

# Jury News

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## NEW STANDARDS FOR JURIES AND JURY TRIALS

In the last issue, I reported on the new jury initiative of the American Bar Association and the activities in that program. The first is the American Jury Project that is tasked with taking the three existing jury standards and combining and updating them. The first draft of these new standards was presented through a set of panels at the National Symposium on the American Jury System held at the Washington and Lee School of Law on October 15, 2004. Robert Grey, the sixth alumnus of Washington and Lee to serve as ABA president, served as moderator for the day. Attendees asked many questions about the standards and offered ideas. Some issues were even put to a vote to get a consensus from the attendees. The standards were also sent to a long list of organizations not represented on the project or on the Commission on the American Jury. Based on the comments received, the standards are now ready for final editing and the commentary to each standard is being drafted. They will go before the ABA House of Delegates in February 2005.

The format of the 19 standards differs from the previous ones in that each standard is prefaced by a stated principle. Then the standard, using the same number, gives the means by which the principle is achieved or approached. In a few cases, the standard and the principle are the same. By stating the principle first, the standards are more focused and become the implementation of the higher principle rather than simply a standard that can be viewed as some minimum level of compliance. This solves a problem I have always had with standards, in that courts are not encouraged to go beyond the standard. The stated principle now provides that higher focus.

The following paragraphs list the 19 principles. Under each one I have noted the portions of that standard that I feel are of interest to *Court Manager* readers.

### PRINCIPLE 1

#### THE RIGHT TO JURY TRIAL SHALL BE PRESERVED

- The standard contains the various conditions necessary for a waiver of the right.

### PRINCIPLE 2

#### CITIZENS HAVE THE RIGHT TO PARTICIPATE IN JURY SERVICE AND THEIR SERVICE SHOULD BE FACILITATED.

- Biggest challenge for some court managers involves the use of one-day/one-trial or the limitation of service to not more than two weeks. Courts using systems that keep jurors on call for longer than two weeks may have to make adjustments in automation, summoning, and other administrative matters.

- Next big issue is the statement that “courts should respect jurors’ time by calling in the minimum deemed necessary and by minimizing their waiting time.” Here are the basics of jury management. This calls upon court managers to both keep data regarding their juror usage at the courtroom and also to coordinate with their judges in order to determine the panel sizes needed for different cases. Upon the collection of this data, court managers will need an awareness of what the data means and how to utilize it.

- Providing an adequate and suitable environment may be difficult. But the standard might provide some help in making the case for improvements.

- The standards do not recognize a difference between the first and subsequent days of the fee for serving on jury duty as many state fee structures do. The standards recognize the financial hardship as a daily burden that should be consistently met. Although they don't require employers to pay the juror's salary, the standard says the employer cannot penalize the employee.

### **PRINCIPLE 3**

#### **JURIES SHOULD HAVE TWELVE MEMBERS.**

- An allowance is made for those conditions when less than 12 is acceptable, but the principle is to get back to the 12 person jury for the sake of better representation and the greater experience that more people bring to the jury.

### **PRINCIPLE 4**

#### **JURY DECISIONS SHOULD BE UNANIMOUS.**

- Again, the standards make some allowances for non-unanimous verdicts, however, the time saved and the reduction in hung juries that non-unanimous juries may bring has been shown to be minimal. Juries required to be almost unanimous, i.e. 11 of 12, usually return a unanimous vote anyway.

### **PRINCIPLE 5**

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

- Collection and maintenance of information regarding the performance of the jury system requires knowledge in how to do this, as well as the technology and automation in order to be able to do so. It is also important that court managers understand the applicability and importance of the data.
- It is worth quoting the information that the courts should collect and analyze regarding the performance of the jury system.
  - “The representativeness and inclusiveness of the source list
  - The effectiveness of the qualification and summoning process
  - The responsiveness of individual citizens to the jury duty summons
  - The efficient use of jurors
  - The reasonableness of accommodations being provided to jurors with disabilities “

### **PRINCIPLE 6**

#### **COURTS SHOULD EDUCATE JURORS REGARDING THE ESSENTIAL ASPECTS OF A JURY TRIAL.**

The important aspect of this standard is the recognition of the continuity of the information provided.

- The standard recognizes the value of providing each juror with a copy of the final instructions and letting them take the copies into the deliberation room.

### **PRINCIPLE 7**

#### **COURTS SHOULD PROTECT JUROR PRIVACY INsofar AS IT IS CONSISTENT WITH THE REQUIREMENTS OF JUSTICE AND THE PUBLIC INTEREST.**

- This standard is expanded from the previous standard and tries to strike a balance between the requirements of an open trial and the privacy of the juror.

### **PRINCIPLE 8**

#### **INDIVIDUALS SELECTED TO SERVE ON A JURY HAVE AN ONGOING INTEREST IN COMPLETING THEIR SERVICE.**

- Calls for strict consideration before a juror is removed from a jury

#### **PRINCIPLE 9**

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

- Covers change of venue and adds the provision for selecting a jury from another venue and conducting the trial in the original venue but cautions that juror inconvenience should be balanced against the competing reasons that this is done.

#### **PRINCIPLE 10**

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

- This standard is one of three standards that together take up about half of the 19 standards' length.
- Multiple lists, as used by most courts, is considered the standard.
- Court managers need to make sure that their process is truly random, although a few exceptions are allowed, such as using everyone in the pool once before a person is used a second time. This standard also contains a valuable definition for randomness, which is that the process gives "each eligible and available person an equal chance of being selected."
- Exemptions based on profession should be eliminated as most states have done.
- Deferrals are encouraged over excusing a juror.
- Enforcement of non-response to the summons is called for.

#### **PRINCIPLE 11**

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

- This standard covering the many aspects of voir dire is the longest of the standards and is an indication of the ABA project's concern.
- Anonymous juries are discouraged.

#### **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.**

- Isn't this just plain common courtesy? I am always surprised at the number of courts that, outside of some general estimates of the time a trial is estimated to take, give the jurors so little help in planning their time.

#### **PRINCIPLE 13**

##### **THE COURT AND PARTIES SHOULD VIGOROUSLY PROMOTE JUROR UNDERSTANDING OF THE FACTS AND THE LAW.**

- This standard is very supportive of what I call in-court innovations.
- Permitting jurors to take notes is the standard. Courts should provide materials for jurors to take notes with. Additionally, they must make sure that there is a safeguard for destroying the notes after the trial has finished, in addition to making sure that notes are kept confidential during the course of the trial itself.
- Notebooks are encouraged.
- Judges should consider whether jurors may submit questions.

#### **PRINCIPLE 14**

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

PRINCIPLE 15

COURTS AND PARTIES HAVE A DUTY TO FACILITATE EFFECTIVE AND IMPARTIAL DELIBERATIONS.

- Attention must be paid to juror comfort and inconvenience in the event that sequestration is necessary.

PRINCIPLE 16

DELIBERATING JURORS SHOULD BE OFFERED ASSISTANCE WHEN AN APPARENT IMPASSE IS REPORTED.

PRINCIPLE 17

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.

Although many judges provide a closure to the jury process by meeting informally with the jurors following the verdict, this standard requires that the meeting be open to the parties and on the record. This reflects new caselaw on the subject expressing the concern that the judge will probably be ruling on the case in post-verdict matters and the jurors' comments could impact those rulings.

PRINCIPLE 19: APPROPRIATE INQUIRIES INTO ALLEGATIONS OF JUROR MISCONDUCT SHOULD BE PROMPTLY UNDERTAKEN BY THE TRIAL COURT.

A FINAL NOTE: All of the work from drafting the standards, vetting them through many organizations, revising them, and preparing the commentary to each standard, was done in nine months. This is quite an achievement. The standards can be found at <http://www.abanet.org/juryprojectstandards/principles.pdf>



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