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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION)
TO AMEND RULES 18.5, 18.6, 22.1, 22.5) Supreme Court No. R-08-____
ARIZONA RULES OF CRIMINAL)
PROCEDURE and RULES 39(d), 47(b), 51(a))
ARIZONA RULES OF CIVIL PROCEDURE)

**PETITION TO AMEND VARIOUS RULES OF PROCEDURE
RELATING TO JURORS**

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts (AOC), respectfully petitions this Court to adopt the attached, proposed amendments to Rules 18.5, 18.6, 22.1, 22.5 of the Arizona Rules of Criminal Procedure and Rules 39(d), 47(b), 51(a) of the Arizona Rules of Civil Procedure relating to jurors.

**BACKGROUND AND PURPOSE OF THE PROPOSED
AMENDMENTS TO RULES**

In 2002, the Ad Hoc Committee to Study Jury Practices and Procedures submitted their Final Report and Recommendations to the Arizona Supreme Court. The report recommended a number of reforms related to improving jury service in Arizona. Many of the reforms were incorporated into a new section of the Arizona Code of Judicial Administration, § 5-203: Trial Jury Management (hereinafter “ACJA § 5-203”), adopted by Administrative Order 2003-34 and subsequently amended by Administrative Orders 2003-96, 2004-34, and 2007-105.

ACJA § 5-203 is intended to address trial and grand jury management and the treatment of jurors by the jury commissioner or jury manager prior to empanelment. However, upon closer review of existing ACJA § 5-203, the AOC has identified several provisions that relate to the judicial function of jury procedures that occur during and after trial. Specifically, these provisions set forth procedures for voir dire, removal from the jury panel for cause, peremptory challenges, instructing a jury, dismissing a jury, jury size and unanimity of verdict, jury anonymity, jury deliberations, and sequestration of jurors. Since these particular provisions govern the judicial process and attorney practice, they are better suited for court rule instead of the ACJA, and, in fact, many of these topics are already adequately covered by court rule.

Therefore, the attached Proposed Rule Changes re Jury Procedures incorporates certain provisions of ACJA § 5-203 into court rules as indicated. Should this Petition be granted, the AOC would then propose to removal of these provisions from ACJA § 5-203, to coincide with the effective date of the rule amendments.

RESPECTFULLY SUBMITTED this _____ of _____, 2008:

By _____
David K. Byers, Director

Proposed Rule Changes re Jury Procedures

Arizona Rules of Criminal Procedure

[Added text is shown underlined, deleted text is shown with ~~strikethrough~~]

Rule 18.5. Procedure for Selecting a Jury

* * *

d. Voir Dire Examination. ~~The court shall~~ The judge shall control the voir dire examination and shall conduct a thorough oral examination of prospective jurors. In courts of record, voir dire shall be conducted on the record. Upon the request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors, giving due regard to the purpose of such examination. In addition, the court may terminate or limit voir dire on grounds of abuse. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination.

e. Scope of Examination. The judge shall ensure the privacy of prospective jurors is reasonably protected. The examination of prospective jurors shall be limited to inquiries directed to bases for challenge for cause or to information to enable the parties to exercise intelligently their peremptory challenges.

* * *

Rule 18.6. Preparation of jurors

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c. Preliminary Instructions. Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses or of the court as set forth in Rule 18.6(e), and the elementary legal principles that will govern the proceeding. The instructions shall be provided in a manner that makes them as readily understandable as possible by individuals unfamiliar with the legal system.

d. Note Taking; Access to Juror Notes and Notebooks. The court shall instruct

the jurors that they may take notes regarding the evidence presented. The court shall provide materials suitable for this purpose. In its discretion, the court may authorize documents and exhibits to be included in notebooks for use by jurors during trial to aid them in performing their duties. Jurors shall have access to their notes and notebooks during recesses and deliberations. After the jury has rendered its verdict, the notes shall be collected by the bailiff or clerk who shall destroy them promptly. In a capital case, the jurors shall have access to their notes from the trial and all phases of the sentencing proceedings until the jury renders a penalty verdict or is dismissed.

e. Juror Questions. Jurors shall be instructed that they are permitted to submit to the court written questions directed to witnesses or to the court; and that opportunity will be given to counsel to object to such questions out of the presence of the jury. Notwithstanding the foregoing, for good cause the court may prohibit or limit the submission of questions to witnesses.

f. Additional Communications. The judge shall provide additional instructions to the jury as necessary during the course of the trial. All communications between the judge and members of the jury panel shall be in writing or on the record.

Rule 22.1. Retirement of Jurors

a. Retirement. Prior to the commencement of deliberations, the judge shall instruct the jury on the law, the appropriate procedures to be followed during deliberations, and the appropriate method of reporting the results of its deliberations. Such instructions shall be recorded or reduced to writing and made available to the jurors during deliberations. ~~After instructing the jury, the~~ The court shall appoint or instruct the jurors to elect a foreman. The jurors shall then retire in the custody of a court officer and consider their verdict.

b. Permitting the Jury to Disperse. The court may in its discretion permit the jurors to disperse after their deliberations have commenced, instructing them when to reassemble and giving the admonitions of Rule 19.4

c. Length of Jury Deliberations. The court shall not require a jury to deliberate after normal work hours unless the judge, after consultation with the jury and the parties, determines that evening or weekend deliberations are necessary in the interest of justice and will not impose an undue hardship upon the jurors.

Rule 22.5. Discharge

The court shall discharge jurors when:

- a. Their verdict has been recorded as set forth in Rule 23;
- b. Upon expiration of such time as the court deems proper, it appears that there is no reasonable probability that the jurors can agree upon a verdict; or
- c. A necessity exists for their discharge

When dismissing a jury at the conclusion of the case, the judge shall advise the jurors that they are discharged from service and, if appropriate, release them from their duty of confidentiality and explain their rights regarding inquiries from counsel, the media, or any person.

Arizona Rules of Civil Procedure

Rule 39(d). Verdict, Deliberations and Conduct of Jury; Sealed Verdict; Access to Juror Notes and Notebooks

1. Prior to the commencement of deliberations, the judge shall instruct the jury on the law, the appropriate procedures to be followed during deliberations, and the appropriate method for reporting the results of its deliberations. Such instructions shall be recorded or reduced to writing and made available to the jurors during deliberations.

2. ~~4.~~ When the jurors retire to deliberate, they shall be kept together in some convenient place in the charge of a proper officer. The court in its discretion may permit jurors to separate while not deliberating, or, on motion of any party or the judge, may require them to be sequestered in the charge of a proper officer whenever they leave the courtroom or place of deliberation. The court shall admonish ~~them~~ the jury not to converse among themselves or with anyone else on any subject connected with the trial while not deliberating, or to permit themselves to be exposed to any accounts of the proceeding, or to view the place or places where the events involved in the action occurred, until they have completed their deliberations.

3. The court shall not require a jury to deliberate after normal work hours unless the judge, after consultation with the jury and the parties, determines that evening or weekend deliberations are necessary in the interest of justice and will not impose an undue hardship upon the jurors.

4. 3. The court may direct the jury to return a sealed verdict at such time as the court directs.

5. 4. Jurors shall have access to their notes and notebooks during recesses, discussions and deliberations.

6. When dismissing a jury at the conclusion of the case, the judge shall advise the jurors that they are discharged from service and, if appropriate, release them from their duty of confidentiality and explain their rights regarding inquiries from counsel, the media, or any person.

Rule 47(b). Voir Dire Oath; Examination of Jurors; Brief Opening Statements

1. Prior to examination of jurors with respect to their qualifications, an oath or examination shall be administered in substance as follows: "You do solemnly swear (or affirm) that you will well and truly answer all questions touching your qualifications to serve as a trial juror in the cause now on trial, so help you God." If a juror affirms, the clause "so help you God" shall be omitted.

2. Upon request and with the court's consent, the parties may present brief opening statements to the entire jury panel, prior to voir dire. The court may require counsel to present such opening statements.

3. 2. ~~The court shall~~ The judge shall control voir dire and conduct a thorough oral examination of prospective jurors. Upon the request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. In courts of record, voir dire shall be conducted on the record unless waived by the parties on the record. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors, ~~giving due regard to the purpose of such examination.~~ The judge shall ensure the privacy of prospective jurors is reasonably protected. ~~In addition, the~~ The court may terminate or limit voir dire on grounds of abuse. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination. The judge may permit written questions to be submitted following review and approval by the court. The parties may, with the court's consent, present brief opening statements to the entire jury panel, prior to voir dire. On its own motion the court may require counsel to do so. Following such statements, if any, the court shall conduct a thorough examination of prospective jurors.

Rule 51(a). Instructions to Jury; Objection

Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses or of the court as set forth in Rule 39(b)(10), the procedure for note-taking, the nature of evidence and its evaluation, any issues to be addressed, and the elementary legal principles that will govern the proceeding. The instructions shall be provided in a manner that makes them as readily understandable as possible by individuals unfamiliar with the legal system. Prior to the commencement of a jury trial or at such other time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Counsel shall be deemed to have waived request for other instructions except those which could not reasonably have been anticipated prior to trial. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of hearing of the jury. All communications between the judge and members of the jury panel shall be in writing or on the record.