

Jury News

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A COST FREE CIVIL JURY TRIAL?

When I recently visited the court in Clark County, Las Vegas, court administrator Chuck Short mentioned their new Nevada Short Trial Program. About that same time, my colleague Paula Hannaford was reviewing data from the most recent Civil Justice Survey of State Courts and noticed that Maricopa County, Phoenix, Arizona, was reporting many four-person jury trials. Upon examination, she, too, discovered the short trial concept.

What interested us were the new twists on an old idea that give it new life. The result is a short trial that can be quickly and positively scheduled and provides a binding decision at no cost to the court. Many of the jury trial innovations that I have written about previously are used. Jurors are given notebooks containing copies of the evidence and are permitted to submit questions to the witnesses.

And coming just as courts are under financial pressure as never before, here is a method to resolve some of the smaller civil cases that does not cost the court anything.

The idea looks to be a variation on the summary jury trial that was developed and widely supported by federal judge Thomas Lambros of Cleveland, Ohio. He conducted the first summary jury trial in 1980. The idea was to present a short version of a planned trial to a jury so the parties could see how a jury would or might find in the trial. The trial was restricted to a half day. Jury selection was very limited. The attorneys presented all of the evidence. No witnesses testified. The jury instructions were shortened significantly, and the jury deliberated and brought in a verdict or at least a vote by mid-day. Judge Lambros and others reported great success in settling cases through this technique. The concept still has a following in some courts, although it has not received much exposure in the last few years.

The Maricopa County Superior Court implemented its short trial program more than seven years ago in response to complaints by lawyers about the expense associated with the court's mandatory arbitration program for cases with amounts in controversy under \$50,000. Judge Roger W. Kaufman, who was at that time the civil presiding judge, and others offered the short trial program as an inexpensive and efficient way to bypass mandatory arbitration. For short trials, a four-person jury is selected from a total panel of 10 persons, and the trial is by definition a one-day trial. The attorneys stipulate to the admissibility of evidence and the number of witnesses in advance, and the jurors are provided with jury instructions and a notebook with trial evidence (e.g., documents, reports) at the beginning of trial. Three of the four (3/4) jurors must agree on the verdict, which is binding on the parties. In many cases, the parties also waive or restrict their rights of appeal. The litigants are responsible for the juror fees and other expenses associated with the short trial. Most of the short trial cases are soft-tissue injury automobile torts and smaller contract (e.g., collections) cases.

According to Judge Kaufman, the short trial has been extremely popular with attorneys — so much so, that he expressed some concern that the availability of the program actually encourages more cases to go to trial, rather than settle, although court statistics on the program do not appear to bear this out. More recently, the court has experimented with a modified short trial program designed for slightly longer (e.g., 2 to 3 days), more complex cases. The procedures are similar, but the jury consists of six people selected from a panel of 17 and requires four of the six jurors to agree on the verdict. The jurors who serve on these trials are very satisfied with the program, because they have the opportunity to serve (rather than cooling their heels in the jury assembly room) without serving on longer trials that would be more disruptive to their schedules.

The Clark County District Court in Las Vegas, also improved on the summary jury trial concept and, in fact, visited the Maricopa Superior Court program while developing their own program. Most striking is the fact that in both states the results are now binding. In Clark County, parties assigned to arbitration — as are all

cases under \$40,000 dollars — can ask for a short trial instead of an arbitration hearing or can request one following an arbitration hearing. A key component of the Clark County program is the speed with which these cases are scheduled for trial – usually within four months for appeals from arbitration hearings and within six months if the parties bypass mandatory arbitration.

Jury selection is completed in 30 minutes. A jury of four is chosen from a panel of 12 people, and each side is given two peremptories. A verdict from three of the four constitutes a valid verdict, although all 17 of the verdicts in Clark County have been unanimous. This is rather curious, but with such a small jury, there is probably more cohesion of members and more desire to work together, one of the advantages of smaller juries.

After selection, the jury is given a notebook that contains exhibits associated with the evidence to be presented, which is prepared by the parties. The jurors report that having the notebook helps them get a handle on documentary evidence before they begin deliberations. Each side is given 3.5 hours for the presentation of the opening statement, evidence, and the closing. A clock is used that the attorneys and jury can easily see. Jurors are permitted to submit questions to the attorneys or witnesses. By mid-afternoon, the jury is ready for instructions and begins deliberation. The shortest trial was finished before lunch, and one went until 9 p.m. before the verdict was given. The jury is usually finished by 5:30 p.m. A pro tempore judge hears the case. These judges have undergone special training on the procedures to be used. There are only limited appeals available that must be based on judicial misconduct (e.g., evident partiality, corruption), undisclosed conflict of interest, abuse of discretion, or lack of proper notice of the proceedings. The parties split the judge's fee of \$1,500 and the cost of the total juror's per diem — \$204. The trials are scheduled late in the week when jury courtrooms are available. To date, none of the short trials have been or have had to be continued for any reason.

Jurors in both jurisdictions are very pleased with the short trials as reported on exit questionnaires and in interviews. In fact, Clark County court administrators reported a few instances in which jurors who were not selected were quite angry at being excluded and asked for reconsideration. Especially pleased are jurors who have served in longer cases where a common juror complaint is the waste of time and the seeming repetition in evidence presentation. Parties and attorneys also express satisfaction with the process. The Clark County court is now working with the county bar association to make the program and its acceptance by the parties known to a larger audience.

The process is almost cost-free in that many employers are still paying their employees as they serve as jurors, just as they would for other trials, so there is an employer contribution. In fact, that was the argument against the non-binding summary jury trial. Are employers subsidizing a settlement procedure? The arguments are fairly obvious, but this should remind us of the contribution which many, and we would hope all, employers make to the jury system.

Information on the Maricopa program can be obtained from Judge Roger Kaufman at (602) 506-1984 or Marcus Reinkensmeyer at (602) 506-3190. You may also e-mail Marcus at mreinken@superiorcourt.maricopa.gov, or send "snail mail" to Superior Court of Arizona, Maricopa County, 201 W. Jefferson, Phoenix, AZ 85003.

For information about the Nevada program, contact arbitration commissioner Chris A. Beecroft Jr. at Eighth Judicial District Court, Clark County Courthouse, 200 S. Third Street, Las Vegas, Nevada, 89155. You can also call Chris at (702) 455-4383, or send email to beecrof@co.clark.nv.us. The Short Trial Rules can be found at www.co.clark.nv.us. Select "Court Forms, Short Trials." **CM**