

STATE OF MINNESOTA

IN SUPREME COURT

C5-85-837

Order for Hearing Regarding  
Proposed Minnesota Jury Standards.

WHEREAS, by order of this Court dated May 7, 1985, the Minnesota Jury Standards Committee was established, and

WHEREAS, this committee was requested to study the American Bar Association Standards for Juror Use and Management for possible implementation in Minnesota, and for consideration by this Court,

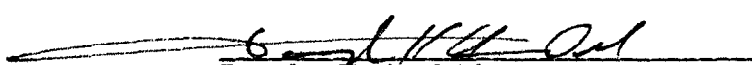
WHEREAS, this committee has formulated such standards for consideration by judges, attorneys, and members of the public,

NOW THEREFORE, IT IS HEREBY ORDERED that a public hearing be held in the Supreme Court Chambers at 10:00 a.m. on Wednesday, July 30, 1986, to hear arguments regarding the desirability of adopting the committee's recommendations.

IT IS HEREBY FURTHER ORDERED that persons who wish to obtain copies of the proposed standards may write Janet Marshall, 40 North Milton, Suite 201, St. Paul, Minnesota, 55104.

Dated: April 15, 1986

BY THE COURT

  
Douglas K. Amdahl  
Chief Justice

OFFICE OF  
APPELLATE COURTS  
FILED

APR 15 1986

WAYNE TSCHIMPERLE  
CLERK

DISTRICT COURT OF MINNESOTA  
FIFTH JUDICIAL DISTRICT  
NEW ULM, MINNESOTA 56073  
TELEPHONE 354-2014

OFFICE OF  
APPELLATE COURTS  
FILED  
MAY 22 1986

NOAH S. ROSENBLUM  
JUDGE

May 17, 1986

WAYNE TSCHIMPERLE  
CLERK

Hon Douglas G. Amdahl  
Chief Justice - Supreme Court of Minnesota  
State Capitol  
St. Paul, MN 55155

RE: Proposed Minnesota Jury Standards

CS-85-837

Dear Mr. Chief Justice Amdahl:

I have followed development of proposed Minnesota Jury Standards with interest. Several provisions in the original ABA version inappropriate to Minnesota practice have been eliminated in the April 1, 1986 version. There are, however, several respects in which the most recent draft should be revised.

First, it is inappropriate to talk of "opportunity" for jury service. Juries are required for resolution of litigated matters for the benefit of litigants whose problems require solution and to advance the public interest that those problems be resolved. In an ideal society, individuals summoned for jury service would regard the invitation as an opportunity and a privilege incident to their rights of citizenship. Many, indeed, do so regard it and we are fortunate that they do so. Nonetheless, others regard it as an obligation of citizenship which also describes its character. The latest version of Jury Standard No. 1 declares that "opportunity" for service shall not be limited on account of race, national origin, etc., criteria taken from Minn. Stats. 1984, Section 593.32; it eliminates the omnibus addenda reference to other factors discriminating against "cognizable" population groups in the jurisdiction. However, use of the term "opportunity" invites litigation over matters that have arisen in other states in recent years. Handicapped persons have claimed right to serve notwithstanding defects in sight or hearing, ability to get around without assistance and other jurors have challenged English language requirements. Constitutional claims of unlawful denial of equal protection of the law as between one juror and another have been made in some courts. The Supreme Court of the United States has just made a decision in which that issue was raised. A conviction was reversed for inappropriate jury practices and this specific argument is one of the bases for the decision articulated in the squib available to me. Of course, if the case so holds, that decides the law in this field. Several bases of decision are mentioned in the summary I have. I therefore can't tell if that is, indeed, the situation. See, Batson v Kentucky, Supreme Court of the United States, 4/30/86, as summarized at 8 Supreme Court Bulletin, No. 15, Page 52 (5/2/86). Whatever the merits of these controversies, we ought not incorporate language in the jury standards that lends support to such a claim inadvertently. Accordingly, I suggest jury standard no. 1 be revised to read as follows, to-wit:

"~~The opportunity for~~ Jury service shall not be ~~denied or~~ limited on the basis of race, national origin, gender, age, religious belief, income or occupation."

Hon. Douglas G. Amdahl  
May 17, 1986  
Page 2

Consonant with that change, standard 3(c)(iv) should be revised to read as follows:

"to provide equalize jury service among all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel in accordance with Standard 13."

Next, recommended Standard 4 provides that some individuals, though disqualified by existing law, "shall" be eligible to serve. Unless, and until, Minn. Stats. 1984, Section 593.41, is amended, this standard is inappropriate insofar as it is in conflict therewith.

Recommended Standard 6(a) strikes me as redundant. There are no "automatic excuses for exemptions" from jury service contained in present Minnesota law so far as I am aware. I would strike that sentence altogether.

Proposed Standard 6(b)(ii) should be amended to read as follows:

"they request to be excused because their service would be a continuing hardship to them or to members of the public and they are excused for this reason by a jury commissioner or a judge."

This change is necessary to bring the language of clause "(ii)" into line with clause "(i)". Excuses for hardship are the most troublesome in the jury system. We should not leave it loose as to who makes that judgment call when such claims are made. The problem should receive, at least, the same attention as that provided for where impairment by reason of handicap is involved.

The commentary to this section appears to have been borrowed from the federal standard and is simply inappropriate to present Minnesota practice. The final paragraph in it contains a statement that Minnesota Statutes "do not provide for deferrals from jury service" which appears clearly wrong. Although Minn Stats. 1984, Section 593.45 refers to "excuses from jury service" it is clear from subdivision 2 of the section that what is meant by "excuse" is, in fact, a deferral since the subdivision concludes by stating that,

"At the conclusion of such excuse period, the persons shall re-appear for jury service in accordance with the Court's direction."

Further, Standard 9 appears in conflict with the criminal rules insofar as it may be read to preclude voir dire procedures permitted under MRCrP 26.02, subdivision 4(3)(b) or (c). I am aware that the word "should" is used rather than shall and that the framers evidently intended that 9(f) be permissive rather than mandatory in consequence. Nonetheless, the sentence structure is such that it will not be read that way. I therefore propose that Standard 9(f) be amended to read as follows:

"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

Hon. Douglas G. Amdahl  
May 17, 1986  
Page 3

exhausted or waived the permitted number of challenges unless, in criminal proceedings, an inconsistent voir dire procedure is utilized under MRCrP 26.02."

Finally, Standard 16(f) should be revised to use the term "should" rather than the present "shall", unless the qualifying language "to the extent it is helpful and appropriate" is eliminated. As the language stands, the qualifying reference to "helpful and appropriate" is in square implicit conflict with the mandatory "shall" which precedes it. Since utility and appropriateness must, in the last analysis, be decided according to the needs of each procedural setting, it would seem preferable to substitute merely directory "should" for the mandatory "shall" in this subparagraph.

Subject to these comments and proposals, the developing guidelines appear well adapted to their intended purpose. I believe they will, if adopted, significantly improve jury practices in Minnesota. I ask that these comments be considered when the rules are reviewed for implementation in July. I do not request opportunity to appear at that time.

Respectfully,

  
Noah S. Rosenbloom

NSR/ch

cc: Hon. James L. Mork, Judge of District Ct., Freeborn County Crth., Albert Lea, MN 56007  
Hon. Harvey A. Holtan, Judge of District Ct., Cottonwood County Crth., Marshall, MN 56101  
Hon. Miles B. Zimmerman, Judge of District Ct., Blue Earth County Crth., Mankato, MN 56001  
Hon. Richard L. Kelly, Judge of County Court, Chief Judge - 5th Judicial District, Brown County Crth., New Ulm, MN 56073  
Janet Marshall, Director of Judicial Planning, 40 N Milton St., No. 201, St. Paul, MN 55104  
Judith Besemer, Courts Administrator, Brown County Crth., New Ulm, MN

5-22 -- copy to each Justice  
and Sue Dosal

FAEGRE & BENSON

2300 MULTIFOODS TOWER  
33 SOUTH SIXTH STREET

MINNEAPOLIS, MINNESOTA 55402-3694

612/37-5300  
TELEX 425131

2500 REPUBLIC PLAZA  
370 SEVENTEENTH STREET  
DENVER, COLORADO 80202-4004  
303/592-5690

July 23, 1986

GEORGE D. MCCLINTOCK  
RODGER L. NORDBYE  
JOHN S. HOLTEN  
G. ALAN CUNNINGHAM  
ROBERT W. DELKE  
JAMES A. HALLS  
GERALD T. FLOM  
CHARLES L. HORN  
JACK D. GAGE  
PETER W. ANSON  
JAMES FITZMAURICE  
GORDON G. BUSDICKER  
JOHN D. FRENCH  
RONALD B. HEMSTAD  
NORMAN R. CARPENTER  
LAWRENCE C. BROWN  
MARTIN N. BURKE  
JOHN E. HARRIS  
PAUL T. BIRKELAND  
DAVID M. BEADIE  
DAVID R. BRENNAN  
RICHARD C. SCHMOKER  
THOMAS M. CROSSBY, JR.  
LUDWIG B. GARTNER, JR.  
JAMES B. LOKEN  
ARTHUR L. DOTEN  
DUANE W. KROHNKE  
GEORGE W. FLYNN  
JAMES A. DUEHOLM  
HUBERT V. FORCIER  
JAMES M. SAMPLES  
DALE E. BEIHOPFER  
GALE R. MELLUM  
JERRY W. SNIDER  
HENRIK DE JONG  
STEPHEN ROSHOLT  
FRANK S. BUTLER  
GORDON B. CONN, JR.  
BRUCE A. ACKERMAN  
MICHAEL H. HARPER, JR.

THOMAS L. KIMER  
JOSEPH M. PRICE  
W. SMITH SHARPE, JR.  
PHILIP S. GARON  
JOHN F. BEUKEMA  
WALTER J. DUFFY, JR.  
JAMES P. STEPHENSON  
REID CARRON  
A. DAVID KELLY  
JOHN K. STEFFEN  
JOHN B. GORDON  
THOMAS M. MAYERLE  
THOMAS G. MORGAN  
EDWARD G. HELLMAN  
JOHN H. MINDERAKER  
ROBERT L. SCHMELL, JR.  
RICHARD A. NELSON  
BRIAN B. O'NEILL  
THOMAS J. MOORE  
MICHAEL E. MURPHY  
JOHN D. SHIVELY  
WILLIAM R. BUSCH, JR.  
RONNIE M. FLEMING  
HENRY F. FRISCH  
RANDY M. LEBEDOFF  
WINTHROP A. ROCKWELL  
JACK M. FRIBLEY  
JOHN S. JAGIELA  
STEVEN C. SCHROEDER  
JOHN P. BORGER  
HEIDI M. HOARD  
RICHARD A. HELDE  
STEVE W. GASKINS  
ROBERT C. HENTGES  
STEVEN R. ANDERSON  
JAY D. CHRISTIANSEN  
CHARLES S. FERRELL  
DAVID B. MILLER  
JAMES E. NICHOLSON  
REBECCA L. ROM  
MARK F. ENGBRETSON

JAMES A. O'NEAL  
ELIZABETH L. TAYLOR  
SALLY A. JOHNSON  
WALTER H. ROCKENSTEIN II  
ROBERT L. COLLINS  
BRUCE M. ENGLER  
SUSAN L. JACOBSON  
WALTER A. PICKHARDT  
DONALD C. SHEPARD  
WENDY J. WILDUNG  
SCOTT W. JOHNSON  
JAMES D. O'CONNOR  
MARY TRIPPLER  
DIANE O. STOCKMAN  
MELINDA MOORE WELLVANG  
RICHARD K. BAUMAN  
JAMES L. VOLLING  
MICHAEL S. FROST  
THOMAS H. BENNING  
SHELLEY A. FITZMAURICE  
SUSAN K. FUNK  
GERARD M. NOLTING  
MICHAEL R. STEWART  
DAVID M. VANDER HAAR  
TIMOTHY J. WILLIAMS  
PETER J. WITHOFF  
MARIANNE T. REMEDIOS  
STEVEN R. ANDREWS  
KRISTIN A. SIEGESMUND  
HOWARD J. BERGMAN  
ROBERT W. FULTON  
SUSAN OODNATURE  
JEANINE L. LEE  
TIMOTHY R. SCHUPP  
CHARLES E. UNDERBRINK  
DANIEL G. WILCZEK  
AMY B. BRONKHORST  
CHARLES T. BARR, JR.  
DANIEL J. AMEN  
KARI L. ANDERSON  
ANTHONY R. BATTLES

JEFF H. ECKLAND  
DOUGLAS J. HEFFERNAN  
MEGHAN H. KINTZINGER  
JENNIFER R. NEWALOT  
DAVID A. MUNN  
THOMAS P. SCHNETTLER  
MARY H. TERZINO  
LYLE G. WARD  
ALAN M. ANDERSON  
MARY K. BACHMAN  
KIRK O. KOLBO  
MELISSA W. MCLENAHAN  
PATRICK C. LEUNG  
JAMES C. WINE  
BRUCE M. BATTERSON  
SCOTT P. DRAWE  
DELMAR R. EHRRICH  
CAROL H. HEARN  
KAREN LOEFFLER  
JAMES M. PFAU  
STEVEN L. SEVERSON  
TERESA J. AYLING  
CALVIN L. LITSEY  
DAVID M. MOREHOUSE  
LINDA J. RUSCH  
CYNTHIA A. MCATTIN  
TERENCE P. BRANIGAN  
NANCY G. ETZWILLER  
HAZEN GRAVES  
GARY A. HECK  
MICHAEL E. KAVOUKJIAN  
DOUGLAS P. LONG  
CHRISTINE O. MERRIMAN  
DIANA YOUNG MORRISSEY  
TERRI K. SIMARD  
VALERIE M. WELCH

- RESIDENT IN DENVER

Minnesota State Supreme Court  
State Capitol  
St. Paul, Minnesota 55101

Attention: Ms. Bev Dease

Dear Ms. Dease:

On behalf of the Minnesota Chapters of the American Board of Trial Advocates and the American College of Trial Lawyers, I request permission to address the Court on July 30, 1986 on the proposed jury rules and to emphasize the importance of the jury selection process and the preservation of it with lawyer involvement.

Thank you for your consideration.

Very truly yours,

G. Alan Cunningham

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 24 1986

WAYNE TSCHIMPERLE  
CLERK

GAC:ec



# District Court of Minnesota

THIRD JUDICIAL DISTRICT

OFFICE OF  
APPELLATE COURTS  
FILED

OLMSTED COUNTY COURTHOUSE  
ROCHESTER, MINNESOTA 55902  
TELEPHONE (507) 285-8243

JUL 28 1986

WAYNE TSCHIMPERLE  
CLERK

GERARD W. RING  
JUDGE OF DISTRICT COURT

July 25, 1986

Chief Justice Douglas K. Amdahl  
Supreme Court of Minnesota  
230 State Capitol  
St. Paul, MN 55155

Re: Minnesota Jury Standards **CS-85-837**

Dear Chief Justice:

I am unable to attend the July 30 hearing in regard to the Minnesota Jury Standards. I would like to present my thoughts on a couple of those proposed standards.

Proposed Standards 5(a) (b)

While I am basically in agreement with the committee recommendation that jurors should be required to be available to the court for relatively short periods of time, I think the time periods set out here are too short for counties such as ours. Over the years I have randomly sent questionnaires to the jurors at the time they received their checks for jury service. In addition, I have made it a practice when jurors finish their last day of service to talk with as many as possible about the conditions of their service. One of the themes that has consistently surfaced is the frustration of those who are called and never actually get to sit on a jury. In every jury panel there are a few who do everything they can to avoid service and get themselves excused. However, the majority of jurors with whom I've had experience are willing to provide what they conceive to be a civic service. If they do not get a chance to sit on a jury or participate in jury selection a number of times, they feel let down. I do not suggest that my questionnaires and discussions with jury panels is anything bordering a scientific survey. However, I'm not so sure that everyone seeks so desperately to avoid jury service as some people suggest. In fact my experience has really been that once they are here, go through the orientation, and understand the system, they are proud to be part of it so long as they are treated with the respect and consideration they deserve.

In a county such as ours, which I assume will soon be over the 100,000 population limit, the two-week term will not provide a sufficient period of time to allow most of the jurors to have any meaningful connection with the court. This is so because we need to call somewhere around 60 on any given panel in order to have enough jurors available if at least two courtrooms are holding jury trials at any one time. The mathematics of that number, however, is such that many will only be showing up on one or two days since often times there will be misdemeanor and civil juries which require fewer and there will be a number of days when all of the jury cases settle.

In my judgment the matter can be resolved by permitting the longer period of service and then allowing jurors to be excused after the ten days as suggested in Standard 5(b). I should think that the population levels for that Standard should be raised to at least 150,000. We will then be able to excuse those jurors who find it a hardship to serve or simply wish not to be bothered, and at the same time accommodate those jurors who have a genuine interest in providing a service to the system.

#### Proposed Standard 19(d)

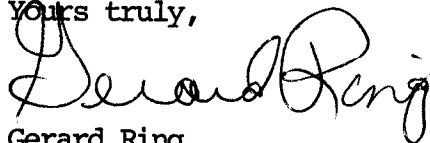
I note that the committee indicated that they would prefer not to change Standard 19(b) because the matter was covered by the Minnesota Rules of Criminal Procedure. I can see no reason why this committee should not deal with that issue. In any event I would like to note my objection to sequestration of all criminal juries subsequent to the beginning of deliberations. I do so for the following reasons:

1. I fail to see why jurors are any more likely to be influenced by the world around them, including news reports, than are judges. I am sure that no judges' committee would ever suggest that a judge be sequestered during a criminal trial. Surely the legal questions which a judge decides are no less important than the fact questions which the jury decides. If tampering is the concern of the people drafting these standards or the Criminal Rules, surely it would be much easier to reach a single judge than a group of jurors.
2. It has always seemed odd to me that jurors are presumed to be able to cope with all of the pressures of living in the community during the course of the trial, but once having heard the final arguments of counsel and instructions of the judge, are unable to withstand those pressures during deliberation.
3. One of the things that happens in criminal cases is that jurors are often compelled to deliberate at late hours in order to avoid being locked up for the night. We do not compel them to deliberate, but if they find out they will not be allowed to go home if they have not reached a verdict, they will usually say they want to keep on deliberating. As a result if a case is going to go to the jury late in the afternoon, we occasionally hold them over and do the final arguments and instructions the following morning in order not to put the jury in that bind. This is wasteful of a day of court time since I would normally be starting

another jury trial the following morning if not compelled to delay the case being submitted. If the case does go to the jury late in the day, there certainly is a good deal of coercion which the Standard unintentionally places upon jurors.

Thank you for your consideration of my suggestions.

Yours truly,

A handwritten signature in cursive script, appearing to read "Gerard Ring". The signature is written in dark ink and is positioned above the typed name.

Gerard Ring  
Judge of District Court

GR/ch





Jeanne A. Haben  
Court Administrator

Olmsted County Courthouse  
Rochester, Minnesota 55902  
Telephone 507/287-2127

OLMSTED COUNTY

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 28 1986

WAYNE TSCHIMPERLE  
CLERK

July 25, 1986

Chief Justice Douglas K. Amdahl  
Supreme Court of Minnesota  
230 State Capitol  
St. Paul, MN 55155

Re: Hearing - Minnesota Jury Standards  
July 30, 1986

**CS-85-837**

I will be unable to attend the July 30 hearing. I am, therefore, writing to present to you my concerns regarding one of the proposed standards.

STANDARD 5(a)

I would suggest that the population limits be changed so that Standard 5(a) would have a population figure of 150,000 or more, and Standard 5(b) would have a population of 50,000 to 150,000. A population of 150,000 would likely support a court having jury trials in 4-6 courtrooms, which would better utilize a jury panel which was called every 2 weeks.

Olmsted County currently has an approximate population of 98,000 and will probably reach 100,000 soon, thus placing it under Standard 5(a).

For a period of time, we experimented with a 4-week term and found that, even though we schedule numerous jury trials in 2 courtrooms nearly every day, the average number of days a juror was required to appear during that 4-week period was only 3.10 days, which did not make optimal use of the jury panel. Our court currently has a jury service term of 6 weeks. During the 6-week term, it is our experience that jurors have to appear an average of only 5.15 days.

A 6-week term provides for some flexibility in granting jurors days off for doctor appointments, 1 day out-of-town meetings, etc., which flexibility would be less available in a shorter term. If a rule were adopted where there were no excuses, and a person had to either appear or be deferred to a different term, there would be a considerable amount of additional staff work spent on these deferrals.

Chief Justice Douglas K. Amdahl  
July 25, 1986  
Page 2

I agree that "administrative burden" should not be the primary consideration in setting jury standards, but I assume that it will be given some consideration. My concerns regarding the administrative burden of having 2-week terms would involve such matters as:

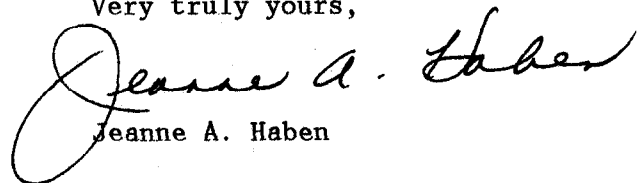
- We would need to call in nearly as many people as we do now in order to have sufficient jurors for 2 courtrooms
- Staff time needs would be considerably higher to perform the following functions every 2 weeks instead of every 6 weeks:

Notify jurors  
Finalize panel  
Orientation  
Payment to jurors

In addition, some jurors would have to appear only once or twice, or possibly not at all; it would then appear that we had called jurors we really didn't need, thus causing them unnecessary inconvenience.

Thank you for your consideration.

Very truly yours,

  
Jeanne A. Haben

jah/s

CC: Hon. James L. Mork  
Donald Cullen