

IMPLEMENTATION PLAN
JURY REFORM IN COLORADO
March 12, 1998

Introduction

In February of 1997, the Supreme Court adopted in principle the recommendations contained in a report entitled "With Respect to the Jury: A Proposal for Jury Reform" (the Report). The Court reserved the discretion to review particular implementation measures and rule changes as proposed.

On May 7, 1997, the Chief Justice appointed a Jury Reform Implementation Committee (the Implementation Committee), and charged that committee with developing specific proposals to implement the various recommendations in this Report, and reporting back to the Court.

This Plan answers that charge. The Implementation Committee divided into two groups, one focusing on implementation measures dealing with in-courtroom changes; and the other focusing on measures outside the courtroom such as administrative changes, education, identifying and summoning jurors, etc.

The recommendations that the Implementation Committee now presents to the Court have been reviewed and approved by the full committee. The Plan includes recommended changes in seven areas: 1. Civil/Criminal Rules revisions; 2. Jury Instruction revisions; 3. Statutory revisions; 4. Chief Justice Directives; 5. Administrative changes; 6. Training issues; and 7. Pilot projects.

The Implementation Committee intends, by the recommended changes, to remain true to the intent of the Report, and to propose practical solutions that can be implemented within the system without undue delay or expense.

The Implementation Committee anticipates that some of the proposed changes will have a positive fiscal impact by increasing efficiency. However, some of the changes, while saving public time by expediting the jury process, will have an adverse fiscal impact upon courts and counsel. Additionally, funding may be required for portions of the pilot projects and for some of the public education efforts.

1. Civil/Criminal Rules Revision

The Implementation Committee asked both the Supreme Court Civil Rules Committee and the Criminal Rules Committee to submit rules responsive to the changes recommended in the original Report.

The Civil Rules Committee was very cooperative, and has worked with the Implementation Committee closely. The Civil Rules as to which amendments are proposed are

C.R.C.P. 16, 32, 47 and C.R.E. 1004, and County Court Rules 316 and 347. The amendments are attached to this Plan as Appendix A, together with the Civil Rules Committee formal comments. The amendments deal with the planning necessary for a jury trial, as well as the conduct of the trial once it occurs. They are designed to make the process more efficient for the jurors, to make the information the jurors receive more understandable and to promote better decision-making by jurors.

The Criminal Rules Committee did not provide suggested Criminal Rules changes. Hence, the Implementation Committee has worked with the Civil Rules proposals, and tailored them to address issues particular to criminal law. The proposed amendments to Crim. P. 16 and 24 do not enjoy the sponsorship of the Criminal Rules Committee. The amendments are attached to this Plan as Appendix B.

COURT ACTION: The Court has published the Rules for comment and public hearing, with proposed effective date of July 1, 1998.

2. Jury Instruction Revision

The Implementation Committee similarly asked the Civil and Criminal Jury Instruction Committees to propose jury instructions responsive to the recommendations in the Report.

The Civil Jury Instruction Committee submitted revised jury instructions, which are attached to the Plan as Appendix C. Those instructions have been published in the 1998 Supplement to the Colorado Civil Jury Instructions. If the Court adopts the pertinent proposed Rules, then the Instructions will come into play. If any of the proposed rules are not adopted by the Court, then the Instructions incorporating those Rules will remain dormant. The new Instructions deal with juror orientation, note-taking, and the process for handling questioning by jurors directed to witnesses through the judge, and during deliberations.

The Criminal Jury Instruction Committee did not tender proposed jury instructions. The Implementation Committee used those instructions prepared by the Civil Jury Instruction Committee and tailored them to criminal cases. Proposed Criminal Jury Instructions 1:05, 1:06, 1:07 and 1:08 are attached to the Plan as Appendix D. They have not been approved by the Criminal Jury Instruction Committee.

COURT ACTION: The Criminal Jury Instruction Committee has been requested to include the proposed instructions, amended as necessary, in their next update to Criminal Jury Instructions.

3. Statutory Revisions

The Report highlighted some need for statutory revision, specifically in the area of clarifying jury duty requirements, eliminating lawyer as an occupation entitling a prospective juror

to be excused for cause, and providing some additional confidentiality to jurors who are chosen to serve.

Senator Richard Mutzebaugh, who served as a member of the original Jury Reform Committee, is carried legislation to implement these changes. A copy appears at Appendix E.

4. Chief Justice Directive

Many of the changes proposed in the Report deal with the way that court personnel, and particularly judges, deal with jurors. In order to implement those changes, the Implementation Committee recommends the adoption of a Chief Justice Directive detailing Jury Management Standards.

The Directive includes comprehensive procedures for planning and conducting a jury trial in a manner that serves the interests of courtesy to and respect for the jurors, as well as attention to the rights of the litigants. It also includes measures designed to complement the proposed Rules changes, in increasing the understanding of jurors of their role and of the specific aspects of a given case. The draft Directive has been tendered to the Chief Justice for circulation to judges, amendment and ultimate adoption. The draft Directive appears at Appendix F.

COURT ACTION: The Chief Justice is in the process of requesting input prior to proposed adoption.

5. Administrative Matters

There are a number of changes that the Implementation Committee proposed that generally fall into the category of administration. These changes relate to public education, training of judges, revising the juror master wheel list, developing standards for excusing jurors and for pursuing jurors who fail to appear for jury duty, addressing the need for juror debriefing after traumatic trials and supporting the proposed pilot projects.

The bulk of those changes are incorporated into a Memorandum from the Court to the State Court Administrator.

6. Training

Change is not an abstract concept. It happens only when people put it in place. The Implementation Committee understands that the judges, court personnel and lawyers involved in a given case are the individuals who will ultimately implement jury reform.

To this end, the members of the Implementation Committee have attempted to make themselves available to any group interested in learning about Jury Reform. However, comprehensive training programs are going to be necessary to assure that the changes will become a part of daily procedure.

One half day of time at the 1998 Judicial Conference has been set aside to begin the process of acquainting judges with the operation of jury reform. Additionally, the Implementation Committee requests that the SCAO include jury reform training on the agenda for administrators, court clerks, and new judges.

7. Pilot Projects

The Report contemplated two pilot projects: one involving predeliberation discussion among jurors on a civil case; and the other involving questioning by jurors in a criminal case.

Justice Kourlis has appointed a Pilot Projects Committee, consisting of a mix of members from the original Jury Reform Committee and the Implementation Committee. Cathlin Donnell chairs the civil predeliberation discussion pilot project and Judge David Lass chairs the project involving juror questioning in a criminal case.

Summaries of the two pilot projects and membership rosters are attached as Appendix G.

COURT ACTION: The Court has authorized the pilot projects to proceed, including interim adoption of procedures necessary to facilitate the projects.

List of Appendices

Appendix A - Civil Rules (including County Court)

Appendix B - Criminal Rules

Appendix C - Civil Jury Instructions
(Full text not available here - listing of changes provided.)

Appendix D - Criminal Jury Instructions

Appendix E - Senate Bill 98-136
(Senate Bills stored under General Assembly at <http://www.state.co.us>)

Appendix F - Directive concerning Jury Management Standards

Appendix G - Summary of Pilot Projects and Committee Membership List