

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CHANGES
TO COURT RULES TO IMPROVE THE
PRESENTATION OF EVIDENCE TO
JURORS, IMPROVE CASELOAD
MANAGEMENT TO BETTER UTILIZE
JURORS AND THOSE CALLED TO
JURY DUTY, AND EXPAND THE ROLE
OF JURORS IN THE TRIAL PROCESS.

ADKT No. 351

FILED

DEC 16 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER ACCEPTING REPORT OF JURY IMPROVEMENT
IMPLEMENTATION COMMITTEE AND APPROVING
RECOMMENDATIONS

WHEREAS, this court established the Jury Improvement Commission in 2001 with a mandate to study the jury system in Nevada and recommend changes to improve efficiency, make the process more user friendly for citizens and lawyers, and ensure that verdicts are fair and reliable; and

WHEREAS, the Commission held public hearings and considered questionnaires completed by former jurors, input from leading experts in the field of jury innovations, and reports prepared in other states; and

WHEREAS, in October 2002, the Commission published its recommendations to improve the jury system in this state in a report entitled "Justice by the People"; and

WHEREAS, the co-chairs of the Commission, Justice Deborah A. Agosti and Justice Robert E. Rose, and Commission member Justice

Mark Gibbons petitioned this court to adopt the Commission's recommendations and to adopt or amend court rules as necessary to implement those recommendations; and

WHEREAS, this court considered the petition and the Commission's report, adopted the report on April 25, 2003, and further ordered that a Jury Improvement Implementation Committee chaired by Justice Mark Gibbons be created for the purpose of developing specific proposals to implement the various recommendations in the Commission's report and to report back to the court; and

WHEREAS, on December 3, 2004, Justice Mark Gibbons petitioned this court to adopt the recommendations, which were unanimously approved by the Committee; accordingly,

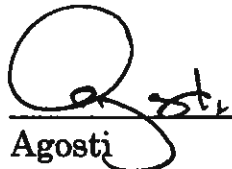
IT IS HEREBY ORDERED that the Supreme Court of Nevada grants the petition and accepts the Nevada Jury Improvement Implementation Committee's report, attached hereto as Exhibit "1," and adopts in principle the Committee's conclusions and recommendations set forth in the report. This court, however, reserves the discretion to review particular implementation measures and rule changes as they are proposed.


IT IS FURTHER ORDERED that the district judges shall act with all due diligence to implement the recommended trial procedures reflected in recommendations 1 through 7 that are within the trial court's discretionary authority over the conduct of jury trials, but no later than July 1, 2005. The district courts shall also proceed in a timely fashion to

implement the recommendations regarding case management and pre-trial conferences consistent with NRCP 16.1 timelines.

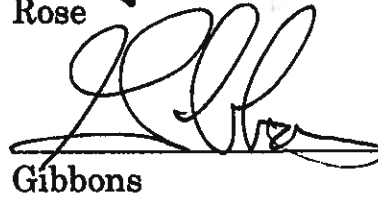
Dated this 16th day of December, 2004.

 _____, C.J.
Shearing

 _____, J.
Agosti

 _____, J.
Rose

 _____, J.
Becker

 _____, J.
Gibbons

 _____, J.
Douglas

cc: All District Court Judges
All County Clerks
Court Administrator, Second Judicial District
Court Administrator, Eighth Judicial District
Administrative Office of the Courts

Exhibit "1"

RECOMMENDATIONS OF THE
JURY IMPROVEMENT IMPLEMENTATION COMMITTEE

1. Juror Questions

Flores v. State, 114 Nev. 910, 965 P.2d 901 (1998), allows jurors to ask questions of witnesses at the discretion of the trial judge. However, after receiving testimony from former jurors, members of the Nevada Bar Association and the general public, the Jury Improvement Commission of the Nevada Supreme Court has recommended that jurors have the right to ask questions in every jury trial. As the Commission was told during testimony, allowing jurors to ask questions can reduce trial delays, such as those caused by unnecessary read-backs of testimony or extended deliberations as a result of juror confusion. Upon consideration of Standard 13C of the American Bar Association's revised draft of standards for juries and jury trials and after conducting a pilot program on the practicality of juror questions in the Second, Fourth, and Eighth Judicial District Courts, the Jury Improvement Implementation Committee makes the following recommendations for implementation of the Jury Improvement Commission's recommendation to become effective July 1, 2005:

Jurors shall have the conditional right to ask questions of witnesses in all civil and criminal trials. The trial courts, however, may exercise their sound discretion to prohibit juror questions by making specific findings on the record as to why juror questions should not be permitted based upon the facts and circumstances of a particular trial. The trial judge may consider the arguments of counsel prior to making its determination. However, juror questions should be prohibited only in unusual and rare situations and based only upon distinct circumstances pertinent to the particular trial. When juror questions are allowed, the trial court

shall ask the juror question to the witness. The trial court must incorporate procedural safeguards including, but not limited to, the following:

- a. Initial jury instructions explaining that questions must be factual in nature and designed to clarify information already presented.
- b. The requirement that jurors submit their questions in writing.
- c. Determinations regarding the admissibility of questions must be conducted outside the presence of the jury. Discussions "outside the presence of the jury" may include sidebars if a record is not required or the removal of the jury from the courtroom if a record is required. Determinations regarding the admissibility of questions should be conducted outside the presence of the jury unless the court determines, as a matter of law, that a question is improper and cannot be asked.
- d. Counsel shall have the opportunity to object to each question unless the court determines, as a matter of law, that a question is improper and cannot be asked.
- e. An admonition that only questions permissible under the rules of evidence will be asked and jurors should not draw any inferences or conclusions if a submitted question is not asked.
- f. Counsel is permitted to ask follow-up questions.
- g. The admonition that jurors must not place undue weight on the responses to their questions.

Jurors must be further instructed that asking questions is the primary responsibility of counsel and that a limited number of questions may be posed by jurors. Jurors must be further instructed that jurors will not be allowed to become "the third attorney" or advocate a position

and the trial court has the discretion to preclude individual jurors from asking excessive numbers of questions.

The Supreme Court should review procedures pertaining to juror questions subsequent to two years after the effective date of the adoption of this recommendation.

2. Use of Mini-Opening Statements and Jury Tutorials

The Jury Improvement Implementation Committee has determined that based upon the experimental use of mini-opening statements and jury tutorials, jurors do not find them of additional assistance in reaching their verdicts. Therefore, the Jury Improvement Implementation Committee recommends that the Supreme Court not authorize the use of mini-opening statements in jury tutorials.

3. Reading and Use of Jury Instructions at the Beginning of the Trial

The Jury Improvement Implementation Committee has determined that based upon the experimental use of reading jury instructions, in addition to stock instructions, at the beginning of the trial, jurors do not find this of additional assistance in reaching their verdicts. Therefore, the Jury Improvement Implementation Committee recommends that the Nevada Supreme Court not authorize the reading of additional jury instructions at the beginning of the trial unless the trial court determines in its discretion that they are of assistance to the jury to clarify legal issues and promote a just conclusion. However, the Supreme Court is encouraged to update and standardize stock civil and criminal jury instructions for use throughout the State of Nevada.

4. Use of Jury Notebooks

The Jury Improvement Implementation Committee believes that the use of jury notebooks is very helpful in both civil and criminal cases. Although there are some expenditures of public funds involved if notebooks are utilized in criminal cases, the value of jury notebooks

is worth the expense. In civil cases, the attorneys advance the costs or these costs should be taxable court costs pursuant to NRS 18.005. The Jury Improvement Implementation Committee recommends to the Supreme Court that trial judges be given the discretion to waive the requirement to utilize jury notebooks only based upon extenuating circumstances in specific cases and a record of such circumstances shall be made. As part of pretrial procedures in civil cases, the parties, through their counsel, should be required to meet and confer prior to the pretrial conference with the court to stipulate regarding the contents of the jury notebooks. All pretrial orders issued by the District Court should include this requirement. At the pretrial conference, the contents of the jury notebooks would be approved or determined by the judge. In criminal cases, the parties should be required to meet and confer about jury notebook content one week prior to Calendar Call. Contents of jury notebooks generally should include photos of witnesses if the trial is of such a length that the photos would refresh juror recollections, pertinent evidentiary documents, and jury instructions. Not all evidentiary documents need be included in the notebooks to prevent the notebooks from becoming unwieldy during lengthy or complex trials. The notebooks, however, should include copies of documents that will be referred to frequently in trial. The courts may defer to attorneys to stipulate to the contents of the notebooks (other than photos and jury instructions) if there is a need to reduce the number of documents in the notebooks.

5. Clustering of Expert Witness Testimony

The Jury Improvement Implementation Committee recommends that the Nevada Supreme Court authorize and encourage the use of clustering of expert witness testimony during the course of civil and criminal trials. Judges at the pretrial conferences should urge attorneys to arrange for the experts in particular subject areas to testify consecutively at trial. However, the

trial court should have the discretion to waive this requirement based upon scheduling issues with the experts or constitutional protections. A record of the reasons for a waiver should be made.

6. Mini-Closing Arguments

As a result of statements made by jurors in recent pilot program trials against mini-closing arguments following the clustering of expert testimony, the Jury Improvement Implementation Committee recommends that the Supreme Court not mandate the use of mini-closing arguments. Jurors reported to the trial judges that the mini-closing arguments are redundant with the final closing arguments and do not provide additional help in reaching their verdicts. In unusually complex or lengthy cases, trial judges should have the discretion to authorize mini-closing arguments if the trial judge believes it would help clarify legal issues and promote a just conclusion.

7. Jury Exit Questionnaire

The Jury Improvement Implementation Committee recommends that a standard jury exit questionnaire be utilized for all jury trials statewide. The questionnaire should gather meaningful data about the jury trial experience that will help the trial judge and others involved in the justice system improve the way jurors are processed and treated. Questionnaires should be distributed to the jurors at the time they are discharged or mailed on occasions when such distribution is impractical. The jurors should be requested to fill out the questionnaire and return it with a self-addressed, stamped envelope provided to them. In jurisdictions that have a jury commissioner, the questionnaire should be returned to the jury commissioner to compile the data. In jurisdictions that do not have a jury commissioner, the questionnaire should be returned to the District Court judge who conducted the trial to compile the data. The data compiled from

the questionnaire should be distributed to the trial judge, bailiff, the court clerk, court reporter, and judicial executive assistant and be available to the Administrative Office of the Courts. It should further be submitted to the chief judge in judicial districts that have a chief judge. A sample of a proposed jury exit questionnaire utilized by Second Judicial District Judge James Hardesty is attached hereto. The Committee recommends that the final content of the survey to be used statewide should be determined following consultation with jury improvement experts from the National Center for State Courts.

8. Judicial Case Management and Meaningful Pretrial Conferences

The primary complaint of prospective jurors and jurors is that they are forced to wait and they feel their time is being wasted. To minimize the impact on citizens called to jury duty, it is necessary to establish rules for case management procedures that promote pretrial resolution of cases and eliminate the need to summon some citizens. Case management rules also are necessary to reduce the time spent waiting by those who do report for jury duty.

As recommended by the Jury Improvement Commission, the Supreme Court should instruct the District Courts to establish judicial case management rules such as the following that were included in the Commission's report:

1. A Pretrial Scheduling Order shall be issued no later than 10 days after the filing of the Answer to the Complaint or motion filed under Nevada Rule of Civil Procedure 12. Counsel for the parties shall set a mandatory pretrial conference with the court to be held within 60 days of the filing of the Pretrial Scheduling Order.

2. Counsel and parties must be prepared to discuss the following:

a. Status of NRAB 16.1 settlement discussions and an assessment of possible court assistance,

- b. Alternative dispute resolution techniques appropriate to the case,
 - c. Simplification of issues,
 - d. The nature and timing of all discovery,
 - e. Any special case management procedures appropriate to the case,
 - f. Trial setting, and
 - g. Other matters that may aid in the prompt disposition of the action.
3. Trial or lead counsel for all parties (if the party is an entity, an authorized representative) must attend the conference.
4. A representative with negotiating and settlement authority of any insurer insuring any risk pertaining to the case must attend.
5. Upon request and/or stipulation of counsel and at the discretion of the court, a party or parties may appear telephonically.

As recommended by the Jury Improvement Commission, the Supreme Court should instruct the District Courts to establish meaningful pretrial conferences. The following was the recommendation of the Jury Improvement Commission in its report:

District Courts should embrace all forms of pretrial dispute resolution. The Commission recommends the use of pretrial conferences with the district judge's full involvement to decide issues prior to trial and streamline the case as much as possible for jury presentation. One attorney (testifying before the Commission) contrasted the practices of two district court judges in his district – one conducts a pretrial conference and decides all possible issues prior to trial while the other conducts no pretrial conferences. The attorney said that the two different judicial approaches produce two distinctly different results. When one or more formal pretrial conferences are held with

the judge actively participating, many legal issues are decided before trial and delays are reduced. When no pretrial conference is held, all the legal issues that arise are necessarily determined during trial, wasting valuable court time, causing jurors and witnesses to sit and wait, impacting witness's schedules, and unnecessarily increasing the trial costs. The Commission believes district court judges should actively engage in pretrial case management.

In judicial districts where it is feasible, such rules should be implemented as soon as possible. In judicial districts where immediate implementation is impractical because of workload or manpower issues, steps should be taken to implement such rules within 12 months. In those districts, the courts should report to the Supreme Court in writing, within six months, of the progress being made toward implementation. The report should include the time frame for full implementation.

SAMPLE

POST-SERVICE JUROR QUESTIONNAIRE

(Case Name)

Case No.

1. Dates of Jury Service: _____ (Date)
2. Number of days you reported for Jury Duty: _____
3. Type of case: Civil _____ Criminal _____
4. Is your opinion of the Civil Justice System better or worse than before your Jury experience? Better _____ Worse _____ Unchanged _____
5. Please mark the number which best represents your opinion:

		Strongly Agree				Strongly Disagree
A.	My services as a juror were well used	1	2	3	4	5
B.	My purpose and role were accurately and clearly explained to me by the Judge	1	2	3	4	5
C.	The Judge made me feel comfortable about my role	1	2	3	4	5
D.	I would be willing to serve as a juror again under similar circumstances	1	2	3	4	5
E.	The Judge appeared knowledgeable about laws involved in the case	1	2	3	4	5
F.	The Judge appeared to be fair to all parties and free from bias	1	2	3	4	5
G.	Jury Service was a valuable experience	1	2	3	4	5
H.	The Judge managed the proceedings efficiently	1	2	3	4	5

6. Please indicate the ease or difficulty of each of the following:

		Very Easy				Very Difficult
A.	Waiting in the Jury assembly area	1	2	3	4	5
B.	Being questioned by Attorneys before Trial	1	2	3	4	5
C.	Being questioned by the Judge before Trial	1	2	3	4	5
D.	Waiting in the Courtroom for the case to begin	1	2	3	4	5
E.	Waiting during recess period in trial	1	2	3	4	5

7. Rate your opinion of each of the following individuals:

		Extremely Positive				Extremely Negative
A.	Judge	1	2	3	4	5
B.	Plaintiff=s Attorney or Prosecutor	1	2	3	4	5
C.	Defendant=s Attorney	1	2	3	4	5
D.	Bailiff	1	2	3	4	5
E.	Jury Commissioner and Staff	1	2	3	4	5
F.	Other Courtroom Personnel	1	2	3	4	5

8. What could be done to make Jury Service a more positive experience for Jurors?

9. Do you have any suggestions or other comments for or about the Judge?

10. Optional:

Name:

Address:
