

Jury News

PAULA HANNAFORD-AGOR

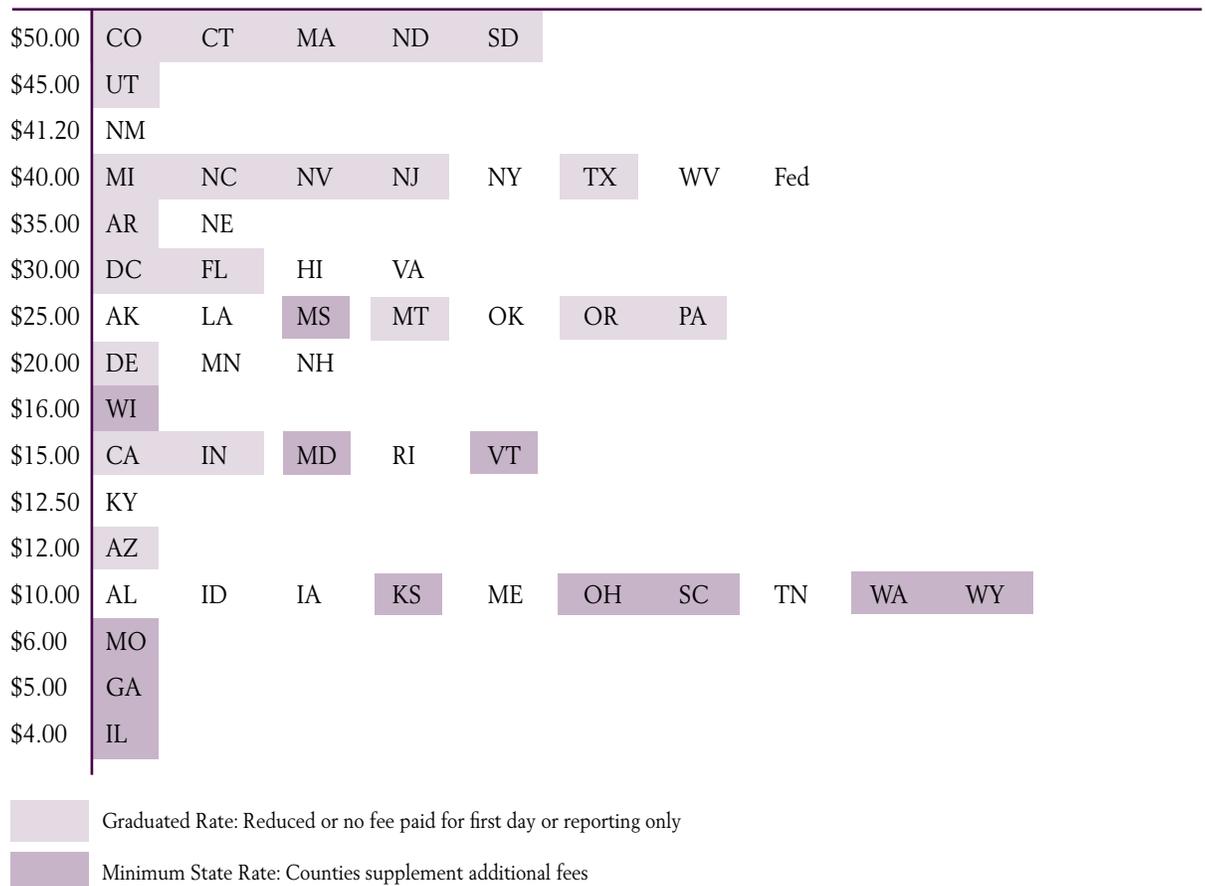


THE LABORER IS WORTHY OF HIS HIRE AND JURORS ARE WORTHY OF THEIR JUROR FEES

Most state legislative sessions have come to a close for the summer and once again we see several states reviewing the adequacy of their juror fees and, in some instances, making substantial changes to the structure and amount of the fees and the funding source. There are several rationales for increasing juror fees — to alleviate the financial hardship associated with jury service, making it possible for more citizens to be able to serve, to adequately reimburse jurors' out-of-pocket expenses, and to better reflect in monetary terms the value of jury service to the justice system. At the same time, however, many remain concerned about the budgetary effects of increased juror fees on state and local governments. As a result, many states are moving away from a flat daily rate for juror fees to a proliferation of different juror fee structures and funding sources.

Juror fees make up just one part of a fairly complex formula concerning juror hardship. Equally important are the length of service and whether and for how long employers compensate employees while on jury service. But there is no question that the amount of juror compensation is strongly related to jury yield, juror hardship, and juror satisfaction. In a 1991 National Center for State Courts study of the relationship between juror fees and terms of service to jury system performance, the average out-of-pocket expenses for travel, parking, and meals was \$9.18, which adjusting for inflation would be \$12.95 in 2005. At that time, the median juror fee was

FIGURE 1: JURY FEES IN STATE AND FEDERAL COURTS



\$10 and covered 66 percent of jurors' out-of-pocket expenses. A \$15 juror fee would cover 90 percent of out-of-pocket expenses, and a \$20 fee would cover 96 percent of out-of-pocket expenses. More recently, the NCSC examined employer jury policies in California and found that the \$15 juror fee was sufficient to reimburse jurors' out-of-pocket expenses 75 percent of the time. Although only 30 percent of jurors reported that jury service was a financial hardship, those who did were twice as likely to report that their out-of-pocket expenses exceeded the juror fee.

Table 1 shows — to the best of our knowledge — a state-by-state breakdown of juror fees. Eighteen states and the federal courts still pay jurors a flat daily rate ranging from \$10 in Alabama, Idaho, Iowa, and Tennessee to \$40 in New York, West Virginia, and the federal courts. New Mexico pays an hourly rate of \$5.15 (federal minimum wage), which computed for an eight-hour day equals \$41.20 per day, technically the highest flat rate in the nation. Several of these flat-rate jurisdictions permit half-day payments.

Twenty states and the District of Columbia have a graduated rate system in which jurors receive no fee or a substantially reduced fee for some limited period of time, usually one to three days, and an increased rate for subsequent days of jury service. Massachusetts was one of the first states to enact this type of fee structure, implementing a comprehensive package of reforms related to juror compensation in 1986. Under the statute, most jurors receive no fee for the first three days of jury service, but \$50 per day thereafter. Employers, however, are required to pay their employees who are summonsed for jury service their regular wages or earnings for the first three days of jury service. Jurors who are unemployed or who incur childcare costs as a result of jury service are paid the \$50 fee. Texas is the most recent state to make this change, raising its juror fee from a flat \$6 per day to a \$40 fee beginning on the second day of service. All six of the states that pay jurors \$45 or more per day — Colorado, Connecticut, Massachusetts, North Dakota, South Dakota, and Utah — do so on a graduated fee basis. Arizona has also recently implemented a “Lengthy Trial Fund” that reimburses for lost income up to \$300 per day for jurors serving on trials lasting more than 10 days.

The graduated rate system is a particularly popular approach in jurisdictions with one day/one trial or other relatively short terms of service. As we all know, only a small proportion of the people who report for jury service are ultimately selected as trial jurors. The vast majority of prospective jurors are removed from the panel for cause, struck by peremptory challenges, excused, or dismissed from service because they were not needed that day. In one day/one trial jurisdictions, the people receiving the higher graduated rate are those few who are actually impaneled as sworn jurors. Thus, the budgetary impact of higher fees is less severe.

Another change that we are seeing is a movement away from local funding for juror compensation. Twelve states still have juror compensation systems in which the state mandates a minimum daily rate but encourages individual counties to supplement the rate. At \$4 per day, Illinois has the lowest state-mandated rate, but the county rates range from \$5 per day in Lake and Mercer Counties to \$25 per day in Bureau and Douglas Counties. Some counties also provide free parking, mileage (with varying rates), and childcare.

Part of the impetus for the movement toward state funding is simply to remove the inherent unfairness of paying jurors different amounts for jury service based on whether their local government is comparatively generous or miserly with jury fees. State policymakers are also becoming increasingly reluctant to impose unfunded mandates on localities and instead are changing their jury compensation structures to provide for statewide funding.

Michigan is the most recent example of this approach. In 2003, it passed legislation to increase the minimum juror fee from \$15 per day to \$25 for the first day of service and \$40 per day for each subsequent day. Funding for the increase was provided by raising jury demand fees and driver's license reinstatement fees. Arkansas plans to introduce legislation in the next legislative session to increase the rate from \$15 per day for prospective jurors and \$35 for sworn jurors to \$40 per day for all jurors, with the difference paid directly from the state budget. Ironically, the “vanishing trials” phenomenon provided some of the justification for the state to pick

up the difference in the fees in Arkansas. A review of juror fees paid showed that the state portion of the jury fee had declined substantially because fewer jury trials were being held.

Each of these different approaches — increased fees, graduated fees, state funding for fees — reflects a sea change in the way courts think about the value of jury service. Historically, the juror fee was designed only to reimburse for minimal out-of-pocket expenses. Any additional compensation was regarded as unnecessary, even disdainful, in that citizens were expected to donate their time and talents as part of their civic duty. We don't pay people to vote, went the argument, so why should we pay them for jury service?

That view misconstrues the respective roles of voting and jury service in a well-functioning democracy. High voter participation is most necessary and expected for elections involving highly contentious political and social issues. In fact, one explanation for the comparatively lower voter turnout in the United States is that most people are fairly satisfied with the status quo. In times of relative peace and prosperity, many citizens do not feel it necessary to exercise their right to vote.

Jury service, in contrast, is wholly dependent on citizen participation in order to function as an essential component of the American justice system. And our entire jurisprudence concerning the right to trial by jury is premised on the ideal of juries that reflect the broadest possible cross section of their communities. One might reasonably doubt the ability of a jury to be fair and impartial if it was selected from a jury pool consisting only of people with the wherewithal and inclination to serve. Thus, jury service is compulsory for those who are eligible where voting is a purely voluntary act. The changes that we are now seeing in juror compensation systems nationally reflect this growing understanding that a healthy, viable justice system needs to invest sufficiently to attract and retain the active and thoughtful participation of its citizenry.

NACM Midyear Conference

February 11-13
The Roosevelt Hotel
Madison Avenue at 45th Street
New York, New York

The Court Executive Leadership Team

Room rates are \$185 per night for single or double occupancy. Standard singles will be offered at \$165 per night based on room category availability. Call (800) TEDDY-NY or (212) 661-9200 for reservations. Cutoff date for reservations is January 18.

