



7/22/86

District Court of Minnesota
THIRD JUDICIAL DISTRICT

FREEBORN COUNTY COURTHOUSE
ALBERT LEA, MINNESOTA 56007
TELEPHONE 507/373-3112

JAMES L. MORK
JUDGE OF DISTRICT COURT

July 21, 1986

Supreme Court of Minnesota
230 State Capitol
St. Paul, Minnesota 55155

RE: File C5-85-837
Minnesota Jury Standards
Hearing scheduled July 30, 1986 10:00 a.m.

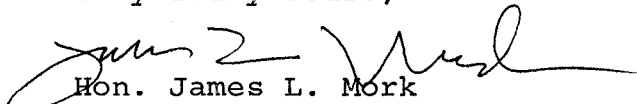
SIRS:

Enclosed herewith is an original and nine copies of Petition for Approval Of Proposed Minnesota Jury Standards.

Please file the original and distribute a copy to each of the Justices for his or her review prior to the July 30th hearing.

Should you have any questions, please advise.

Very Truly Yours,


Hon. James L. Mork
Committee Chair

cc Sue K. Dosal

STATE OF MINNESOTA

JUL 22 1986

IN SUPREME COURT

C5-85-837

WAYNE TSCHIMPERLE
CLERK

IN RE:

Proposed Minnesota Standards
Relating to Jury Use and
Management.

PETITION FOR APPROVAL
OF PROPOSED MINNESOTA
JURY STANDARDS

WHEREAS, Douglas K. Amdahl, Chief Justice of the Minnesota Supreme Court, on the 7th of May, 1985 appointed a Minnesota Jury Standards Committee to review and make recommendations to the Supreme Court on the implementation of the American Bar Association Standards for Juror Use and Management; and,

WHEREAS, the Committee consisting of Judges Steven Maxwell, Cheryl Hvass, and James Mork; Attorneys Michael Sieben, Kelton Gage, and Monte Miller; Court Administrators Sue Dosal, Donald Cullen, D.J. Hanson, and Joseph Lasky; Legislators, Sen. Keith Langseth and Rep. Adolph Kvam; and Laypersons Vivian Jenkins Nelsen and Barbara Hiles, has completed its work and submitted nineteen proposed Standards, attached hereto, for Court approval and for implementation at a hearing scheduled for July 30, 1986; and,

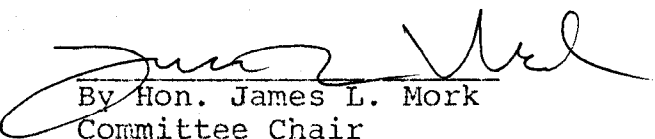
WHEREAS, prior to completing its work, the Committee first held three public hearings after notice was duly published and otherwise given. The hearings were held at Brainerd, Minnesota on March 7, 1986, at Mankato, Minnesota on March 14, 1986, and at Minneapolis, Minnesota on March 21, 1986. Proposed Standards were thereafter modified,

NOW THEREFORE, The Minnesota Jury Standards Committee now recommends to the Supreme Court of the State of Minnesota that the proposed Minnesota Jury Standards as attached hereto be approved by the Court and thereafter implemented. And, the Committee does hereby respectfully Petition the Court as follows:

1. To approve and implement the nineteen proposed Minnesota Jury Standards.
2. To amend such Minnesota court rules and/or procedures necessary to conform said rules or procedures with the Standards.
3. To propose and support legislation during the 1987 Session of the Minnesota Legislature needed to conform Minnesota Statutes to the Standards.

Dated this 18th day of
July, 1986

RESPECTFULLY SUBMITTED,


By Hon. James L. Mork
Committee Chair

MINNESOTA JURY STANDARDS

Hon. James L. Mork
Third Judicial District
Committee Chairman

MINNESOTA JURY STANDARDS COMMITTEE

Honorable James L. Mork, Chairman
Third Judicial District

Don Cullen
District Administrator

Sue K. Dosal
State Court Administrator

Kelton F. Gage
Attorney

D. J. Hanson
District Administrator

Barbara Hiles
League of Women Voters

Sheryl R. Hvass
Attorney

Rep. Adolph Kvam

Sen. Keith Langseth

Joseph Lasky
Court Administrator

Honorable Stephen Maxwell
Second Judicial District

Monte Miller
MSBA Criminal Section

Vivian Jenkins Nelson
Hubert Humphrey Institute

Michael R. Sieben
Attorney

COMMITTEE RECOMMENDED STANDARD 1:
OPPORTUNITY FOR JURY SERVICE

The opportunity for jury service ~~should~~ shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, or occupation, ~~or any other factor that discriminates against a cognizable group in the jurisdiction.~~

Commentary

In accordance with Minnesota Statutes, this standard forbids exclusion from jury service based on certain inappropriate factors. The standard closely parallels M.S.A. § 593.32, which provides for nonexclusion from jury service of certain categories of persons.

The committee recognizes that, although not all existing groups are specifically enumerated in the standard, the purpose of this standard is to permit broad participation in jury service, and the selection of juries which are both inclusive and representative of the community.

COMMITTEE RECOMMENDED STANDARD 2:
JURY SOURCE LIST

- (a) The names of potential jurors ~~should~~ shall be drawn from a jury source list compiled from ~~one or more~~ the voter registration and drivers license lists which may be supplemented by other regularly maintained lists of persons residing in the ~~court jurisdiction~~ county.
- (b) The jury source list should be representative and should ~~be as inclusive~~ include at least 85% of the adult population in the ~~jurisdiction~~ county ~~as is feasible~~.
- (c) The ~~court~~ jury commissioner ~~should~~ shall ~~periodically~~ review the jury source list once every four years for its representativeness and inclusiveness of the adult population in the ~~jurisdiction~~ county and report said results to the chief judge of the judicial district.
- (d) ~~Should~~ If the court chief judge determines that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action should be taken.

Commentary

It is essential that the jury source list represent a fair cross-section of the county because it is from this list that the names of prospective jurors are drawn. In Minnesota the voter registration list has traditionally served as the source list. Some counties supplement this list with other lists, such as the drivers license list, when compiling the source list. Mandating the use of the drivers license list in combination with the voters registration list in subsection (a) is intended to create a juror source list which is as representative and as inclusive of the community as feasible. In addition, the committee believes that the merger of these two lists would not create an undue administrative burden. While use of data processing to merge these lists is helpful, at the present time, a number of Minnesota counties manually create such combined juror lists without apparent difficulty. The merging of the lists should be done in a manner that avoids duplication of names on the source list. In combination, the lists used should include at least 85% of the adult population in the county. The 85% inclusiveness should be calculated as an average over the calendar year.

Periodic review of the source list is essential to ensure that the list is both representative and inclusive. Responsibility for such review is placed with the jury commissioner. The chief judge shall review the results, determine if improvement is needed, and recommend that appropriate corrective action be taken. The results should be circulated to interested judges in the district for review.

COMMITTEE RECOMMENDED STANDARD 3:
RANDOM SELECTION PROCEDURES

- (a) Random selection procedures ~~should~~ shall be used throughout the juror selection process. Any method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection.
- (b) Random selection procedures ~~should~~ shall be employed in
 - (i) selecting persons to be summoned for jury service;
 - (ii) assigning prospective jurors to panels; and
 - (iii) calling prospective jurors for voir dire.
- (c) Departures from the principle of random selection are appropriate
 - (i) to exclude persons ineligible for service in accordance with Standard 4;
 - (ii) to excuse or defer prospective jurors in accordance with Standard 6;
 - (iii) to remove prospective jurors for cause or if challenged peremptorily in accordance with Standards 8 and 9; and
 - (iv) to provide all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel in accordance with Standard 13.

Commentary

Minnesota law is strongly supportive of random selection of jurors to ensure a jury's representativeness. This standard is the same as the ABA standard, and reflects the committee's recommendation to mandate random selection of jurors throughout the selection process.

In compliance with this standard and Minnesota policy, each District Jury Administration Plan shall contain a detailed description of the random selection procedures employed in the phases of juror selection identified in provisions (b)(i)-(iii).

COMMITTEE RECOMMENDED STANDARD 4:
ELIGIBILITY FOR JURY SERVICE

All persons ~~should~~ shall be eligible for jury service except those who:

- (a) are less than 18 years of age, or
- (b) are not citizens of the United States, or
- (c) are not residents of the ~~jurisdiction~~ county in which they have been summoned to serve, or
- (d) are not able to communicate in the English language, ~~or~~
- (e) have been convicted of a felony and have not had their civil rights restored, or
- (f) have served as a county, municipal, district or federal court grand or petit juror within the past four years.

Commentary

The policy behind this standard is that jury service is a responsibility, as well as a privilege, of citizenship. It is recognized that juries function best and most closely approach impartial decision making when they are as representative of the community as possible. Representativeness is promoted by limiting ineligibility for juror service only to those narrow categories of persons whose service would most likely impair jury functioning.

Eligible persons may be excused from jury service only under certain conditions. (See Standard 6.)

COMMITTEE RECOMMENDED STANDARD 5:
TERM OF AND AVAILABILITY FOR JURY SERVICE

The time that persons are called upon to perform jury service and to be available therefore, should be the shortest period consistent with the needs of justice.

- (a) In counties with a population of 100,000 or more, a term of service shall not exceed of one day two weeks or the completion of one trial, whichever is longer is acceptable.
- ~~(b) Persons should not be required to maintain a status of availability for jury service for longer than two weeks except in areas with few jury trials when it may be appropriate for persons to be available for service over a longer period of time.~~
- (b) In counties with a population of less than 100,000 but more than 50,000 a term of service shall not exceed two months; provided, however, no person shall be required to continue to serve after he or she has reported to the courthouse for ten days or after the completion of the trial on which the juror is currently sitting, whichever is longer.
- (c) In counties with a population of less than 50,001 but more than 15,000 a term of service shall not exceed four months; provided, however, no person shall be required to continue to serve after he or she has reported to the courthouse for ten days or, after the completion of the trial on which the juror is currently sitting, whichever is longer.
- (d) In counties with a population of 15,000 or less, a term of service shall not exceed six months; provided, however, no person shall be required to continue to serve after he or she has reported to the courthouse for selection for three days, or after the completion of the trial on which the juror is currently sitting, whichever is longer.
- (e) Chief judges and district administrators shall review the frequency of juror use in each county in determining the shortest period of jury service that will enable the greatest number of citizens to have the opportunity to report to the courthouse and participate in the jury system. All courts should adopt the shortest period of jury service that is practical.

Commentary

Because the demographics of Minnesota's judicial districts vary so widely, this standard establishes the term of jury service based on the population of each county, while expressing a preference for as short a period of jury service as is practical.

Committee Recommended Standard 5
Page Two

The district jury commissioner should institute this standard according to the particularized needs and population traits of the counties in his or her district. The administrative burden of a shorter term of service may not be the primary criteria in determining the term of service.

COMMITTEE RECOMMENDED STANDARD 6:
EXEMPTION, EXCUSE AND DEFERRAL

- (a) All automatic excuses or exemptions from jury service ~~should~~ shall be eliminated.
- (b) Eligible persons who are summoned may be excused from jury service only if:
- (i) their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors and they are excused for this reason by a jury commissioner or a judge;
 - (ii) they request to be excused because their service would be a continuing hardship to them or to members of the public, ~~or they have been called for jury service during the two years preceding their summons, and they are excused by a judge or duly authorized court official.~~
- (c) Deferrals of jury service for reasonably short periods of time may be permitted by a jury commissioner and are encouraged as an alternative to excusal from service ~~judge or duly authorized court official.~~
- (d) Requests for excuses and deferrals and their disposition should be written or otherwise made of record. Specific uniform guidelines for determining such requests should be adopted by the court.

Commentary

The committee recommends abolishing the outdated concept of automatic excuses or exemptions from jury service and suggests instead a more narrowly-tailored rule designed to eliminate from jury service only persons with the most compelling reasons to be excused.

Rather than providing for automatic exemptions, the committee recognizes the importance of jury service to the justice system and as a civic responsibility. Automatic categorical excuses on the basis of such things as age, parental circumstances, occupation, or sex shall not be permitted. Case-by-case consideration of requests for excusal from service shall be required. The jury commissioner should sparingly grant excuse from service based on a continuing hardship to the public. Shorter terms of service and deferral shall be considered as alternatives to excuse from service.

The determination of whether mental or physical impairment would render the prospective juror unable to serve on any case shall be the responsibility of the jury commissioner and shall be determined on an individual basis. To facilitate the process, the committee recommends that a question dealing with this issue be included in the qualification questionnaire. The determination of whether mental or physical impairment would render the prospective juror unable to serve in a particular case is the responsibility of the presiding judge. (See Standard 11.)

Minnesota statutes do not provide for deferrals from jury service; the committee recommends institution of such a procedure, which would give jury commissioners greater flexibility in filling the need for jurors at designated times and would permit an individual to report for jury service at a later, more convenient date.

COMMITTEE RECOMMENDED STANDARD 7:
VOIR DIRE

Voir dire examination should be limited to matters relevant to determining whether to ~~remove~~ challenge a juror for cause and to develop information to permit the intelligent exercising of peremptory challenges.

- (a) ~~To reduce the time required for~~ assist the voir dire process, basic background information, including age, gender, occupation, educational level, marital status, his or her address, the occupation of his or her spouse, and the age(s) of his or her children, if any, regarding panel members should be made available in writing to counsel for each party in advance of voir dire if requested by counsel ~~on the day on which jury selection is to begin.~~ The court may restrict access to the addresses of the prospective jurors.
- (b) The trial judge ~~should~~ shall first conduct a ~~preliminary~~ voir dire examination. Counsel ~~should~~ shall then be permitted to ~~question panel members for a reasonable period of time~~ make reasonable inquiry.
- (c) The judge and the jury commissioner should ensure that the privacy of prospective jurors is reasonably protected, and the judge should ensure that questioning by counsel is consistent with the purpose of the voir dire process.
- (d) ~~In criminal cases, the voir dire process should always~~ shall be held on the record at the request of any party. ~~In civil cases, the voir dire process should be held on the record unless waived by the parties.~~

Commentary

The purpose of the voir dire process is to discover preconceptions and biases to support a challenge for cause and to develop information to permit the intelligent exercise of peremptory challenges. The voir dire process is an integral step in the process of selecting a fair and impartial jury.

This standard attempts to balance the need to detect such preconceptions and biases with the need to restrict unnecessary questions and facilitate an efficient process.

It is recommended that counsel receive basic background information regarding panel members in advance of voir dire. Because the number of potential panel members varies greatly in the courts throughout the state, each court is left with the decision of how best to compile the information and how far in advance the information is to be made available.

The standard permits the court to restrict access to the addresses of jurors in those rare instances where the court may feel that the security or privacy of jurors may be unduly and significantly compromised. In such circumstances, upon motion by counsel or upon the court's own motion, the court may restrict access to address information.

The standard recommends continuation of Minnesota's practice of permitting counsel to participate in the voir dire process. It also clearly states that the judge is responsible for initiating the process and for ensuring that the privacy of prospective jurors is protected.

This standard also recommends continuation of Minnesota's practices pertaining to when the voir dire process is made a matter of record.

COMMITTEE RECOMMENDED STANDARD 8:
REMOVAL FROM THE JURY PANEL FOR CAUSE

If the judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, that individual should be removed from the panel. Such a determination may be made on motion of counsel or on the judge's own initiative.

Commentary

It is essential to a fair trial that jurors make their decisions based on the evidence presented at trial and not on prejudicial factors which can be discerned through voir dire.

The trial judge, in order to assure an impartial jury, has the independent power to remove jurors for cause, whether or not that person has been challenged by counsel.

COMMITTEE RECOMMENDED STANDARD 9:
PEREMPTORY CHALLENGES

- (a) The number of and procedure for exercising peremptory challenges ~~should~~ shall be uniform throughout the state.
- ~~(b)~~ Peremptory challenges should be limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury.
- ~~(c)~~ (b) In civil cases, ~~the number of each adverse party shall be allowed two~~ peremptory challenges should not exceed three for each side.
- ~~(d)~~ (c) In criminal cases, the following number of peremptory challenges ~~should~~ shall not exceed be allowed:
- (i) ~~ten~~ fifteen for ~~each side~~ the defense and nine for the prosecution when ~~a death sentence~~ life imprisonment may be imposed upon conviction.
 - (ii) five for ~~each side~~ the defense and three for the prosecution when a sentence of ~~imprisonment~~ incarceration for more than ~~six months~~ 90 days may be imposed upon conviction; or
 - (iii) three for ~~each side~~ the defense and two for the prosecution when a sentence of ~~six months~~ 90 days or less, or when only a penalty not involving incarceration may be imposed.
- ~~One additional peremptory challenge should be allowed for each defendant in a multi-defendant criminal proceeding. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly, and in that event the state's peremptory challenges shall be correspondingly increased.~~
- ~~(e)~~ (d) Where juries of fewer than twelve persons are used in civil or petty offense cases, ~~the number of peremptory challenges should not exceed two for each side.~~
- ~~(f)~~ (d) One peremptory challenge should be allowed to each side in a civil or criminal proceeding for the first alternate juror to be seated and an additional peremptory challenge for every additional two alternate jurors to be seated.
- ~~(g)~~ (e) The trial judge should have the authority to allow additional peremptory challenges when justified.
- ~~(h)~~ (f) Following completion of the voir dire examination, counsel for the parties, starting with the defense, should exercise their peremptory challenges by alternately striking names from the list of panel members until each side has exhausted or waived the permitted number of challenges.

Commentary

This standard makes clear the number of peremptory challenges permitted each party in a case, while recognizing the judge's discretion to permit additional peremptory challenges. Uniform, easily-applied rules are provided for typical cases, and current Minnesota practice is followed in the number of challenges allowed and in granting fewer challenges to the prosecution than the defense in criminal cases.

In the exercise of peremptory challenges, the discomfort or embarrassment of prospective jurors should be minimized. The judge should explain the process to prospective jurors, and make every attempt to ensure their understanding of, and comfort with, this process.

Standard 9(c)(iii) reflects a reduction in the number of peremptory challenges permitted in misdemeanor cases because of the less severe penalty resulting from a misdemeanor conviction.

COMMITTEE RECOMMENDED STANDARD 10:
ADMINISTRATION OF THE JURY SYSTEM

The responsibility for administration of the jury system should be vested exclusively in the judicial branch of government.

- (a) Minn. Stat. Chapter 593 and other relevant statutes should establish general policies concerning jury administration. All procedures concerning jury selection and service should be ~~governed~~ established by court rules and regulations promulgated by the ~~state's highest court or judicial council~~ Supreme Court and should be administered pursuant to the Judicial District Jury Administration Plan devised by the district jury commissioner under the supervision and control of the chief judge of the judicial district.
- (b) A single unified jury system ~~should~~ shall be established in any area in which two or more courts conduct jury trials. This applies whether they are of the same or of differing subject matter or geographic jurisdiction.
- (c) Responsibility for administering the jury system ~~should~~ shall be vested in ~~a single administrator~~ the district jury commissioner in each district acting under the supervision and control of the ~~district court~~ chief judge of the judicial district.

Commentary

The committee recommends that the judiciary be responsible for administering the jury system, through court rules and administrative policies pertaining to all procedures to be used in all facets of jury administration. Day-to-day operations should be the responsibility of each jury commissioner. It is recognized that the local trial judge is entrusted with administrative responsibilities pertaining to jury administration, but the ultimate responsibility rests with the chief judge of the district. Judges are encouraged to communicate concerns regarding jury administration to their chief judge.

Minnesota Statutes, Chap. 593, Juries, should contain general policies pertaining to jury administration.

Vesting the responsibility for administering the jury system in the judicial branch will provide the judiciary with the flexibility needed for efficient administration.

COMMITTEE RECOMMENDED STANDARD 11:
NOTIFICATION AND SUMMONING PROCEDURES

- (a) The notice summoning a person to jury service and the questionnaire eliciting essential information including age, race, gender, occupation, educational level, marital status, his or her address, any prior jury service in the past four years, the occupation of his or her spouse, and the age(s) of his or her children, if any, regarding that person ~~should~~ shall be:
- (i) combined in a single mailing document;
 - (ii) phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems; and
 - (iii) delivered by first class mail.
- (b) A summons should clearly explain how and when the recipient must respond and the consequences of a failure to respond.
- (c) The questionnaire should be phrased and organized so as to facilitate quick and accurate screening, and should request only that information essential for:
- (i) Determining whether a person meets the criteria for eligibility;
 - (ii) determining whether there exists a mental or physical disability which would prevent the person from rendering satisfactory jury service;
 - ~~(ii)~~ (iii) providing basic background information including age, race, gender, occupation, educational level, and marital status, his or her address, any prior jury service within the past four years, the occupation of his or her spouse, and the age(s) of his or her children, if any, ordinarily sought during voir dire examination;
 - (iii) (iv) efficiently managing the jury system.
- (d) Each District Jury Administration Plan shall contain policies and procedures ~~should be established~~ for enforcing a summons to report for jury service and for monitoring failures to respond to a summons.

Commentary

The process for summoning and determining the qualifications of prospective jurors should be performed in the most efficient and cost-effective manner possible. Accordingly, the committee recommends adoption of a combined qualification and summoning procedure. The documents shall be contained in one mailing, to be delivered by first class mail.

The qualification questionnaire should be easily understood by prospective jurors; provide all the information necessary at this stage of the process; request only the information necessary to determine eligibility and to assist the voir dire process; and organized in a fashion that will facilitate quick and accurate screening.

The summons should be clear and concise. It should provide prominent notice that compliance is required by law.

Each judicial district shall establish policies and procedures for enforcing a summons to report for jury service and for monitoring failures to respond to a summons. These policies and procedures shall be contained in the District Jury Administration Plan.

COMMITTEE RECOMMENDED STANDARD 12:
MONITORING THE JURY SYSTEM

Courts should collect and analyze information regarding the performance of the jury system on a regular basis in order to ~~ensure~~ evaluate:

- (a) the representativeness and inclusiveness of the jury source list;
- (b) the effectiveness of qualification and summoning procedures;
- (c) the responsiveness of individual citizens to jury duty summonses;
- (d) the efficient use of jurors; and
- (e) the cost effectiveness of the jury system.

Commentary

In order to effectively manage the jury system, it is essential that operations be monitored on a regular basis. If problem areas are identified, appropriate changes should be implemented immediately.

Operations should also be monitored during and after change to insure that the desired results are achieved.

Each jury commissioner should be responsible for the collection and maintenance of information used in monitoring the jury system.

COMMITTEE RECOMMENDED STANDARD 13:
JUROR USE

- (a) Courts should employ the services of prospective jurors so as to achieve optimum use with minimum inconvenience to jurors.
- (b) Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity; this information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.
- (c) Courts should ensure that each prospective juror who has reported to the courthouse is assigned to a courtroom for voir dire each day before any prospective juror is assigned a second time that day.
- (d) Courts should coordinate jury management and calendar management to make effective use of jurors.

Commentary

Inefficient juror use not only results in juror dissatisfaction with jury service and the court system but also increases the costs associated with jury system administration.

Courts should employ appropriate management techniques aimed at balancing the supply of prospective jurors at the court with the actual number required to accommodate scheduled trial activity. These management techniques should also ensure that prospective jurors are used in the most efficient manner possible.

As a matter of daily procedure, courts should provide that all prospective jurors have the opportunity to participate in the voir dire process before others are assigned a second time.

COMMITTEE RECOMMENDED STANDARD 14:
JURY FACILITIES

Courts should provide an adequate and suitable environment for jurors.

- (a) The entrance and registration area should be clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse.
- (b) Jurors should be accommodated in pleasant waiting facilities furnished with suitable amenities. Whenever feasible, a separate non-smoking area of suitable size should be provided for waiting jurors.
- (c) Jury deliberation rooms should include space, furnishings and facilities conducive to reaching a fair verdict. The safety and security of the deliberation rooms ~~should~~ shall be ensured. Whenever feasible, smoking shall be prohibited in jury deliberation rooms. Recesses in deliberations shall be permitted at reasonable intervals to permit smoking outside the jury deliberation room in an area where sequestration procedures shall be maintained.
- (d) To the extent feasible, juror facilities should be arranged to minimize contact between jurors, parties, counsel, and the public.

Commentary

Jurors perform an essential service to the justice system, and should be treated with respect. They are called upon to make important decisions, and should be provided with facilities that promote the decision-making process. Jurors' comfort is an important consideration, and surroundings should be pleasant and businesslike. The environment should convey the importance of the jury's task, and deliberation rooms should be designed so as to allow for thorough consideration of the case and not a hasty, coerced decision.

In providing facilities for jurors, it is important to consider the need for accessibility to all prospective jurors, including those with handicapping conditions, from initial registration through trial and deliberation.

The committee recommends amending ABA Standard 14 to offer guidance and give appropriate emphasis to consideration of smoking and nonsmoking. This is in recognition of Minnesota's strong policy of limiting smoking to certain places.

The committee recommends amending ABA Standard 14 to offer guidance and give appropriate emphasis to consideration of smoking and nonsmoking. This is in recognition of Minnesota's strong policy of limiting smoking to certain places.

COMMITTEE RECOMMENDED STANDARD 15:
JUROR COMPENSATION

- (a) Persons called for jury service should receive:
- (i) a ~~nominal amount~~ fee, of \$10 and round trip travel between his or her residence and court, in recognition of out-of-pocket expenses for the first day they report to the courthouse;
 - (ii) a ~~reasonable~~ fee, of \$20 and round trip travel between his or her residence and court, for each succeeding day they report.
- (b) Such amount and fees should be paid ~~promptly~~ at least monthly.
- (c) State law should prohibit employers from discharging, laying-off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.
- (d) An additional sum should be available for reimbursement to those jurors who, upon demonstration of special economic need, would suffer undue hardship due to their sole care of a dependent as defined by the Internal Revenue Code.

Commentary

It is recognized that the cost of juror compensation, if in proportion to actual costs and lost wages, would substantially interfere with, and could impose a heavy monetary burden on, court budgets. At the same time, jury service imposes a special demand on jurors in terms of time and limitation on everyday activities and work; these demands should be acknowledged beyond verbal expressions of gratitude.

The committee's recommendation balances these concerns and recognizes that jury service is a responsibility of citizenship, but also a duty that should not extract too burdensome of a cost from jurors. Justice is most effectively rendered when all participants are treated respectfully, and their contributions are recognized.

The amount of compensation proposed is sufficient to reimburse jurors for the special costs they incur as a result of serving on juries as well as a token amount over costs in appreciation of their work. The thrust of a two-tier system of juror compensation is to encourage the one-day, one-trial system.

In keeping with the policy of reimbursement for costs attributable to jury service itself, subsection (d) recommends payment to certain persons who would otherwise be excluded from jury service based on hardship. This serves to make juries more representative by insuring that certain groups of persons are not systematically excluded from jury service. Criteria provided in MRCP 5.08 should be used to determine if special economic need exists. Subsection (d) is aspirational in nature and counties are encouraged to experiment with this concept.

COMMITTEE RECOMMENDED STANDARD 16:
JUROR ORIENTATION AND INSTRUCTIONS

- (a) Courts should provide some form of orientation or instruction to persons called for jury service:
- (i) upon initial contact prior to service;
 - (ii) upon first appearance at the courthouse;
 - (iii) upon reporting to a courtroom for voir dire;
 - (iv) directly following empanelment;
 - (v) during the trial;
 - (vi) prior to deliberations; and
 - (vii) after the verdict has been rendered or when a proceeding is terminated without a verdict.
- (b) Orientation programs should be:
- (i) designed to increase prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors;
 - (ii) presented in a uniform and efficient manner using a combination of written, oral, and audiovisual materials.
- (c) The trial judge should:
- (i) give preliminary instructions directly following empanelment of the jury which at a minimum conform to the preliminary instructions set forth in the Minnesota Civil and Criminal Jury Instruction Guides ~~that explain the jury's role, the trial procedures including note taking and questioning by jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles;~~
 - (ii) prior to the commencement of deliberations, instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations. Such instructions should be made available to the jurors during deliberations; and
 - (iii) prepare and deliver instructions which are readily understood by individuals unfamiliar with the legal system.
- (d) Before dismissing a jury at the conclusion of a case, the trial judge should:
- (i) release the jurors from their duty of confidentiality;
 - (ii) explain their rights regarding inquiries from counsel or the press; and
 - (iii) either advise them that they are discharged from service or specify where they must report.
- The judge should express appreciation to the jurors for their service, but the judge should not express approval or disapproval of the result of the deliberation.

- (e) All communications between the judge and members of the jury panel from the time of reporting to the courtroom for voir dire until dismissal should be in writing or on the record in open court. Counsel for each party should be informed of such communication and given the opportunity to be heard.
- (f) All judicial districts shall utilize, to the extent it is helpful and appropriate, a jury orientation and instruction audiovisual program developed under the auspices of the Supreme Court.

Commentary

Most members of a jury have never before performed this essential service. It is important to begin juror orientation at the earliest possible time, in order to remove any apprehension a prospective juror might feel, and to help each individual feel more comfortable and familiar with the justice system. This orientation and continuing provision of information will enable jurors to better understand and more effectively perform their duties. A jury orientation and instruction audiovisual program is highly recommended.

In all communications with the jury, it is strongly suggested that clear, precise and plain language be used, with technical and legal terms limited, and fully explained when used.

Preliminary instructions to the jury are important for establishing a framework for observation of the trial, and to make clear the jury's role in the trial.

Before deliberation, the judge should impress upon the jurors the importance of careful consideration of the case, and fully explain the law and how deliberations are conducted.

As part of dismissal of the jury, the judge should inform the jurors regarding post-trial communication with attorneys and the media. The jurors, unless otherwise instructed, are free to respond to inquiries from the press regarding their impressions of the trial as well as the course of their deliberations. The judge may inform the jury that they may wish to keep their deliberations private, and that an agreement by all jurors to do so is permissible. The judge may inform the jurors that they may refuse

requests for interviews. Further, the judge may issue a very narrow order imposing only the most reasonable restrictions on press contact with jurors post-trial (see United States v. Harrelson, 713 F.2d 1114 (5th Cir. 1983), cert den sub nom. El Paso Times, Inc. v. U.S. District Court, 465 U.S. 1041, 104 S.Ct. 1318 (1984) for examples of permissible limitations) but may not ban interviews with jurors entirely. In informing the jury of its rights to speak about the case, the judge should indicate that in talking about the case with others, they should respect the privacy and feelings of their fellow jurors.

As to attorney contact with jurors, the court may inform the jury that, while they are free to speak to the counsel involved, they are under no obligation to do so, unless later ordered to by the court.

The court should advise that no one has the right to harass or embarrass the jurors regarding their trial conduct or the verdict.

Minnesota law is very firm regarding judge and jury communication and much importance is attached to on the record communications during jury deliberations, in particular. The best suggested practice is to record judge-jury communication at all stages of the trial, to the fullest extent feasible.

COMMITTEE RECOMMENDED STANDARD 17:
JURY SIZE AND UNANIMITY OF VERDICT

- (a) Juries in criminal cases ~~should~~ shall consist of:
 - (i) Twelve persons if a penalty of confinement for more than ~~six months~~ one year may be imposed upon conviction;
 - (ii) At least six persons if the maximum period of confinement that may be imposed upon conviction is ~~six months~~ one year or ~~fewer~~ less.

A unanimous decision should be required for a verdict in all criminal cases heard by a jury.

- (b) Juries in civil cases ~~should~~ shall consist of ~~no fewer than six and no more than twelve~~ persons. ~~It is acceptable to have either unanimous or nonunanimous verdicts in civil cases shall be unanimous except, provided however that a civil jury should not be authorized to may return a verdict, after six hours of deliberation, which is concurred in by less than three quarters~~ 5/6 of its members.

Commentary

Standard 17 varies from the ABA standard in numbers of jurors to serve on criminal trials, depending on whether the penalty is more than one year. This is in conformance with Minnesota statutes.

Similarly, the verdict in a Minnesota civil case is to be concurred in by five-sixths of the jury members, and not three-quarters, in accordance with Minnesota law.

COMMITTEE RECOMMENDED STANDARD 18:
SEQUESTRATION OF JURORS

- (a) A jury should be sequestered only for the purpose of insulating its members from improper information or influences or for good cause shown in the court's discretion or upon motion of counsel.
- (b) The trial judge should have the ~~discretion to sequester a jury on the motion of counsel or on the judge's initiative,~~ and the responsibility to ~~oversee~~ establish the conditions of sequestration.
- (c) Standard procedures should be promulgated to make certain that:
 - (i) The purpose of sequestration is achieved; and
 - (ii) The inconvenience and discomfort of the sequestered jury is minimized.
- (d) Training should be provided to personnel who escort and assist jurors during sequestration. Use of personnel actively engaged in law enforcement for escorting and assisting jurors during sequestration is discouraged.
- (e) This standard shall apply during trial and jury deliberations in both civil and criminal cases except as otherwise provided in Standard 19.

Commentary

The committee, through Standard 18, entrusts greater discretion in the judge to sequester jurors than does ABA Standard 19 (the equivalent of Minnesota Standard 18), while establishing basic policies for sequestration procedures.

The use of personnel to assist jurors during sequestration does not mandate retaining special personnel for this duty; training of existing personnel is permissible.

Subsection (e) is added in order to clarify the appropriate application of this standard in civil and criminal cases, and to recognize a relation between this standard and Standard 19.

COMMITTEE RECOMMENDED STANDARD 19:
JURY DELIBERATIONS

Jury deliberations should take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision-making.

- (a) The judge should instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with Standard 16(c).
- (b) The deliberation room should conform to the recommendations set forth in Standard 14(c).
- (c) ~~The~~ A civil jury should not be sequestered except under the circumstances and procedures set forth in Standard 18. A civil jury shall be kept together during deliberation but may be sent home when deliberation is in recess.
- (d) Criminal juries shall be sequestered at all times during deliberation except with the consent of the defendant.
- ~~(d)~~ (e) The trial judge shall ensure that the jury ~~should~~ shall not be required to deliberate during after normal working hours unless the trial judge, after consultation with counsel, determines that evening or weekend deliberations would not impose when it would be an undue hardship upon the jurors and are required in or contrary to the interests of justice.
- ~~(e)~~ (f) Training should be provided to personnel who escort and assist jurors during deliberations.

Commentary

Minnesota Standard 19 differs from ABA Standard 18 (its equivalent) in clarifying its applicability to civil and criminal trials. This is in recognition that the potential consequences of the verdict and the potential harm of nonsequestration vary widely between civil and criminal cases. Pursuant to the committee's recommendation, this standard explicitly creates a preference for sequestration in criminal cases and for nonsequestration in civil cases.

The decision as to what hours a jury works unquestionably rests with the judge, who bases this decision on potential juror hardship and on the interests of justice.

It is noted that the committee considered whether it would be appropriate to include misdemeanor trials within Standard 19 (d). The committee declined to make that change, due to the recent review of this matter in the Minnesota Rules of Criminal Procedure. It was decided that change, if any, is more appropriately left to the body reviewing the Criminal Rules.