner using a combination of written, oral and audiovisual materials; and
  - 3. Presented, at least in part, by a judge.
- C. Throughout the course of the trial, the court should provide instructions to the jury in plain and understandable language.
  - 1. The court should give preliminary instructions directly following empanelment of the jury that explain the jury's role, the trial procedures including note-taking and questioning by jurors, the

nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles, including the elements of the charges and claims and definitions of unfamiliar legal terms.

2. The court should advise jurors that once they have been selected to serve as jurors or alternates in a trial, they are under an obligation to refrain from talking about the case outside the jury room until the trial is over and the jury has reached a verdict. At the time of such instructions in civil cases, the court may inform the jurors about the permissibility of discussing the evidence among themselves as contemplated in Standard 13 F.
3. The court should give such instructions during the course of the trial as are necessary to assist the jury in understanding the facts and law of the case being tried as described in Standard 13 D. 2.
4. Prior to deliberations, the court should give such instructions as are described in Standard 14 regarding the applicable law and the conduct of deliberations.

**PRINCIPLE 7 – COURTS SHOULD PROTECT JUROR PRIVACY INsofar AS CONSISTENT WITH THE REQUIREMENTS OF JUSTICE AND THE PUBLIC INTEREST**

- A. Juror interest in privacy must be balanced against party and public interest in court proceedings.
  1. Juror voir dire should be open and accessible for public view except as provided herein. Closing 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.
  2. Requests to jurors for information should differentiate among information collected for the purpose of juror qualification, jury administration, and voir dire.
  3. Judges should ensure that jurors' privacy is reasonably protected, and that questioning is consistent with the purpose of the voir dire process.



4. 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.
  5. 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.
  6. Courts should inform jurors that they may provide answers to sensitive questions privately to the court, and the parties.
  7. Jurors should be examined outside the presence of other jurors with respect to questions of prior exposure to potentially prejudicial material.
  8. Following jury selection and trial, the court should keep all jurors' home and business addresses and telephone numbers confidential and under seal unless good cause is shown to the court which would require disclosure. 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 and devices for viewing them.
- B. Without express court permission, surveillance of jurors and prospective jurors outside the courtroom by or on behalf of a party should be prohibited.
- C. If cameras are permitted to be used in the courtroom, they should not be allowed to record or transmit images of the jurors' faces.

**PRINCIPLE 8 -- INDIVIDUALS SELECTED TO SERVE ON A JURY HAVE AN ONGOING INTEREST IN COMPLETING THEIR SERVICE**

During trial and deliberations, a juror should be removed only for a compelling reason. The determination that a juror should be removed should be made by the court, on the record, after an appropriate hearing.

### **ASSEMBLING A JURY**

#### **PRINCIPLE 9 – COURTS SHOULD CONDUCT JURY TRIALS IN THE VENUE REQUIRED BY APPLICABLE LAW OR THE INTERESTS OF JUSTICE**

- A. In civil cases where a jury demand has been made, a change of venue may be granted as required by applicable law or in the interest of justice.
- B. In criminal cases, a change of venue or continuance should be granted whenever there is a substantial likelihood that, in the absence of such relief, a fair trial by an impartial jury cannot be had. A showing of actual prejudice should not be required.
- C. Courts should consider the option of trying the case in the original venue but selecting the jury from a new venue. In addition to all other considerations relevant to the selection of the new venue, consideration should be given to whether the original venue would be a better location to conduct the trial due to facilities, security, and the convenience of the victims, court staff, and parties. This should be balanced against the possible inconvenience to the jurors.

#### **PRINCIPLE 10 – COURTS SHOULD USE OPEN, FAIR AND FLEXIBLE PROCEDURES TO SELECT A REPRESENTATIVE POOL OF PROSPECTIVE JURORS**

- A. Juror source pools should be assembled so as to assure representativeness and inclusiveness.
  - 1. The names of potential jurors should be drawn from a jury source list compiled from two or more regularly maintained source lists of persons residing in the jurisdiction. These source lists should be updated at least annually.

2. The jury source list and the assembled jury pool should be representative and inclusive of the eligible population in the jurisdiction. The source list and the assembled jury pool are representative of the population to the extent the percentages of cognizable group members on the source list and in the assembled jury pool are reasonably proportionate to the corresponding percentages in the population.
  3. The court should periodically review the jury source list and the assembled jury pool for their representativeness and inclusiveness of the eligible population in the jurisdiction.
  4. Should the court determine that improvement is needed in the representativeness or inclusiveness of the jury source list or the assembled jury pool, appropriate corrective action should be taken.
  5. Jury officials should determine the qualifications of prospective jurors by questionnaire or interview, and disqualify those who fail to meet eligibility requirements.
- B. Courts should use random selection procedures throughout the juror selection process.
1. Any selection method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection, except when a court orders an adjustment for underrepresented populations.
  2. Courts should use random selection procedures in:
    - a. Selecting persons to be summoned for jury service;
    - b. Assigning jurors to panels;
    - c. Calling jurors for voir dire; and
    - d. Designating, at the outset of jury deliberations, those jurors who will serve as “regular” and as “alternate” jurors.
  3. Departures from the principle of random selection are appropriate:
    - a. To exclude persons ineligible for service in accordance with basic eligibility requirements;
    - b. To excuse or defer jurors in accordance with C. below;
    - c. To remove jurors for cause or if challenged peremptorily in accordance with D. and E. below; or
    - d. To provide jurors who have not been considered for selection with an opportunity to be considered before other jurors are considered for a second time, as provided for in Standard

2 D. 3.

- C. Exemptions, excuses, and deferrals should be sparingly used.
1. All automatic excuses or exemptions from jury service should be eliminated.
  2. Eligible persons who are summoned may be excused from jury service only if:
    - a. Their ability to perceive and evaluate information is so impaired that even with reasonable accommodations having been provided, they are unable to perform their duties as jurors and they are excused for this reason by a judge; or
    - b. Their service would be an undue hardship or they have served on a jury during the two years preceding their summons and they are excused by a judge or duly authorized court official.
  3. Deferrals of jury service to a date certain within six months should be permitted by a judge or duly authorized court official. Prospective jurors seeking to postpone their jury service to a specific date should be permitted to submit a request by telephone, mail, in person or electronically. Deferrals should be preferred to excusals whenever possible.
  4. Requests for excuses or deferrals and their disposition should be written or otherwise made of record. Specific uniform guidelines for determining such requests should be adopted by the court.
- D. Courts should use sensible and practical notification and summons procedures in assembling jurors.
1. The notice summoning a person to jury service should be easy to understand and answer, should specify the steps required for answering and the consequences of failing to answer, should allow for speedy and accurate eligibility screening, and should request basic background information.
  2. Courts should adopt specific uniform guidelines for enforcing a summons for jury service and for monitoring failures to respond to a summons. Courts should utilize appropriate sanctions in the cases of persons who fail to respond to a jury summons.
- E. Opportunity to challenge the assembled jury pool should be afforded all parties on the ground that there has been material departure from the requirements of the law governing selection of jurors. The court should

maintain demographic information as to its source lists, summonses issued, and reporting jurors.

**PRINCIPLE 11 – COURTS SHOULD ENSURE THAT THE PROCESS USED TO EMPANEL JURORS EFFECTIVELY SERVES THE GOAL OF ASSEMBLING A FAIR AND IMPARTIAL JURY**

- A. Before voir dire begins, the court and parties, through the use of appropriate questionnaires, should be provided with data pertinent to the eligibility of jurors and to matters ordinarily raised in voir dire, including such background information as is provided by prospective jurors in their responses to the questions appended to the notification and summons considered in Standard 10 D. 1.
  - 1. In appropriate cases, the court should consider using a specialized questionnaire addressing particular issues that may arise. The court should permit the parties to submit a proposed juror questionnaire. The parties should be required to confer on the form and content of the questionnaire. If the parties cannot agree, each party should be afforded the opportunity to submit a proposed questionnaire and to comment upon any proposal submitted by another party.
  - 2. Jurors should be advised of the purpose of any questionnaire, how it will be used and who will have access to the information.
  - 3. All completed questionnaires should be provided to the parties in sufficient time before the start of voir dire to enable the parties to adequately review them before the start of that examination.
- B. The voir dire process should be held on the record and appropriate demographic data collected.
  - 1. Questioning of jurors should be conducted initially by the court, and should be sufficient, at a minimum, to determine the jurors' legal qualification to serve in the case.
  - 2. Following initial questioning by the court, each party should have the opportunity, under the supervision of the court and subject to reasonable time limits, to question jurors directly, both individually and as a panel. In a civil case involving multiple parties, the court should permit each separately represented party to participate meaningfully in questioning prospective jurors, subject to reasonable time limits and avoidance of repetition.

3. Voir dire should be sufficient to disclose grounds for challenges for cause and to facilitate intelligent exercise of peremptory challenges.
  4. Where there is reason to believe that jurors have been previously exposed to information about the case, or for other reasons are likely to have preconceptions concerning it, the parties should be given liberal opportunity to question jurors individually about the existence and extent of their knowledge and preconceptions.
  5. It is the responsibility of the court to prevent abuse of the juror selection examination process.
- C. Challenges for cause should be available at the request of a party or at the court's own initiative.
1. Each jurisdiction should establish, by law, the grounds for and the standards by which a challenge for cause to a juror is sustained by the court.
  2. At a minimum, a challenge for cause to a juror should be sustained if the juror has an interest in the outcome of the case, may be biased for or against one of the parties, is not qualified by law to serve on a jury, has a familial relation to a participant in the trial, or may be unable or unwilling to hear the subject case fairly and impartially. There should be no limit to the number of challenges for cause.
  3. In ruling on a challenge for cause, the court should evaluate the juror's demeanor and substantive responses to questions. If the court determines that there is a reasonable doubt that the juror can be fair and impartial, then the court should excuse him or her from the trial. The court should make a record of the reasons for the ruling including whatever factual findings are appropriate.
- D. Peremptory challenges should be available to each of the parties.
1. In the courts of each state, the number of and procedure for exercising peremptory challenges should be uniform.
  2. The number of peremptory challenges should be sufficient, but 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.

3. The court should have the authority to allow additional peremptory challenges when justified.
  4. 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.
- E. Fair procedures should be utilized in the exercise of challenges.
1. 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.
  2. 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 in D. 4. above. A party should be permitted to exercise a peremptory challenge against a member of the panel who has been passed for cause.
  3. 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, regarding the exercise of challenges.
  4. 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.
- F. No party should be permitted to use peremptory challenges to dismiss a juror for constitutionally impermissible reasons.
1. It should be presumed that each party is utilizing peremptory challenges validly, without basing those challenges on constitutionally impermissible reasons.
  2. 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.

3. 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.
  4. 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.
  5. 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 under F. 3. above.
- G. The court may empanel a sufficient number of jurors to allow for one or more alternates whenever, in the court's discretion, the court believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties.
1. Alternate jurors shall be selected in the same manner, have the same qualifications, be subject to the same examination and challenges, and take the same oath as regular jurors.
  2. The status of jurors as regular jurors or as alternates should be determined through random selection at the time for jury deliberation.
  3. In civil cases where there are 12 or fewer jurors, all jurors, including alternates, should deliberate and vote, but in no case should more than 12 jurors deliberate and vote.
- H. Courts should limit the use of anonymous juries to compelling circumstances, such as when the safety of the jurors is an issue or when



there is a finding by the court that efforts are being made to intimidate or influence the jury's decision.

### **CONDUCTING A JURY TRIAL**

#### **PRINCIPLE 12 – COURTS SHOULD LIMIT THE LENGTH OF JURY TRIALS INsofar AS JUSTICE ALLOWS AND JURORS SHOULD BE FULLY INFORMED OF THE TRIAL SCHEDULE ESTABLISHED**

- A. The court, after conferring with the parties, should impose and enforce reasonable time limits on the trial or portions thereof.
- B. Trial judges should use modern trial management techniques that eliminate unnecessary trial delay and disruption. Once begun, jury trial proceedings with jurors present should take precedence over all other court proceedings except those given priority by a specific law and those of an emergency nature.
- C. Jurors should be informed of the trial schedule and of any necessary changes to the trial schedule at the earliest practicable time.

#### **PRINCIPLE 13 – THE COURT AND PARTIES SHOULD VIGOROUSLY PROMOTE JUROR UNDERSTANDING OF THE FACTS AND THE LAW**

- A. Jurors should be allowed to take notes during the trial.
  - 1. Jurors should be instructed at the beginning of the trial that they are permitted, but not required, to take notes in aid of their memory of the evidence and should receive appropriate cautionary instructions on note-taking and note use. Jurors should also be instructed that after they have reached their verdict, all juror notes will be collected and destroyed.
  - 2. Jurors should ordinarily be permitted to use their notes throughout the trial and during deliberations.

3. The court should ensure that jurors have implements for taking notes.
  4. The court should collect all juror notes at the end of each trial day until the jury retires to deliberate.
  5. After the jurors have returned their verdict, all juror notes should be collected and destroyed.
- B. Jurors should, in appropriate cases, be supplied with identical trial notebooks which may include such items as the court's preliminary instructions, selected exhibits which have been ruled admissible, stipulations of the parties and other relevant materials not subject to genuine dispute.
1. At the time of distribution, the court should instruct the jurors concerning the purpose and use of their trial notebooks.
  2. During the trial, the court may permit the parties to supplement the materials contained in the notebooks with additional material that has been admitted in evidence.
  3. The trial notebooks should be available to jurors during deliberations as well as during the trial.
- C. In civil cases, jurors should, ordinarily, be permitted to submit written questions for witnesses. In deciding whether to permit jurors to submit written questions in criminal cases, the court should take into consideration the historic reasons why courts in a number of jurisdictions have discouraged juror questions and the experience in those jurisdictions that have allowed it.
1. Jurors should be instructed at the beginning of the trial concerning their ability to submit written questions for witnesses.
  2. Upon receipt of a written question, the court should make it part of the court record and disclose it to the parties outside the hearing of the jury. The parties should be given the opportunity, outside the hearing of the jury, to interpose objections and suggest modifications to the question.
  3. After ruling that a question is appropriate, the court may pose the question to the witness, or permit a party to do so, at that time or later; in so deciding, the court should consider whether the parties prefer to ask, or to have the court ask, the question. The court

should modify the question to eliminate any objectionable material.

4. After the question is answered, the parties should be given an opportunity to ask follow-up questions.

D. The court should assist jurors where appropriate.

1. The court should not in any way indicate to the jury its personal opinion as to the facts or value of evidence by the court's rulings, conduct, or remarks during the trial.
2. When necessary to the jurors' proper understanding of the proceedings, the court may intervene during the taking of evidence to instruct on a principle of law or the applicability of the evidence to the issues. This should be done only when the jurors cannot be effectively advised by postponing the explanation to the time of giving final instructions.
3. The court should exercise self-restraint and preserve an atmosphere of impartiality and detachment, but may question a witness if necessary to assist the jury.
  - a. Generally, the court should not question a witness about subject matter not raised by any party with that witness, unless the court has provided the parties an opportunity, outside the hearing of the jury, to explain the omission. If the court believes the questioning is necessary, the court should afford the parties an opportunity to develop the subject by further examination prior to its questioning of the witness.
  - b. The court should instruct the jury that questions from the court, like questions from the parties, are not evidence; that only answers are evidence; that questions by the court should not be given special weight or emphasis; and the fact that the court asks a question does not reflect a view on the merits of the case or on the credibility of any witness.

E. The court should control communications with jurors during trial.

1. The court should take appropriate steps ranging from admonishing the jurors to, in the rarest of circumstances, sequestration of them during trial, to ensure that the jurors will not be exposed to sources of information or opinion, or subject to influences, which might tend to affect their ability to render an impartial verdict on the evidence presented in court.

2. At the outset of the case, the court should instruct the jury on the relationship between the court, the parties and the jury, ensuring that the jury understands that the parties are permitted to communicate with jurors only in open court with the opposing parties present.
  3. All communications between the judge and members of the jury panel from the time of reporting to the courtroom for juror selection examination until dismissal should be in writing or on the record in open court. Each party should be informed of such communications and given the opportunity to be heard.
- F. Jurors in civil cases may be instructed that they will be permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence.
- G. Parties and courts should be open to a variety of trial techniques to enhance juror comprehension of the issues including: alteration of the sequencing of expert witness testimony, mini- or interim openings and closings, and the use of computer simulations, deposition summaries and other aids.
- H. In civil cases the court should seek a single, unitary trial of all issues in dispute before the same jury, unless bifurcation or severance of issues or parties is required by law or is necessary to prevent unfairness or prejudice.
- I. Consistent with applicable rules of evidence and procedure, courts should encourage the presentation of live testimony.
- J. The court may empanel two or more juries for cases involving multiple parties, defendants, or claims arising out of the same transaction or cause of action, in order to reduce the number and complexity of issues that any one jury must decide. Dual juries also may be used in order to promote judicial economy by presenting otherwise duplicative evidence in a single trial.

### **JURY DELIBERATIONS**

#### **PRINCIPLE 14 –THE COURT SHOULD INSTRUCT THE JURY IN PLAIN AND UNDERSTANDABLE LANGUAGE REGARDING THE APPLICABLE LAW AND THE CONDUCT OF DELIBERATIONS**

- A. All instructions to the jury should be in plain and understandable language.
- B. Jurors should be instructed with respect to the applicable law before or after the parties' final argument. Each juror should be provided with a written copy of instructions for use while the jury is being instructed and during deliberations.
- C. Instructions for reporting the results of deliberations should be given following final argument in all cases. At that time, the court should also provide the jury with appropriate suggestions regarding the process of selecting a presiding juror and the conduct of its deliberations.
- D. The jurors alone should select the foreperson and determine how to conduct jury deliberations.

**PRINCIPLE 15 – COURTS AND PARTIES HAVE A DUTY TO FACILITATE EFFECTIVE AND IMPARTIAL DELIBERATIONS**

- A. In civil cases of appropriate complexity, and after consultation with the parties, the court should consider the desirability of a special verdict form tailored to the issues in the case. If the parties cannot agree on a special verdict form, each party should be afforded the opportunity to propose a form and to comment upon any proposal submitted by another party or fashioned by the court. The court should consider furnishing each juror with a copy of the verdict form when the jury is instructed and explaining the form as necessary.
- B. Exhibits admitted into evidence should ordinarily be provided to the jury for use during deliberations. Jurors should be provided an exhibit index to facilitate their review and consideration of documentary evidence.
- C. Jury deliberations should take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision-making.
  - 1. The court should instruct the jury on the appropriate method for asking questions during deliberations and reporting the results of its deliberations.

2. A jury should not be required to deliberate after normal working hours unless the court after consultation with the parties and the jurors determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interest of justice.
- D. When jurors submit a question during deliberations, the court, in consultation with the parties, should supply a prompt, complete and responsive answer or should explain to the jurors why it cannot do so.
  - E. A jury should be sequestered during deliberations only in the rarest of circumstances and only for the purposes of protecting the jury from threatened harm or insulating its members from improper information or influences.
  - F. When a verdict has been returned and before the jury has dispersed, the jury should be polled at the request of any party or upon the court's own motion. The poll should be conducted by the court or clerk of court asking each juror individually whether the verdict announced is his or her verdict. If the poll discloses that there is not that level of concurrence required by applicable law, the jury may be directed to retire for further deliberations or may be discharged.

**PRINCIPLE 16 – DELIBERATING JURORS SHOULD BE OFFERED ASSISTANCE WHEN AN APPARENT IMPASSE IS REPORTED**

- A. If the jury advises the court that it has reached an impasse in its deliberations, the court may, after consultation with the parties, inquiry the jurors in writing to determine whether and how court and the parties can assist them in their deliberative process. After receiving the jurors' response, if any, and consulting with the parties, the judge may direct that further proceedings occur as appropriate.
- B. If it appears to the court that the jury has been unable to agree, the court may require the jury to continue its deliberations. The court should not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals.
- C. If there is no reasonable probability of agreement, the jury may be discharged.

## **POST-VERDICT ACTIVITY**

### **PRINCIPLE 17 – TRIAL AND APPELLATE COURTS SHOULD AFFORD JURY DECISIONS THE GREATEST DEFERENCE CONSISTENT WITH LAW**

Trial and appellate courts should afford jury decisions the greatest deference consistent with law.

### **PRINCIPLE 18 – COURTS SHOULD GIVE JURORS LEGALLY PERMISSIBLE POST-VERDICT ADVICE AND INFORMATION**

- A. After the conclusion of the trial and the completion of the jurors' service, the court is encouraged to engage in discussions with the jurors. Such discussions should occur on the record and in open court with the parties having the opportunity to be present, unless all the parties agree to the court conducting these discussions differently. This standard does not prohibit incidental contact between the court and jurors after the conclusion of the trial.
- B. Under no circumstances should the court praise or criticize the verdict or state or imply an opinion on the merits of the case, or make any other statements that might prejudice a juror in future jury service.
- C. At the conclusion of the trial, the court should instruct the jurors that they have the right either to discuss or to refuse to discuss the case with anyone, including counsel or members of the press.
- D. Unless prohibited by law, the court should ordinarily permit the parties to contact jurors after their terms of jury service have expired, subject, in the court's discretion, to reasonable restrictions.
- E. Courts should inform jurors that they may ask for the assistance of the court in the event that individuals persist in questioning jurors, over their objection, about their jury service.

### **PRINCIPLE 19 – APPROPRIATE INQUIRIES INTO ALLEGATIONS OF JUROR MISCONDUCT SHOULD BE PROMPTLY UNDERTAKEN BY THE TRIAL COURT**

- A. Only under exceptional circumstances may a verdict be impeached upon information provided by jurors.
1. Upon an inquiry into the validity of a verdict, no evidence should be received to show the effect of any statement, conduct, event, or condition upon the mind of a juror or concerning the mental processes by which the verdict was determined.
  2. The limitations in A.1 above should not bar evidence concerning whether the verdict was reached by lot or contains a clerical error, or was otherwise unlawfully decided.
  3. A juror's testimony or affidavit may be received when it concerns:
    - a. Whether matters not in evidence came to the attention of one or more jurors; or
    - b. Any other misconduct for which the jurisdiction permits jurors to impeach their verdict.
- B. The court should take prompt action in response to an allegation of juror misconduct.
1. Upon receipt of an allegation of juror misconduct, the court should promptly inform the parties and afford them the opportunity to be heard as to whether the allegation warrants further enquiry or other judicial action.
  2. Parties should promptly refer an allegation of juror misconduct to the court and to all other parties in the proceeding.
  3. If the court determines that the allegation of juror misconduct warrants further inquiry, it should consult with the parties concerning the nature and scope of the inquiry, including:
    - a. Which jurors should be questioned;
    - b. Whether the court or the parties should ask the questions; and
    - c. The substance of the questions.
  4. If the court ascertains that juror misconduct has occurred, it should afford the parties the opportunity to be heard as to an appropriate remedy.
  5. If the allegation of juror misconduct is received while the jury is deliberating, the recipient must ensure as quickly as possible that



the court and counsel are informed of it, and the court should proceed as promptly as practicable to ascertain the facts and to fashion an appropriate remedy.

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