

Jury News

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NEW JURY PRINCIPLES ARE ADOPTED BY THE ABA HOUSE OF DELEGATES

The American Bar Association's House of Delegates adopted the Principles for Juries and Jury Trials at their February 14 session. In the last issue of *Court Manager*, I went through the new principles. Please notice that I am now referring to them as principles rather than as principles and standards or just standards. As I described them in the last column, their structure is a "principle" followed by standards that support that principle. This change in title may also help differentiate the new principles from the three sets of jury standards that exist in the sections and divisions of the ABA and as adopted by many states.

There were a few wording changes made in the final moments concerning Principle 3, Jury Size, and Principle 4, Unanimity. Rather than allowing for smaller juries and less than unanimous verdicts wherever "possible," they now say

wherever "feasible." See what happens when you put more than 500 lawyers in one room. The principles are at: <http://www.abanet.org/juryprojectstandards/principles.pdf>

The resolution calling for the adoption of the principles also requested that the other ABA Standards be reviewed and revised to eliminate any conflicts and urged state and federal courts and state and local bar associations to improve the management of jury trials by promoting the implementation of the ABA Principles. States that have adopted jury standards may wish to use this as an opportunity to bring new ideas to their jury operations. States new to these principles might consider a review of their practices in light of these principles. Including the bar may make improvements easier since they do have a mandate to do this. It might also help in getting legislative support for areas that are below the standards given.

A PROGRESS REPORT ON THE JURY PATRIOTISM ACT IN ARIZONA

A few issues back I discussed the Jury Patriotism Act (JPA). The Act is a model proposed by the American Legislative Exchange Council. The goal of the Act is to make it feasible for as many people as possible to serve on jury duty. The key provisions are a term of service of one day/one trial, making it more rigorous to be excused from serving, and the provision that really interests me, the Lengthy Trial Fund. Of all the dimensions that can reduce the hardship on citizens who serve, the financial aspect remains the one least explored or resolved. We have reduced the term of service, eliminated most exemptions, provided for deferrals of service to a more convenient time, and expanded the coverage of the source lists. However, we haven't found a way to put the juror fees in the pockets of those needing it the most.

The Lengthy Trial Fund (LTF) as proposed places a fee on civil filings, with some exceptions, and then uses the funds to reimburse jurors on lengthy civil trials for the amount of their salary not paid by their employer or by the normal jury fees. Many states have not adopted the lengthy trial fund or have not provided for its implementation. This is due to the many unknowns about the fund, including how it is best funded, how much is needed, and how it will be administered. We now have some of the first data needed to help answer these questions. Once again, Arizona is the jury innovation proving ground.

Arizona adopted the JPA in 2002 with the change to the model that the fees collected would reimburse all jurors on lengthy trials, not just for civil jury trials. The fund pays jurors who are on cases lasting 10 days or more. The maximum reimbursement is \$100 a day from the fourth day to the 10th day and up to \$300 per day after the 10th day. Arizona later passed several amendments to the Act, including the coverage to the unemployed or retired jurors of up to \$40 a day if on lengthy trials — 10 days or more. Employed jurors earning less than \$40 a day are also covered if on a long trial. Arizona began collecting the \$15 filing fee for

all civil complaints, answers, and requests to intervene in January 2004. The funds were not available to the jurors until July 1, 2004, to allow the funds to accumulate in anticipation of some long trials.

The fund parameters of the amount to be paid to jurors, and the days at which the increases would be available, were based on a number of assumptions that could not have been accurately known without some extensive study. For instance:

- How long are these very long trials?
- How many of these trials could be expected across the state?
- How many jurors would be eligible based on their salary and employer's pay policy?
- How many jurors would go through the effort needed to verify their qualifications for the funds?

The legislation establishing the fund, A.R.S. §21-222(E), requires the administrative office of the courts to report annually on the fund. The first report is now available. In 2004, the amount of fees collected amounted to \$613,571, and the amount disbursed to the jurors in the first six months has been \$75,416. The 23 trials that were eligible based on the length of the trial had 276 sworn jurors. Of the jurors on the six criminal cases, 33 percent of the jurors received a reimbursement. Of the 17 civil trials, 27 percent of the jurors received payment. The criminal cases were longer than the civil trials, which might explain some of the difference. Reimbursement for jurors on criminal cases accounted for 55 percent of the funds disbursed. The majority of the jurors were eligible for less than \$50 per day. However, a few jurors were limited by the \$100 per day cap. None were hurt by the \$300 limit. This would support one of the modifications considered, and that is to simply set the limit at \$300. This would then accommodate all jurors and would also simplify the accounting. The average reimbursement was about \$1,000, and many jurors received several thousand.

Due to recent U.S. Supreme Court decisions, it was thought that many retrials of death penalty cases in Arizona would need to be covered by the LTF. This has not been the situation, but it may in the future. Because of the limited experience, Arizona has chosen not to modify the fund parameters at this time, although, if the ratio of funds collected to reimbursements holds steady, some modifications should be considered. For instance, the threshold of a lengthy trial could be reduced from 11 days to include more trials, or the coverage could begin on the first, second, or third day, providing greater relief for the jurors selected. The fund also reimburses the local court \$18 for each reimbursement requested. Based on comments from the staff, this is a far cry from the time needed to process these claims.

The good news is judges report that many citizens who would not be able to serve on these lengthy trials are now available, which fulfills the goal of the Act. The downside is the additional time needed to process the claims from the jurors. Another administrative result is related to the more strict excuse provisions.

Several changes have been proposed for the Act. The one creating the most attention is the excuse for elderly persons. Arizona — and 25 other states — does not provide for an automatic excuse based on age. The documentation now required by these older persons has resulted in many complaints to legislators. Legislative action is expected that would make it less onerous for those over a certain age to receive an excuse from serving.

These first results on the JPA look promising. Of interest will be some details of the impact of the tighter excuse requirements and whether employers will in any way modify their juror pay policies since some help is now available from the court. More on the JPA and other improvements in Maricopa County (Phoenix) Arizona, can be found in an article "Innovations in Jury Management from a Trial Court's Perspective," by Presiding Judge Colin Campbell and Bob James in the fall 2004 issue of *Judges Journal*.