

NEW YORK STATE UNIFIED COURT SYSTEM

TRIAL JUROR'S HANDBOOK



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MESSAGE FROM THE CHIEF JUDGE



On behalf of New York State's Unified Court System, welcome to Jury Service and thank you for being here today to participate in the work of your courts.

Since our nation's earliest days, the right to trial by jury has been central to the guarantee of equal justice for all. We could not preserve and protect this fundamental right without the participation of jurors like you.

We are keenly aware that New Yorkers have busy lives and that you have many demands on your time. Knowing that, we have transformed the jury system, by increasing the jury pool and reducing the length of jury service, in order to make your service more convenient.

Like voting, jury service gives you the opportunity to participate – in a very direct and personal way – in our democracy. We ask that each of you be prepared to serve for, at most, one trial. The majority of trials last only a few days. For this brief period of time, you are performing an important and extraordinary public service. If any of us found ourselves in court as a party to a dispute, we would hope to have an engaged, fair, and impartial jury of New Yorkers like you.

Jurors are responsible for evaluating the testimony and other evidence presented at trial and are the judges of the facts. Jury service calls upon individuals to make important decisions that directly affect the lives of your neighbors and members of your community.

Your jury service is your window into our criminal and civil justice system that relies on the common sense of New Yorkers like you.

As Chief Judge, and on behalf of all the members of the judiciary, we are grateful for your service here, as together we advance justice throughout our great state.

A handwritten signature in black ink that reads "Janet DiFiore". The signature is written in a cursive, flowing style.

JANET DIFIIORE

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INTRODUCTION

Being a juror does not require any particular skills, expertise or education. The jury's job is to fairly evaluate the evidence presented in a case.

This handbook provides information concerning the jury experience in the trial courts of New York State. It is not intended to replace the orientation session given by a Judge and/or the Commissioner of Jurors. Nor does it replace the instructions that a judge gives in a trial.

Even if not selected to serve on a jury, the juror's role is vital. Many times, the very presence of a jury encourages parties to resolve issues and avoid a trial.

BASIC QUESTIONS ABOUT JURY SERVICE

Why must I serve?

The constitutions of the United States and of the State of New York guarantee defendants in criminal trials and litigants in civil trials the right to a trial by jury. The New York State Judiciary Law states that all litigants have the right to juries selected from a fair cross section of the community and that all eligible citizens shall have both the opportunity and the obligation to serve.

Who must report?

There are no automatic exemptions or excuses from jury service in New York State. Everyone who is eligible must serve. You are eligible to serve as a juror in New York State if you are:

- 1) a United States citizen,
- 2) at least 18 years old, and
- 3) a resident of the county to which you are summoned to serve.

In addition, jurors must

- 4) be able to understand and communicate in the English language, and
- 5) not have been convicted of a felony. ¹

Where do you get the names of potential jurors?

Potential jurors are randomly selected from lists of registered voters, holders of drivers' licenses or ID's issued by the Division of Motor Vehicles, New York State income tax filers, recipients of unemployment insurance or family assistance, and from volunteers.

How do I know whether I am summoned for grand or trial jury service?

The jury summons states whether the juror is being summoned for grand jury or trial jury service. Only 5% of jurors are summoned for grand jury service.

How long is jury service?

Jurors who do not sit on a jury may serve for as little as 1–2 days. However, even if not needed for a trial a juror may be asked to be available or on call for up to five days. Those who are selected to serve on a jury are required to serve on only one trial. The judge informs the jurors how long the trial is expected to last. Length of service on a grand jury may vary from two weeks to a month or more. For more information about service as a grand juror see the Unified Court System's "Grand Juror's Handbook."

How often does a person have to serve as a juror?

A person who serves in a State or Federal court in New York—either by reporting in person or by being available to serve via a

¹ Persons previously convicted of a felony who have received a Certificate of Relief from Civil Disabilities or a Certificate of Good Conduct may be qualified to serve as jurors.

telephone call-in system—normally is not eligible to serve again in the New York State courts for at least six years. A juror who serves for more than ten days normally is not eligible to serve again in the New York State courts for at least eight years. Jurors who physically report to serve in Town and Village courts are eligible to serve again in two years. Just because a person is eligible to serve does not mean they will be called.

Can jury service be postponed?

Each juror summoned to serve in Supreme, County, District, or City court is allowed one automatic postponement, which can be requested by telephone, mail or, in some counties, by e-mail. The juror may select a date two to six months after being summoned. If the requested date is not available, the juror will be summoned for the closest available date. Requests for postponement should be made at least a week before the scheduled date of appearance. Generally, postponements are not granted on the scheduled appearance date.

What happens if a juror does not report for jury service?

Jury duty, like paying taxes, is mandatory. Skipping jury duty can result in civil or criminal penalties. In addition, anyone who skips jury service will be assigned a new date for future jury service.

What accommodations are available for jurors with disabilities?

The court provides services or aids to reasonably accommodate jurors with disabilities. Aids that are generally available for hearing impaired people include assistive listening devices, sign language interpreters, and “real-time” captioning of court proceedings. Courts may also be able to provide a reader for visually impaired jurors. A juror who has a mobility impairment and is sent to a courtroom with access problems may be reassigned to a different location that has better access. TDD users can call the relay service at 1-800-662-1220 to place the

call. Some courts may have a TDD or TTY in the Clerk's office. Access questions or requests for assistance should be addressed to a jury commissioner, court clerk or judge.

Is there a lot of waiting time during jury service?

The Unified Court System is working very hard to minimize the amount of time that jurors spend waiting. Nevertheless, jurors often have to wait while important court activities take place. Jurors are encouraged to bring along books or newspapers to read during breaks. Many jury assembly rooms also provide computer work stations for waiting jurors' use and free Internet access.

How can an employer be sure that an employee actually served?

Jurors may request a "proof of service" showing the dates of service. Jurors can show this proof to employers and also to the court in the unlikely event that they are summoned again before their period of ineligibility ends.

EMERGENCIES

What if a juror has an emergency?

It is important that jurors report promptly. Absences or lateness may delay or even jeopardize trials. A juror who faces a serious emergency should follow the instructions given by the judge. A juror who is unable to follow the instructions should telephone the Commissioner of Jurors' office. The jury summons generally provides a number to call in case of emergencies.

How will jurors know what to do if there is a weather emergency?

Information about emergency court closings is available from the Commissioner of Jurors for your county or by going to the

website www.nyjuror.gov. Some counties have a special number to call for emergency information which is located on the jury summons.

PAYMENT OF JURORS

What is the jury fee?

The jury fee is \$40 per day. If service extends beyond 30 days the court may authorize an additional \$6 per day per juror.

The fee is paid by the State or the employer depending on (1) the day of service and (2) the size of employer. Employers' jury fee obligations are explained below. For help figuring out how the rules apply to your individual circumstances, you can use the chart "Who Pays Your Jury Fee?" on pages 8-9 of this guide. You can also visit our website, www.nyjuror.gov, and click on "Who Pays Your Jury Fee?" or call 1-800-NYJUROR.

Which employers must pay the jury fee?

Employers are encouraged but not required to pay an employee's full daily wage while the employee is serving as a juror. Employers of more than 10 employees are required to pay jurors at least the jury fee or the employee's wage (whichever is lower) each day for the first three days of jury service. If the juror's daily wage is less than the jury fee, then the State makes up the difference. Employers of 10 or fewer employees are not required to pay the jury fee. The State will pay the jury fee for jurors who work for employers of 10 or fewer employees if the jurors are not paid at least the jury fee by their employers.

After three days, the State pays the jury fee for jurors who are not paid at least the jury fee. For jurors who are paid a daily wage that is less than the jury fee, the State makes up the difference.

Are transportation costs paid?

Jurors are not reimbursed for parking or other transportation costs.

Where does it say that employers of more than 10 employees must pay the jury fee for the first three days of service?

This requirement is contained in Section 519 of the New York State Judiciary Law covering “Right of juror to be absent from employment,” which is reprinted on page 22 of this handbook.

Who pays the jury fee to a self-employed or unemployed person?

The State pays the jury fee to persons who are not employed or are self-employed and have 10 or fewer employees, as well as those who are collecting unemployment insurance, workers compensation, public assistance, or disability.

Are part-time employees paid for jury service?

The same rules apply to part-time and full-time employees. Employers of more than 10 employees must pay the jury fee for the first three days of jury service. If a part-time employee’s daily wage is less than the jury fee, then the employer must pay that wage as a jury fee and the State will make up the difference. After three days, the State pays the jury fee to part-time employees who are not being paid while on jury service. For those who are paid a wage that is less than the jury fee, the State will make up the difference.

Part-time employees who do not miss work due to jury service are paid the jury fee by the State.

Who pays the jury fee for a juror who serves for part of the day and works for part of the day?

Everyone who appears for jury service ready to serve is entitled to be paid for their service. An employee who serves as a juror for part of the day and works for part of the day, must be paid by the employer for the time worked. For the first three days of service, employers of more than 10 are obligated to pay either the jury fee or the juror's wage for the time missed from work. If the employee's wage for the time missed from work is equivalent to or greater than the jury fee, then the employer is obligated to pay at least the jury fee. If the employee's wage for the time missed from work is less than the jury fee, then the State will make up the difference between the wage and the jury fee.

Who pays the jury fee for an employee who works for more than one employer each day?

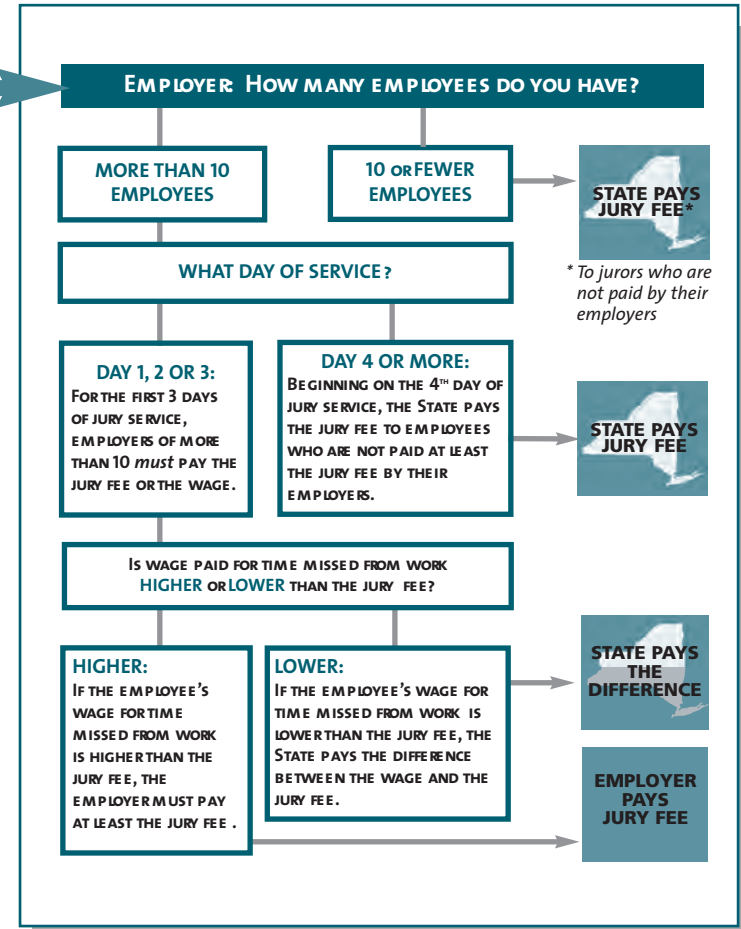
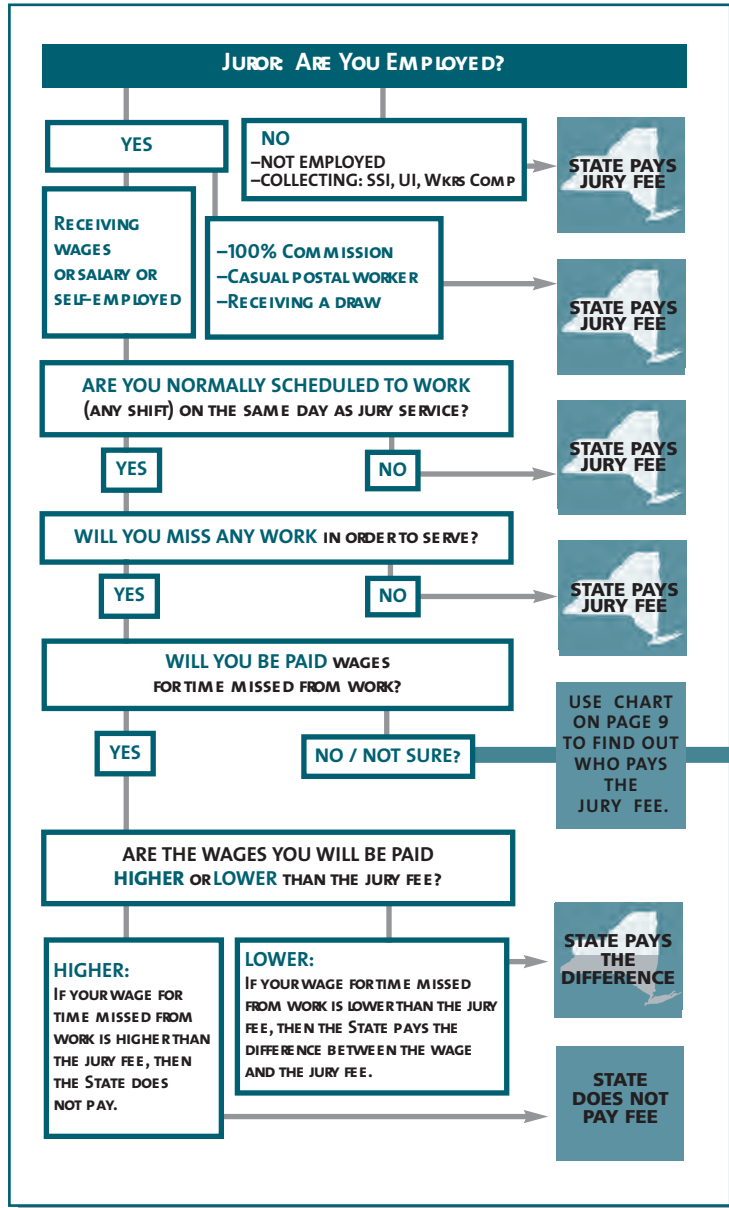
The fact that an employee has more than one employer does not relieve each employer of jury fee obligations.

EMPLOYERS' OBLIGATIONS

Must employers allow employees to serve?

Yes. An employee must be allowed time off from work to serve as a juror. It is illegal for an employer to discharge or penalize an employee who is summoned to serve and who notifies his or her employer before the jury service date. An employer who discharges or penalizes an employee for serving as a juror may be prosecuted by the Office of the Attorney General and subjected to criminal penalties.

WHO PAYS YOUR JURY FEE?



May an employer require an employee to take vacation or other paid leave while serving?

No. It is an illegal penalty to force an employee to charge jury duty absence against vacation, personal or sick time. However, because some employees may not be receiving full pay, an employee may choose paid leave over losing wages. An employer who penalizes an employee for service as a juror by forcing the juror to use paid leave may be prosecuted by the Office of the Attorney General and subjected to criminal penalties.

Are out-of-state employers required to pay New Yorkers who serve as jurors?

An out-of-state employer with more than 10 employees working in New York State must pay New York employees at least the jury fee for the first three days of service. However, an out-of-state employer who employs a New York resident at an out-of-state location is not required to pay the jury fee.

Who is the “employer” of a temporary worker provided by an agency?

Whoever pays the temporary employee is the employer for the purpose of jury service. If the agency pays the employee and has more than 10 paid employees, then the agency must pay at least the employee’s jury fee for the first three days. A company that pays the temporary employee directly and has more than 10 employees must pay at least the employee’s jury fee for the first three days.

May an employer require an employee who serves as a juror to make up time?

No. It is illegal to force an employee to work when the employee is not normally scheduled to work in order to make up for time lost as a result of jury service.

May an employee who is serving as a juror be required to work while serving?

It is an illegal penalty to force an employee to work a full shift while the employee is serving full days on jury service. Where a day's jury service is completed with less than a full day's court appearance, or where the required reporting to work is for a relatively short period of time, jury commissioners exercise their discretion to decide whether the required reporting to work is an illegal penalty. In exercising this discretion, jury commissioners will consider such issues as: relative inconvenience to employer and to employee, number of hours spent at the courthouse, number of hours to be worked on the job, travel time to and from court, travel time to and from the workplace, child care or other arrangements made by the employee in anticipation of jury service, and any other factor reasonably related to an employee's availability to work.

Are evening or night workers paid for jury service?

Evening or night workers who miss work due to jury service are paid the jury fee on the same basis as are employees who work during the day. Evening and night workers who do not miss time from work, are paid the jury fee by the State.

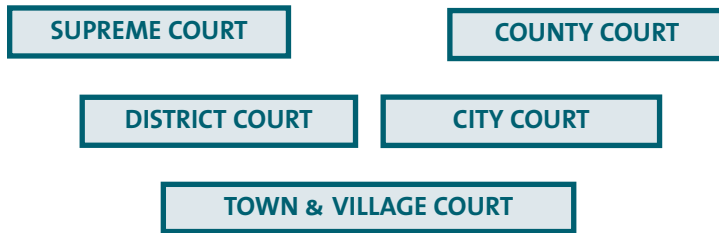
An employer may not require an employee who has reported and served for a full day of jury service to then work a full evening or night shift.

SERVING ON A JURY

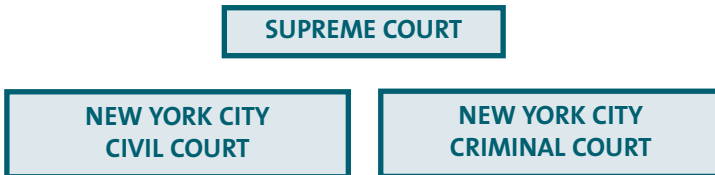
THE TRIAL COURTS

In New York State, jury trials are held in many different courts. Outside of New York City, a juror may be summoned to serve in Supreme, County, District, City, Town or Village Court. In New York City, a juror may be summoned to serve in Supreme Court or in New York City Civil or Criminal Court. During the jury selection process, the judge explains what type of case is being tried.

Outside New York City, jury trials are held in the following courts:



In New York City, jury trials are held in the following courts:



How long is the typical jury trial?

The average length of a civil trial is three to five days. The average length of a criminal trial is five to ten days. Any particular trial may be longer or shorter than the average.

Is it true that sometimes jurors are not allowed to go home until after the trial is over?

In extremely rare instances a jury may be sequestered during a trial. “Sequestered” means that jurors do not go home at the end of the day, but stay in a hotel, where their access to other people, radio, television news, and newspapers is limited. The judge will inform the jurors in advance if there is a possibility that the jury may be sequestered. All meals and lodging for sequestered jurors are paid for by the county.

WHO ELSE WILL BE IN THE COURTROOM?

A number of people may be in the courtroom in addition to the judge and jury. The list below explains who they are and what they may be doing.

Attorneys or Counsel Attorneys representing the plaintiff, the defendant or the government are referred to as counsel.

Court Reporter The court reporter records every word that is spoken. This record will be converted into an official transcript of the trial. During deliberations the jury may ask to have parts of this record read to them.

Court Clerk The clerk maintains the court files and preserves the evidence presented during the trial. The clerk may also administer the oath to jurors and to witnesses.

Court Officer Court officers keep order, maintain security, and assist the judge and the jury as needed.

Defendant In a civil matter, the defendant is the party who is being sued. In a criminal case, the defendant is the person who is charged with a crime.

Interpreter Interpreters are provided for non-English speaking or hearing impaired witnesses. A sign language interpreter may interpret for a hearing impaired juror, attorney or party.

Plaintiff In a civil case, the plaintiff is the party who is suing.

Prosecutor An attorney representing the government in a criminal case is called the prosecutor or prosecuting attorney or the assistant district attorney, and in some cases, the assistant attorney general. In New York State the prosecution is sometimes referred to as “The People.”

Spectators Spectators are members of the public who are generally permitted to observe court proceedings. Spectators sometimes include representatives of the media.

Witnesses Witnesses testify under oath. In most instances, before they testify, witnesses are not permitted to be in the courtroom.

WHAT HAPPENS IN A TRIAL?

THE STEPS OF A TRIAL

A criminal trial is a process for establishing whether the prosecutor has proved beyond a reasonable doubt that an individual is legally guilty of a crime. A civil trial is conducted as a way to enforce or protect private rights. Though the goals of the two kinds of trials are different, the general steps of the trial are the same. These steps are outlined on the following page.

JURY SELECTION

OATH AND PRELIMINARY INSTRUCTIONS

OPENING STATEMENT OR STATEMENTS

TESTIMONY OF WITNESSES AND PRESENTATION OF OTHER EVIDENCE

CLOSING ARGUMENTS

JURY INSTRUCTIONS

DELIBERATIONS

JURY SELECTION

Juries are selected through a questioning process known as “voir dire.” The lawyers, and sometimes the judge, ask questions to decide whether or not each juror should serve on a particular case. The questions are intended to learn whether an individual has any bias or personal knowledge that could hinder his or her ability to judge a case impartially.

Sometimes jurors are asked to complete a questionnaire as part of this process. The questionnaire answers introduce the judge and attorneys to the jurors before oral questions are asked. They help the judge and attorneys ask questions and make decisions during the voir dire.

In a criminal trial the voir dire questioning is always recorded by the court reporter. Any written answers to questionnaires are also made a part of the trial record. In most civil trials, by contrast, the voir dire questioning is not recorded by a court reporter and juror questionnaires are not part of the trial record.

Some people who are questioned will not be seated as jurors. If a juror cannot be fair and objective, the judge may excuse the juror “for cause.” There is no limit to the number of people who might be excused from a jury “for cause.” In addition, attorneys have the right to use a set number of peremptory challenges to excuse jurors without explanation.

Number of Jurors

For a criminal felony trial, there are 12 jurors plus up to six alternates. For a civil trial there are usually six jurors plus up to four alternates. The jury for lesser criminal charges, including misdemeanors, also has six jurors and up to four alternates. Alternate jurors are necessary in case a juror must be excused due to an emergency. Because an alternate juror may be asked to take an excused juror’s place, it is important that alternates pay careful attention to the proceedings.

Usually the first juror seated is the foreperson. In deliberations the foreperson has the same status as any other juror. The foreperson generally has the job of reporting the jury’s verdict to the judge.

Oath and Preliminary Instructions

When enough jurors and alternates have been selected, an oath is administered to the jurors. Each juror pledges to act fairly and impartially and follow the law that is explained by the judge. After the oath, the judge explains the jurors’ responsibilities and some of the legal concepts that apply to the case. The judge’s explanations are called instructions and include requirements that jurors: not read or listen to news accounts of the trial, not visit the scene of an alleged offense, not conduct any research about issues in the case including use of the Internet, and not discuss the case with anyone (including other members of the jury) until all the evidence has been presented and the jury retires to deliberate.

Opening Statements

After the judge's preliminary instructions, the lawyers can make opening statements to the jury. The opening statement presents the issues in the case from one side's point of view. In a criminal trial, the prosecutor's opening statement outlines the charges and evidence that will be offered. Because the burden of proof in a criminal trial is on the prosecution, and the defendant is presumed to be innocent, the defense is not required to make an opening statement, but may choose to do so. In a civil trial the lawyer or lawyers for each side will make opening statements. The lawyer for the plaintiff (the party that is suing) explains the plaintiff's point of view about the case. The lawyer for the defendant explains the defendant's point of view. Sometimes there is more than one plaintiff or more than one defendant. In those cases a lawyer for each individual plaintiff or defendant may make an opening statement. Opening statements are not evidence.

Notes During Trial

Jurors are permitted to take notes during trials in New York State. The judge decides at the beginning of the trial whether to permit note-taking.*

Questions During Trial

The judge may allow jurors to submit written questions for witnesses. The judge decides whether or not to ask each question submitted by a juror.

Presentation of Evidence

Each side has an opportunity to present witnesses, to cross-examine the witnesses presented by the other side, and to present other evidence. Because in a criminal trial, the

* *People v. Hues*, 92 N.Y. 2d 413 (1998).

defendant is presumed to be innocent and the prosecution has the burden to prove its case beyond a reasonable doubt, the defense is not required to put on witnesses or to present any evidence at all.

Closing Arguments

Usually, each lawyer will make a closing argument — a sum-up of that side’s point of view about the evidence and the decisions the lawyer would like the jury to make.

Jury Instructions

After the presentation of witness testimony and other evidence is complete, the judge explains the laws that apply to the case and the issues the jury is to consider. These remarks by the judge are called the jury instructions. Sometimes in addition to giving these instructions orally, they are given to the jury in writing. After the judge instructs the jury, the jurors go to a jury room to deliberate.

Deliberations

The jury reviews the evidence which was presented. The jurors discuss their views about this information.

During deliberations, each juror should keep an open mind, listen carefully, and be prepared to explain their point of view. It is easier to reach a sound verdict when jurors remain courteous and patient, listening openly to each others’ views.

If questions arise during deliberations, or if there is a need for further instructions or to have testimony read, the foreperson may send a written request to the judge through the court officer. The judge will ask all parties to return to the courtroom to be present when a jury’s question is addressed.

The Verdict

In a criminal case, a finding that the defendant is guilty or not guilty must be by unanimous vote of the jury. If a jury reaches a guilty verdict the judge will decide the sentence, usually in a separate proceeding, in accordance with the law.

In a civil case, the verdict does not have to be unanimous; agreement by five of the six jurors is sufficient. A civil trial jury may be asked to decide whether there should be an award of money damages, and if so, how much money should be awarded.

When the jury reaches its verdict, the foreperson notifies the court officer, who advises the judge. Everyone, including the jury is called back into the courtroom. When everyone is present, the clerk will ask the foreperson for the jury's verdict. In some cases, each member of the jury is asked how he or she voted.

JURORS' RIGHTS & RESPONSIBILITIES

Every Jurors' Rights

- Be treated with courtesy and respect at all times;
- Express concerns, complaints and recommendations to court personnel;
- Have questions answered plainly and clearly;
- Remain informed about the schedule.

The American Bar Association Commission on the American Jury makes the following suggestions for jurors:

- Answer all questions you are asked honestly and completely.
- If there's something you don't understand, ask the judge or other court personnel.

Once selected for a trial, jurors should remember:

- Use only the evidence you are given.
- Do not do your own "research" about a case.
- Follow the judge's instructions.
- Do not interpret the judge's conduct as a cue about the case.
- Respect each other and each other's opinions.

Informing Your Employer About Jury Service

Jurors should inform their employers as soon as they receive a summons. Pages 5-11 of this Handbook and the pamphlet "Jury Information for Employers" detail employers' responsibilities in connection with their employees' jury service.

Discussing the Case

Jurors may not discuss the case with anyone during the trial including fellow jurors or attorneys. The only times when jurors are permitted to discuss the case are during deliberations and after the jury has completed its deliberation and the trial is over. When the trial is over, the juror may discuss it with others or may keep silent.

If a juror accidentally hears something about the trial outside the courtroom, or is contacted about the trial while it is still going on, the juror should ask the court clerk or court officer to immediately tell the judge what has happened. The juror should not tell anyone about the incident except the court clerk, officer or the judge.

News, Television and Radio Reports

During the trial, jurors are not allowed to read, watch or listen to media stories relating to the trial to which they are assigned. After a trial is over, jurors are free to talk to media reporters but only if they choose to do so.

JUDICIARY LAW, ARTICLE 16, SELECTION OF JURORS

§ 519. Right of juror to be absent from employment.

Any person who is summoned to serve as a juror under the provisions of this article and who notifies his or her employer to that effect prior to the commencement of a term of service shall not, on account of absence from employment by reason of such jury service, be subject to discharge or penalty. An employer may, however, withhold wages of any such employee serving as a juror during the period of such service; provided that an employer who employs more than ten employees shall not withhold the first forty dollars of such juror's daily wages during the first three days of jury service. Withholding of wages in accordance with this section shall not be deemed a penalty. Violation of this section shall constitute a criminal contempt of court punishable pursuant to section seven hundred fifty of this chapter.

§ 521. Fees and travel expenses of jurors.

(a) Except as provided in subdivision (b) of this section, trial and grand jurors in each court of the unified court system shall be entitled to an allowance equal to the sum of forty dollars per day for each and every day of physical attendance wherein the court convenes, except that no person who is employed shall be entitled to receive such allowance if, pursuant to section five hundred nineteen of this article, his or her employer is prohibited from withholding the first forty dollars of wages of such person during such period and such person's daily wages equal or exceed forty dollars. If such person's daily wages are less than forty dollars, he or she shall be entitled to receive an allowance hereunder equal to the difference between forty dollars and the amount of his or her daily wages. Such fees and those expenses actually and necessarily incurred in providing food and lodging for jurors shall be a state charge payable out of funds appropriated to the office of court administration for that purpose. (b) No employee shall be entitled to receive the per diem allowance authorized by subdivision (a) of this section for any regularly scheduled workday on which jury service is rendered if, on such day, his or her wages are not withheld on account of such service. (c) Notwithstanding any other provision of this section, a trial or grand juror may waive entitlement to the allowance authorized by subdivision (a) of this section. In such event the amount of such allowance shall be available to the chief administrator of the courts solely for the purposes specified in paragraph (m) of subdivision

two of section two hundred twelve of this chapter, except that any such amounts not expended in such fashion as of the close of the fiscal year in which they became available shall be transferred by the comptroller to the supplemental jury facilities fund established pursuant to section ninety-four-c of the state finance law.

JUDICIARY LAW, ARTICLE 19, CONTEMPTS

§ 750. Power of courts to punish for criminal contempts.

A court of record has power to punish for a criminal contempt, a person guilty of subjection of an employee to discharge or penalty on account of his absence from employment by reason of jury or subpoenaed witness service.

§ 751. Punishment for criminal contempts.

...[P] Punishment for a contempt, specified in section seven hundred fifty, may be by fine, not exceeding one thousand dollars, or by imprisonment, not exceeding thirty days, in the jail of the county where the court is sitting, or both, in the discretion of the court.

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