

Appendix F

Implementation Plan - Jury Reform in Colorado Report dated March 12, 1998

Jury Management Standards

1. General principles

1.1 Courts should plan for and employ the services of jurors so as to achieve optimum use with a minimum of inconvenience to the jurors.

Jurors must be treated with courtesy, consideration, and respect at all times. The burden and inconvenience of jury service should be reduced to the greatest extent possible. Jurors' time should be used efficiently and effectively.

1.2 Judges should participate in efforts to educate the public and potential jurors about the importance of the jury system to our system of justice and democratic form of government.

1.3 All communications with jurors from judges, court staff, and attorneys should be in plain and clear language.

Judges should take those steps necessary to assist jurors in understanding their abilities and responsibilities, in comprehending the evidence, and in making decisions effectively.

2. Before the Jury arrives at the courthouse

2.1 Courts should determine the minimally sufficient numbers of jurors needed to accommodate trial activity.

Courts should apply appropriate case management techniques to ensure that jurors do not report to the courthouse unless they will actually be used for a trial. Courts should ensure that jurors who have been summoned for a trial that is canceled are instructed that they do not need to report; this should be done as far in advance as possible so as to minimize the disruptive effect on jurors created by planning for jury service.

Courts should avoid summoning an excessive number of jurors. Judges should identify with the parties to a case any issues which might indicate a need for a larger or smaller number of jurors for a given case. These issues could include, as a partial list, concerns about the length of the trial, the subject matter of the trial, the amount of pre-trial publicity, and other issues which might lead to an abnormal number of challenges for cause. Information about the need for a larger or smaller than normal jury panel must be communicated to the jury commissioner far enough in advance to permit the summoning of an appropriate size panel.

Judges should ensure that appropriate management techniques are used to minimize and to adjust the number of jurors summoned for jury duty.

2.2 Judges should resolve as pre-trial matters all issues relating to the use of a jury for the trial and the efficient management of the trial.

a. Such jury issues will include a party's right to a jury trial, the perfection of that right, and the waiver of a right to a jury trial.

b. Judges should identify with the parties the issues which are expected to arise during the trial which will need to be resolved outside the presence of the jury. These matters should be scheduled in such a way as to minimize the waiting by the jury.

c. The court should make appropriate use of case and trial management orders in all types of jury trials in order to structure preparation and procedures for trial. Sanctions should be imposed as appropriate in order to ensure compliance with these orders. Dispositive, significant legal and evidentiary, and constitutional issue motions should be filed and resolved substantially before the day of trial.

d. Judges may consider establishing disposition deadlines in criminal cases in order to minimize last minute dispositions which cause inconvenience to jurors and disruption to court dockets.

e. In order to ensure that a scheduled jury trial will proceed as efficiently as possible, the trial judge and trial counsel should participate in an in-person or telephonic trial status conference prior to trial. That conference should be set close enough to trial to ensure that the parties are ready for trial and have completed settlement discussions, and far enough away to recognize the parties' needs to schedule witnesses, cancel unnecessary witnesses, and avoid expert witness charges. Ten days prior to trial is a suggested date.

The judge should inform trial counsel of any special requirements or protocol to be followed during the trial, including procedures and time limits for jury selection and questioning, and should ensure that all special equipment, technology, or personnel needs have been identified and will be met. In ascertaining that all parties are ready for trial, the judge should resolve with counsel or the parties all remaining issues relating to disclosure and discovery, ensure that all pending motions have been resolved, that all exhibits have been exchanged and pre-marked whenever possible, that preliminary rulings as to admissibility of evidence have been made whenever possible, that jury instructions will be filed and juror notebooks prepared as required by the judge or by rule, that trial witness and exhibit lists have been prepared, that appropriate time limits for various phases of the trial have been discussed and either agreed upon or set, that the legal and factual issues have been limited to those actually in dispute, and such other issues as meet the needs of that case.

f. The judge should resolve with the parties prior to trial any known or anticipated issues relating to expanded media coverage. The judge and the parties should follow the procedures set forth in Canon 3(A)(8) of The Colorado Code of Judicial Conduct.

Comment

Judges and counsel may additionally consider the standards set forth in Standard 22 of the ABA Civil Trial Practice Standards, February 1998.

2.3 Courts should enact procedures and guidelines for excusing, deferring, postponing, and advancing juror service in advance of a juror reporting to the courthouse.

Courts should follow procedures which identify and minimize the hardship or inconvenience which may be created by juror service. These procedures need to be developed consistent with the requirements of law and the principles of model procedures which may be adopted.

2.4 Judges should participate in establishing and implementing procedures to deal with jurors who fail to respond to a juror summons.

The problems that arise in identifying and dealing with jurors who have failed to appear are very complex. However, a clear message should be communicated by the courts to the public that all citizens are expected to perform jury service when called.

3. After jurors arrive at the courthouse

3.1 Jurors should be provided with an adequate and suitable environment.

If possible and if consistent with the security needs of the courts, special security screening procedures for jurors should be used so as to minimize delay in admitting jurors to the courthouse and to the jury assembly area. The entrance and registration area should be clearly identified and communicated to the jurors.

The jury assembly and waiting area should be appropriately designed to accommodate the flow of prospective jurors in the courthouse. Jurors should be accommodated in pleasant waiting facilities furnished with suitable amenities. In designing space for juror assembly and waiting, Courts should consider jurors' needs for comfort, communication, and working on their own personal and business matters while waiting.

To the extent feasible, juror facilities should be arranged to minimize contact between jurors, parties, counsel, and the public.

3.2 Courts should provide appropriate orientation for jurors upon first appearance at the courthouse.

This orientation should be designed to increase prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors. It should be presented in a uniform and efficient manner using a combination of written, oral, and audiovisual materials, and should include the information contained in the model orientation procedures which may be adopted. The juror orientation videotape prepared by the State Court Administrator's Office should be shown to prospective jurors.

All prospective jurors should receive an in-person welcome from a judge. The judge's remarks to the jurors should include appropriate information about the court system, the manner of selection and retention of judges, recognition of the importance of jurors to the system of justice, and appreciation for the jurors' willingness to serve.

3.3 Courts should employ docket and case management techniques which minimize the time jurors spend waiting.

This principle should be followed before jurors are initially called to the courtroom as well as throughout the trial. Once jurors are at the courthouse, judges should postpone consideration of pre-trial matters which do not affect jury selection. The judge should encourage counsel to confer in an effort to resolve motions in limine before filing any with the court.

Judges should ensure that pre-trial matters on the first day of trial do not delay the process of jury selection. Where possible and appropriate for efficient use of juror time, unresolved motions and preliminary matters on the first day of trial which are not related to jury selection should be heard after the jury has been selected and before opening statements.

Courts should organize orientation and processing procedures so as to permit jury panels to report to the courtroom with a minimum of waiting.

4. Jury selection

4.1 Judges should provide jurors with an appropriate orientation to the case and to the jurors' role and responsibilities.

Judges should provide jurors with length of trial and juror schedule information. The judge should give a brief description of the nature of the case. The judge should require the parties to attempt to agree upon a brief statement of the nature of the case. Judges may call on the attorneys or parties to present brief non-argumentative opening statements prior to juror examination in order to make jury selection more meaningful to the parties and jurors.

As often as necessary, the judge should pre-instruct the jury, either before attorney questioning of the jurors or after a jury has been selected, or both. The judge should give preliminary instructions to the jury which will help the jurors understand their role, the trial procedures, the nature of the evidence and its evaluation, the issues to be addressed and basic relevant legal principles. These preliminary instructions must accurately state the law and should inform jurors of the legal rules applicable to charges, claims, or anticipated defenses. When necessary or helpful, a glossary of terms may be provided.

Comment

Judges should develop standard preliminary jury instructions. These instructions should be made available for review by counsel, who should be encouraged to suggest any additional instructions they believe would be helpful in that case. The areas of instruction set out above are listed in more detail in Standard 5(b) of the ABA Civil Trial Practice Standards, February 1998.

4.2 Juror examination should be limited to matters relevant to determining whether to remove a juror for cause or in the best interest of justice and to exercising peremptory challenges.

a. All jury selection procedures should be based on an appropriate balance between the efficient operation of the justice system, respect for the needs and rights of jurors, and the need for fair, impartial and representative juries.

b. To reduce the time required for juror examination, basic background information regarding jury panel members may be made available in writing to counsel for each party prior to the time the jurors are brought to the courtroom. When appropriate, such as in lengthy, complicated, or highly publicized cases, the judge may permit the use of additional written questionnaires prepared by the court with the assistance of counsel. When the court decides to permit this, the judge should encourage the parties to confer in advance on questions and a final form of questionnaire should be determined before the first day of trial. The jurors should be advised that such questionnaires are not public records.

c. The judge should conduct the initial juror examination and then should permit counsel for each separately represented party to question panel members for a reasonable period of time. Judges may impose reasonable time limits for jury examination by counsel or parties.

d. The judge should ensure that the privacy of prospective jurors is reasonably protected. Jurors shall not be required to disclose personal locating information, such as address or place of business in open court and such information shall not be maintained in files open to the public. The trial judge shall ensure that parties and counsel have access to such locating information as is appropriate and necessary. Questioning of one juror outside the presence of other panel members should be done when appropriate to prevent embarrassment or unreasonable intrusions into juror privacy or to ensure a fair trial. Judges should ensure that the questioning by counsel or the parties is consistent with the jury selection process.

4.3 Judges should use jury selection procedures which permit the early identification of jurors who would be subject to a challenge for cause and which identify any juror who should be excused in the best interest of justice.

If a juror is to be excused based on bias or other inability to be a fair and impartial juror based on the evidence and the law, the reason for such excuse should be objectively demonstrated or admitted on the record.

4.4 The judge should allow each attorney and party sufficient time for consultation before requiring the attorney to exercise challenges for cause or peremptory challenges.

4.5 In deciding challenges based on the best interest of justice, on hardship, and on inconvenience, the judge shall endeavor to balance the legitimate needs of jurors with the rights of the parties to a representative jury.

4.6 In order to protect the rights of the parties and of potential jurors, judges should be vigilant in ensuring that peremptory challenges are not exercised in a discriminatory way.

There must be an objective race-, ethnic-, and gender-neutral basis for every peremptory strike of a potential juror. Judges should use jury selection procedures which permit a juror to be placed back into the jury if the judge determines that a peremptory challenge used against the juror was improperly exercised.

Comment

Judges and counsel should be aware of the principles and procedures identified in cases such as *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); *J.E.B. v. Alabama*, 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994); *Purkett v. Elem*, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 395 (1991); *People v. Cerrone*, 854 P.2d 178 (Colo. 1993); and *People v. Valdez*, 946 P. 2d 491 (Colo. App. 1997). Uniform procedures should be developed in this area.

5. During the trial.

5.1 Trial interruptions should be minimized.

The conduct of jury trials should take precedence over all other proceedings except those of an emergency or other mandated priority nature.

5.2 The judge should permit jurors to take notes in all cases.

The judge should use appropriate instructions to advise the jury at the beginning of the trial concerning note taking procedures. Note taking materials should be provided. Juror notes should be collected by the court staff during noon recesses, at the end of each day, and collected and destroyed at the end of the trial.

5.3 The judge should employ appropriate trial management techniques, such as the following:

5.3.1 The judge should ensure that counsel or the parties are aware of the time available for trial and the anticipated trial schedule for each day. After consultation with counsel or the parties, the judge should set reasonable time limits for appropriate phases of the trial.

The judge needs to work with the parties to maximize the efficiency in the presentation of witnesses and evidence. Witnesses should be available for testimony without delay for the jury. Similarly, the judge should work with the parties to minimize the inconvenience created by requiring witnesses to wait. The judge should periodically throughout the trial review witness and trial schedule issues. The judge should encourage counsel to discuss periodically the anticipated time needed for direct and cross-examination of witnesses.

Comment

In fashioning trial presentation limits, the court should consider whether proposed limits allocate trial time fairly, taking into account the complexity of the case, the claims and defenses of the parties, the respective evidentiary burdens of the parties, and the subject matter of evidence that is considered for limitation. The court should reassess imposed limits in light of developments during trial. If the court determines that limits are appropriate, the judge should consider that Standard 12(e) of the ABA Civil Trial Practice Standards, February 1998, states that “it is generally preferable to limit the total amount of time allocated to each party or side, rather than to limit the number of witnesses or exhibits, or the duration of a particular examination.”

In many cases, efficient management by the judge of court time can obviate the need for the imposition of time limits. Generally, the imposition of trial limits should not be done as a matter of course. The court should ensure that each side has the opportunity to present its case fully and fairly. The court should ensure that no party is prejudiced because of arbitrary time limits.

5.3.2 The trial judge should arrange the court’s docket to start trial as scheduled.

When scheduling recesses and time for adjournment, the judge should keep in mind that it is equally offensive to jurors to subject them to too stringent or too lenient a schedule, and should take all reasonable steps to avoid wasting the jurors’ time.

5.3.3 The judge should ensure that once trial has begun, momentum is maintained. Judges should attempt to maintain continuity in hours and days of trial.

Juror waiting time should be minimized and necessary delays should be explained to the jurors to the extent possible without prejudicing a party’s right to a fair trial.

5.3.4 Trial proceedings which do not require the jury’s presence should be scheduled at the beginning or end of the day so as not to interrupt the presentation of evidence.

5.3.5 The judge has the ultimate responsibility to ensure a fair trial.

The trial judge is responsible for managing the trial and the courtroom and the other cases that may require judicial action. To aid the jury in its function, trial judges must actively manage the trial proceedings to ensure that the evidence is presented in a clear and orderly fashion, that the jury’s time is used efficiently and effectively, and that the reasonable needs of the jurors are met. The quality of a jury’s deliberations and verdict depends in part upon the quality of the trial. The judge must ensure that the parties have a fair opportunity to

present their case within the rules of law in such a way that an impartial and representative jury can reach a fair, just, and informed verdict.

5.3.6 Judges should maintain appropriate decorum and formality of trial proceedings.

Judges should permit sidebar conferences only when absolutely necessary, and sidebar conferences should be kept as short as possible. Sidebar conferences should be on the record. If a contemporaneous sidebar record is not practicable, the conference should be summarized by the judge and counsel on the record outside the presence of the jury at the next available recess. Similarly, conducting proceedings outside the presence of the jury should be minimized to the extent possible.

A trial judge should require objections or motions in front of the jury to be stated briefly and succinctly. Legal argument outside the presence of the jury should be done if necessary to protect the rights of the parties.

In cases involving multiple parties, the judge should encourage the parties to cooperate in, coordinate and streamline the presentation of evidence and any objections. The judge should always keep in mind the need for each separately represented party to have an opportunity to develop the testimony of each witness as it might relate to that party.

5.3.7 The development of innovative mechanisms to improve juror comprehension of the issues of the case and the evidence presented should be encouraged consistent with the rules of evidence and the rights of the parties.

a. Judges should be receptive to using technology in managing the trial and the presentation of evidence. The judge should require that the parties have present a person with the ability to operate the equipment necessary for the effective presentation of the evidence. Judges should consider requiring the parties to file papers and prepare exhibits in computer readable form.

b. When necessary to the jurors' proper understanding of the proceedings, the judge may intervene during the taking of evidence to instruct on an appropriate principle of law or any limited applicability of the evidence to the issues.

Comment

Advantages to interim instructions are summarized in the Comment to Standard 5 of the ABA Civil Trial Practice Standards, February 1998.

c. Judges should use juror notebooks for all district court jury trials and may use them for all county court and municipal court jury trials. These notebooks should contain information helpful to jurors such as: note taking materials; orientation material and information about court staff and procedures; copies of charges or a statement of the case; copies of important exhibits; lists of witnesses; lists of admitted exhibits; preliminary jury instructions as appropriate and all final jury instructions; glossaries or definitions of technical terms; stipulations of the parties; chronologies or timelines; and other information appropriate to the case.

Parties should be required to confer concerning juror notebooks prior to trial and the court should resolve any disagreements before the first day of trial. The judge should instruct jurors on the use of notebooks and should permit supplements to the notebooks as the trial progresses. Notebooks should be collected at the end of each day and at the end of the trial.

Comment

For further discussion and procedures concerning juror notebooks, see C.R.C.P. 16(c)(VI), C.R.C.P. 47(m) and (t), Crim.P. 16(f), and Standard 2 of the ABA Civil Trial Practice Standards, February 1998.

d. The judge should use procedures which will both permit and encourage the appropriate use of demonstrative exhibits, edited videotaped testimony, highlighted portions of exhibits, excerpted exhibits, summary exhibits, and deposition summaries, including combining the testimony of multiple witnesses into a single presentation. Opposing parties should have an opportunity to review and object to demonstrative exhibits before they are shown to the jury. Objections to and rulings on the admissibility of videotaped testimony should be made far enough in advance of its presentation to the jury to permit it to be edited to reflect rulings by the court.

e. In especially long, complicated, or difficult trials, the judge may permit the use of brief interim non-argumentative statements by counsel after the conclusion of discrete segments of the trial. These statements are to assist in juror comprehension and recall.

f. In jury trials under the Rules of Civil Procedure, judges should establish appropriate procedures to allow jurors to submit written questions when jury questions might help the jury to understand the evidence or to determine a fact in issue. These procedures should include instructions on the purpose and procedures for questions, either anonymous or identified submission of questions, review by the judge and, when appropriate, by counsel, an opportunity to object outside the presence of the jury, enforcement of the rules of evidence, cautionary instructions concerning questions which are not asked, and an opportunity for follow-up questions by the attorneys.

Comment

For proposed procedures for jury questions, refer to Standards 4(b) and (c) of the ABA Civil Trial Practice Standards, February 1998, and ABA Standards Relating to Juror Use and Management (1993), Standard 16(c)(i). The substance of those procedures is drawn from Ariz. R. Civ. P. 39(b)(1), (10), and cases such as *United States v. Sutton*, 970 F.2d 1001, 1005-06 (1st Cir. 1992), and *United States v. Thompson*, 76 F.3d 442 (2d Cir. 1996).

State and federal courts have recognized that whether to allow juror questioning of witnesses is a matter vested in the sound discretion of the trial judge. See, e.g., *United States v. Bush*, 47 F.3d 511, 514-15 (2d Cir. 1995); *Spitzer v. Haims & Co.*, 587 A.2d 105, 112-13 (Conn. 1991); *State v. Hays*, 883 P.2d 1093, 1101-02 (Kan. 1994); 3 Wigmore, EVIDENCE, Section 784(a). Juror-inspired questions may advance the search for truth by clearing up confusion, alleviating juror uncertainties, or alerting attorneys to points that deserve further elaboration. *Sutton, supra*, 970 F.2d at 1005. Ordinarily, the court should not entertain or invite questions from jurors until after the parties' examination and cross-examination of a witness has concluded.

The Jury Reform Implementation Committee has created a Pilot Project Subcommittee and has authorized that subcommittee to develop a methodology and conduct a pilot project. This project will evaluate the impact of juror questioning in criminal cases on the constitutional right to a fair trial by an impartial jury. The results, and any recommendations, will be published at the conclusion of the project.

g. In civil cases of appropriate complexity, judges should consider altering the traditional order of trial in order to enhance jury comprehension and recollection if it can be done without an unfair advantage to either side. Judges should consider alternatives such as organizing the trial by issues or clusters of issues, giving interim instructions, or submitting issues or claims to the jury sequentially.

h. In civil cases with the consent of counsel judges should permit jurors to discuss the case prior to actual deliberation. These pre-deliberation discussions should be permitted only after appropriate instructions from the court on the purpose of these discussions and the importance of keeping an open mind. See CJI-Civ.3d 1:4 and 1:8.

Comment

A pilot project on mandatory permission for pre-deliberation discussions in a variety of civil cases will be conducted in four judicial districts. This project will evaluate the effect of pre-deliberation discussions on the jurors, on the cases involved, and on the jury trial system. Results from the project are anticipated in 1999.

5.3.8 In longer or highly stressful trials, the judge should consider altering the regular trial schedule.

During a long trial, scheduling trial days to permit jurors time during each day or week for personal business will encourage a more representative panel. The trial judge should consider ways to relieve juror stress, such as more frequent breaks, exercise, and appropriate snacks during recesses.

5.4 A jury should be sequestered only in extraordinary circumstances.

If a jury is to be sequestered, the judge should ensure that standard procedures are in place to make certain that the purpose of sequestration is achieved. Steps should be taken to ensure that the inconvenience and discomfort of the sequestered jurors is minimized. Training should be provided to personnel who escort and assist jurors during sequestration.

5.5 All communications with the jury panel from the time of reporting to the courtroom for jury selection until dismissal should be in writing or on the record.

The judge shall inform each party or counsel for each party of any out of court communications and shall give them the opportunity to be heard. The judge shall ensure that counsel or parties are also informed of significant communications between jurors and court staff.

5.6 A judge shall ensure that final jury instructions are written as clearly as possible and are completed in a timely fashion.

The judge should ensure that final jury instructions are substantially completed in civil cases by the deadlines set in C.R.C.P. 16(d), and in criminal cases before the trial begins. Jurors should not be kept waiting unnecessarily while instructions are being finished.

All final instructions to the jury must be in writing. Each juror should receive an individual copy of the final instructions which may be included in the juror notebook and taken into the jury room by the juror.

Jury instructions should be written as plainly and clearly as possible, should be simplified and clarified wherever possible, and should be understandable to individuals who are unfamiliar with the legal system.

Comment

For standards concerning instructions see C.R.C.P. 16(d), C.R.C.P. 51, Crim.P. 30, and Standard 5 of the ABA Civil Trial Practice Standards, February 1998.

5.7 When sending material to the jury room during jury deliberations, the judge shall consider establishing appropriate guidelines to ensure the evidentiary integrity of each exhibit is preserved, to protect juror and others' safety, and to prevent any improper use of the material by the jury.

A jury is entitled to examine evidence which has been admitted into evidence. When helpful and appropriate the court should provide jurors with aids to facilitate their review of the evidence. When necessary, a judge should consider sealing certain evidence in plastic bags, alternating the presence of certain exhibits in the jury room, or other actions necessary for juror safety or protection, or for the protection of the rights of the parties.

5.8 Judges shall arrange for jury deliberations to occur pursuant to procedures and conditions that are designed to ensure impartiality and to enhance decision-making.

Jury room facilities must be adequate in size and must appropriately meet jurors' needs for bathroom facilities, ventilation, communication with court staff, security, and privacy. The scheduling of jury deliberations is left to the discretion of the trial judge, taking into account individual case needs and the interests of jurors, the parties, and court staff. To the extent possible, jurors should be advised in advance of a schedule for jury deliberations. A jury should not be required to deliberate very long after normal working hours unless the trial judge, after consultation with counsel and the jury, determines that evening or weekend deliberations would not impose an undue hardship on the jurors and are required in the interests of justice.

Before deliberations the trial judge should suggest appropriate procedures to be followed for submitting questions from the jury. Judges are encouraged to attempt to answer jury questions during deliberations after consulting with counsel. If a question cannot be answered, the judge should explain why that is so in a courteous and complete manner.

The judge should require counsel to be readily available for the purpose of consulting about any jury questions. The judge should also require counsel, the parties, and any agency holding a party in custody, to be quickly available for purposes of taking a verdict reached by a jury.

5.9 Any allegations of juror misconduct must be brought to the court's and counsel's attention as quickly as possible.

If the allegation is raised during the trial or while the jury is deliberating, the court should proceed as promptly as practicable to ascertain the facts and to fashion an appropriate remedy. Prior to inquiry of any juror, the court should consult with counsel and determine which juror(s) should be questioned, who will ask the questions, and the substance of the questions to be asked.

6. After the verdict has been received and the jury discharged

6.1 Upon dismissing a jury at the conclusion of a case, the trial judge should explain the jurors' rights regarding inquiries from counsel or the press, should release jurors from their duty of confidentiality, and should either advise them that they are discharged from service or specify where they must report.

Judges should express appreciation to the jurors for their service. Judges should refrain from saying anything that might express approval or disapproval of the results of the jurors' deliberations.

6.2 Before jurors are released after a trial, they should be asked to complete a questionnaire concerning their jury service.

Exit questionnaires should not be given to jurors (other than non-deliberating alternates) until the verdict has been received in open court or until a mistrial has been declared. Giving exit questionnaires to the jurors after they have reached a verdict and before the verdict is received in open court should only be done with the consent of all counsel or parties.

A jury exit questionnaire should be used to elicit information which will help future juries. Opinions and information may be sought on aspects of jury service which did not bear upon the merits of the case, such as the information provided by the juror summons, juror orientation, physical comforts, parking, hours of trial, performance of duties by court staff, the judge, and attorneys, attitudes toward jury service, and suggestions for improvements. Where possible without prejudicing the rights of the parties, the questionnaire could seek jurors' opinions on the extent to which instructions given to the jury were clear and understandable.

6.3 After conclusion of the trial and completion of the jurors' service, the judge may and if possible, should engage in discussions with the jurors.

The judge should try to have a brief discussion with jurors after the trial. Personal contact with the judge can provide important closure to a juror's experience. Such discussions may be off the record, or, in the discretion of the judge, may be on the record. The discussion may be with counsel present or may be before any discussions between counsel and the jurors. The discussion may occur in the jury room, in chambers, or in the courtroom. It is suggested that the discussion be informal, that the judge should not wear a robe for these discussions, and if conducted in the courtroom, that the judge not sit at the bench.

Under no circumstances should the judge state or imply an opinion on the merits of the case or the jury's decision or the merits of the trial strategy used by the parties, or make any other statements that might prejudice a juror in future jury service.

In this post-trial discussion, judges should consider including the following subjects: personal thanks to the jurors for their hard work; explanation for delays or breaks in the proceedings; explanations of trial proceedings or rules of evidence; explanations on how to deal with the media; explanation about pre-sentence investigations, about sentencing hearings, and about a juror's opportunity to be present for sentencing; a reminder that, although they are free to discuss their deliberations with anyone, it will be important to remember to respect the privacy of the views of their fellow jurors, that during deliberations other jurors volunteered their opinions with the understanding that they were expressed in confidence; normal reactions by jurors after a trial: that they may feel "out-of-sorts" for a while (e.g., fatigued, tense, depressed, flashbacks, difficulty in sleeping), but that this is not unusual and should go away. (The judge may suggest that if these feelings do not go away in a few days to a few weeks, the juror should consider seeking professional help for the stress.). The judge should attempt to answer jurors' questions and should avoid letting one or two jurors dominate the discussion.

6.4 When deemed appropriate in cases of unusual difficulty, unpleasant subject matter, unusual length, or high public profile, the judge should present jurors with a more formal debriefing.

This debriefing could include written materials, audiovisual materials, and oral presentations by the judge or appropriate mental health professional. This debriefing could include a handout and/or the showing of a videotape from the State Court Administrator's Office on the psychological impact and stress of serving as a juror in a difficult case. The judge may consider having a mental health professional present at this time, scheduling a session for all jurors to meet with a mental health professional at the courthouse within the next day, or making names and addresses of public mental health agencies available to jurors before they leave. To the extent possible, courts should make arrangements for public agency mental health professionals to provide these group services without charge or as an expense to be paid by the court.

6.5 The judge should ensure that appropriate security is available for jurors.

If a jury has deliberated into the evening or night hours or has been attending an evening or night court session, the judge should ensure that appropriate security is available for jurors as they leave the courthouse. If jurors express reasonable fears of contact or retaliation the court should consider a referral to local law enforcement authorities or other appropriate steps to ensure juror safety in leaving the courthouse.