

Ber —

Here are some comments relating to the  
Jury Standards - could you please have  
them copied and distributed to the Justices?

I'll pick up this copy some other time.

Thanks.

Steve Freett

296-1877

Ber —

I ran 10 copies.

Wagne

al



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.

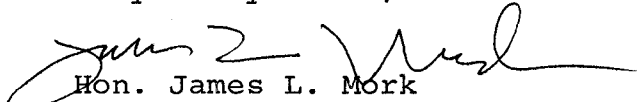
SIRS:

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,

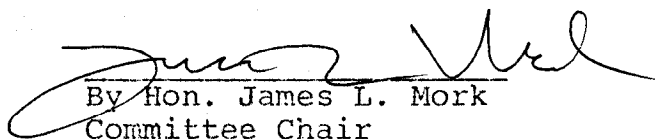
WHEREAS, prior to completing its work, the Committee first held three public hearings after notice was duly published and otherwise given. The hearings were held at Brainerd, Minnesota on March 7, 1986, at Mankato, Minnesota on March 14, 1986, and at Minneapolis, Minnesota on March 21, 1986. Proposed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

REPECTFULLY SUBMITTED,

  
By Hon. James L. Mork  
Committee Chair

C5-85-837

STANDARD #7

VOIR DIRE

OFFICE OF  
APPELLATE COURTS  
FILED

SEP 25 1986

WAYNE TSCHIMPERLE  
CLERK

PROPOSED STANDARD

CURRENT LAWS & RULES

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

Minnesota Rules of Criminal Procedure 26.02, subd. 4(1) is consistent with this language. It states essentially that voir dire examination shall be conducted for the purpose of discovering bases for challenge for cause and for gaining knowledge to enable an informed exercise of peremptory challenges.

Concerning civil actions, M.S. § 546.10 provides only that "before challenging a juror, either party may examine him in reference to his qualifications to sit as a juror in the cause."

- (a) To 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. The court may restrict access to the addresses of the prospective jurors.

Minn. Stat. § 593.42, subd. 5 states "the contents of juror qualification forms may at the discretion of the court be made available to attorneys for use in the conduct of voir dire examination." (Underscoring added.) This language may apply to both civil and criminal trials. However, concerning criminal actions only, MN Rules Crim. P. 26.02, subd. 2 provides that "upon request the clerk of court shall furnish the parties with

STANDARD #7 - CONTINUED  
VOIR DIRE

PROPOSED STANDARD

- (b) The trial judge shall first conduct a voir dire examination. Counsel shall then be permitted to make reasonable inquiry.

CURRENT LAWS & RULES

a list of the names and addresses of the...jury panel. The parties shall also have access to such other information as the clerk has obtained from prospective jurors." (Underscoring added.) This language obligates the court in criminal actions to provide parties with information clerks have obtained, when the parties request it.

Regarding civil actions, see the broadly worded provision noted above from § 546.10. MN Rules Civ. P. 47 states more specifically that the court may permit the parties or their attorneys to conduct the examination or it may itself conduct the examination. If the court conducts the examination, the rule allows the parties to supplement the examination by such further inquiry as the court deems proper. See also MN Civil Trialbook Rule 12.

Rules of Crim. P. 26.02, subd .4(1) clearly states that the judge shall initiate the examination and that either party may make a reasonable inquiry of a prospective juror in reference to their qualifications.

STANDARD #7 - CONTINUED  
VOIR DIRE

PROPOSED STANDARD

- (c) The judge and the jury commissioner should ensure that the privacy of prospective jurors is reasonably protected, and the judge should ensure that the questioning by counsel is consistent with the purpose of the voir dire process.
- (d) The voir dire process shall be held on the record at the request of any party.

CURRENT LAWS & RULES

Other than the above-noted reference to a reasonable inquiry, the rules and statutes do not address these concerns.

MN Rules Crim. P. 26.02, subd. 4(1) states: "A verbatim record of the... examination shall be made at the request of either party." (Under-scoring added.)

Relating to civil actions, the statutes and rules do not specify when or whether the process would be on the record.

STANDARD #8

REMOVAL FROM THE JURY PANEL FOR CAUSE

PROPOSED STANDARD

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.

CURRENT LAWS & RULES

Minn. Stat. § 546.10 provides that in a civil action either party may challenge for the same causes and in the same manner as in criminal trials, except that each party shall be entitled to two peremptory challenges.

MN Rules Crim. P. 26.02, subd. 5 governs a challenge for cause. Item (1) specifies the grounds for cause. Item (2) explains how and when the challenge shall be exercised. Item (3) provides that if the opposing party objects to a challenge, all issues arising upon the challenge shall be tried by the court. This rule refers only to challenges being made by either party and does not explicitly indicate that a judge may strike for cause. The sole explicit reference to the role of the court is in the last line of Item (2) which states: "If a challenge for cause is made and the court sustains the challenge, the juror shall be excused." However, indications are that the practice in Minnesota is that at least some of the judges strike for cause on their own initiative.

STANDARD #9

PEREMPTORY CHALLENGES

PROPOSED STANDARD

CURRENT LAWS & RULES

- (a) The number of and procedure for exercising peremptory challenges shall be uniform throughout the state. Peremptory challenges should be limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury.
- (b) In civil cases, each adverse party shall be allowed two peremptory challenges.
- (c) In criminal cases, the following number of peremptory challenges shall be allowed:
- (i) Fifteen for the defense and nine for the prosecution when life imprisonment may be imposed upon conviction;
  - (ii) Five for the defense and three for the prosecution when a sentence of incarceration for more than 90 days may be imposed upon conviction; or
  - (iii) Three for the defense and two for the prosecution when a sentence of 90 days or less, or when only a penalty not involving incarceration may be imposed.

Minn. Stat. § 546.10 permits two peremptory challenges per party in civil actions.

MN Rules Crim. P. 26.02, subd. 6 provide that in actions where the offense charged is punishable by life imprisonment, the defendant is entitled to 15 peremptory challenges and the plaintiff (the State) is entitled to 9. For any other offense the defendant is entitled to 5 challenges and the State is entitled to 3. Further, if there is more than one defendant, the court may allow the parties additional challenges.



STANDARD #9 - CONTINUED  
PEREMPTORY CHALLENGES

PROPOSED STANDARD

CURRENT LAWS & RULES

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.

- (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.
- (e) The trial judge should have the authority to allow additional peremptory challenges when justified.
- (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.

MN Rules Civ. P. 47.02 is consistent with this. However, MN Rules Crim. P. 26.02, subd. 8 is inconsistent in that it states: "No additional peremptory challenges shall be allowed for alternate jurors except that unused...challenges for the regular jury may be exercised against alternate jurors."

The statutes and rules do not explicitly provide judges with this authority.

Minn. Stat. § 546.10 states that in civil cases peremptory challenges shall be made alternately beginning with the defendant, but it does not indicate when these challenges should occur. MN Rules Crim. P. 26.02, subd. 4(3) provides that after both

STANDARD #9 - CONTINUED  
PEREMPTORY CHALLENGES

PROPOSED STANDARD

CURRENT LAWS & RULES

---

parties have had the opportunity to challenge for cause (which may be made during or at the close of voir dire) each, commencing with the defendant, may exercise alternately peremptory challenges. However, in the case of first degree murder or if the court so orders, the method preferred is that the defendant may exercise a challenge upon the completion of defendant's examination and before the state has conducted its examination.

STANDARD #19

JURY DELIBERATIONS

PROPOSED STANDARD

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) 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 except with the consent of the defendant.
- (d) Criminal juries shall be sequestered at all times during deliberation except with the consent of the defendant.

CURRENT LAWS & RULES

Minn. Stat. § 631.09 describes the conditions under which the jury shall be kept while deliberating. In part it states: "It shall be kept...in some private or convenient place, unless otherwise ordered by the court, and no person shall be permitted to speak to or communicate with it... unless by order of court, nor listen to the deliberations..."

Minn. Stat. § 546.15 provides in part that "on retiring for deliberation, the jury may take with them all papers received in evidence except depositions...The jurors may also take with them notes of the testimony and proceedings made by themselves..." R. Crim. P. 26.03, subd. 12 and subd. 19 is in accordance with the preceding statutory language.

STANDARD #19 - CONTINUED  
JURY DELIBERATIONS

PROPOSED STANDARD

CURRENT LAWS & RULES

---

- (e) The trial judge shall ensure that the jury shall not be required to deliberate during hours when it would be an undue hardship upon the jurors or contrary to the interests of justice.
- (f) Training should be provided to personnel who escort and assist jurors during deliberations.