



COLORADO JURY SYSTEM STANDING COMMITTEE

Meeting Minutes of:

Friday, December 1, 2006

3 – 5 p.m.

Held at the State Court Administrator's Office – 3rd floor conference room

Attendees:	Judge Leland Anderson, Judge Tamara Russell, Bob Grant, Donna Wheeler, Marjory Sewell, Judge Joe Meyer, Libbi Palmer, Jackie Senese, Kevin Kuhn, Justice Michael Bender, Karen Salaz, Mike Keating
Chair:	Judge Leland Anderson
Staff:	Carol Rigato and Amy Mailander
Next Mtg:	Friday, April 13, 2007 from 3-5 p.m. at SCAO, 3 rd floor conference room

GENERAL DISCUSSION ITEMS: Judge Anderson recapped the past year and years prior for the new people who attended today's meeting. Judge Anderson commented on how many inspirational and great things members of this committee have accomplished, i.e.: assisted in getting jurors' rights and privileges that didn't exist previously, pilot project for juror questioning, juror notebooks, etc. Colorado is now considered among the foremost states in the nation on Jury Reform Issues. Judge Anderson attended a conference in Texas, National Jury Reform Committee and Colorado was featured as being one of the top two or three in the Nation, Arizona probably being the leading, with Ohio coming on strong and aggressive.

Status of Committee – Judge Anderson and Carol Rigato

Judge Anderson is interested in making this a working committee and stated that Carol suggested to him that committees have life cycles.

Carol spoke a bit about the life cycles of committees and stated that they go through high-energy periods and low-energy periods. After a low-energy period, there's the need to re-energize and re-group, which is normal. Now its time to gain back energy. In addition the committee needs to have very specific steps and follow-thru. We're at the point that some things are messier and more time consuming and we need to forge ahead and work through them, find our footing and accomplish more in between meetings.

Subcommittee Update – Plain Language Jury Instructions – Bob Grant

There was a subcommittee, but right now Bob Grant is the subcommittee until something gets rolling. Bob stated they've been fairly successful with the civil jury instructions committee, at least in having a liaison (Carrie Morrison) from this committee to theirs. Bob has not talked to Carrie Morrison to see what their progress is to date or what their schedule is.

As far as the criminal jury instructions we've been sitting on it, waiting for the new instructions to be approved. Bob talked with Justice Ben Coats, the liaison to the criminal instructions committee and Ben is hopeful that the instructions will come out in some form in the first quarter of '07. Probably not a book, it will probably stay on the web and be updated that way. When that happens, Justice Coats envisions the on-going work of that committee, in addition to updating annually the decisions and things like that, will include a plain language attempt. Bob proposed to Justice Coats that there be a liaison from this committee involved to work on that specific issue (plain language issue) with the criminal instructions committee and get something done. Judge Anderson reminded us that Janet Bacon (former member of this committee) will help us with something specific in terms of language once we get to that point.

Action Items: In a holding pattern, wait and see.	Person Responsible:	Deadline: Ripe in 2007
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Subcommittee Update – Pre-Deliberation Discussions – Mike Keating (interim chair)

<p>Judge Anderson stated at the last meeting they started putting together some language. All we have right now is an instruction that's in the jury instructions but not a rule pertaining to pre-deliberation discussions – presumption that it would be a required rule but there are exceptions. Judge Anderson asked Justice Bender when 24G went out did they run that through the criminal rules committee? Justice Bender stated yes, they did and further answered Judge Anderson's questions that protocol wise this would have to go through the civil rules committee and can't just be submitted directly to the Chief Justice.</p>		
<p>Action Items: Write a summary justification for the rule (we'll work together on the language), as well as a letter of introduction to the civil rules committee. This will propose that some of the members from this committee attend one of their meetings in the Spring, if possible and see if they could schedule us into their agenda to present our rule. Justice Bender stated that this letter should come from the Chair of this committee. Mike Keating will draft the letter for Judge Anderson's approval and signature and then it's to be submitted to Justice Rice.</p>	<p>Person Responsible: Mike Keating</p>	<p>Deadline: Letter deadline: 4/13/07</p>

Subcommittee Update – Ongoing Education and Training – Justice Bender has agreed to be the chair of this subcommittee, formally Bill Keating was the interim chair

<p>Judge Anderson stated we need someone to take Bill Keating's place as he no longer has the time to be the interim chair. This subcommittee is responsible in getting the word out about reforms that have been done; here's what you could and should be doing in your courtrooms. Getting it in a publication, possibly to the <u>Colorado Lawyer</u>, in a special edition listing all the reforms that have been done. Carol Rigato stated some further subjects/suggestions of interest that this subcommittee had come up with: Conduct a retrospective court study re: juror questions to identify existing problems, how judges are managing the process, etc.; produce a report on Colorado jury questions for possible national publication, i.e. our process, rules, success; work in conjunction with <u>Colorado Lawyer</u> to develop an issue on Jury Reform; update jury related websites/brochures and assess all for "readability" and content, etc (see June 9, 2006 meeting minutes for further list of subjects). New Judge orientation training/ongoing education needs to be added to this list.</p>		
<p>Action Items:</p>	<p>Person Responsible:</p>	<p>Deadline:</p>

Subcommittee Update – Juror Issues – Libbi Palmer (interim chair)

<p>Focusing on issues from the jurors' point of view and how the system works to allow jurors to make good decisions, and what the system can do to help them. In the process of finishing up surveys and have two categories right now: 1) people who get called for jury service but don't actually serve on the jury; looking at: convenience issues, time management issues, how was that process for you and what we can we do to improve that and 2) people who do serve on the jury looking at: convenience issues, what was your experience like, how were you supported in making a decision. We've provided juror notebooks in order to help you make decisions, did you get a notebook, was it helpful in explaining questions, were you allowed to ask questions and was that process helpful to you?</p> <p>This subcommittee stated the need for a lawyer or several to weigh-in on how much or how little we can ask about the actual deliberation process, after the trial is over. And further want to ask jurors: did they get the instruction about picking a foreperson and how did you feel that worked? Justice Bender mentioned that in Minneapolis, Minnesota they did a survey of about 10 of their Judges, not of the Judges themselves, but of whether or not the people that were in the courtroom as they came out, actually understood whatever the Judge said and it turned out the survey reflected the Judges did terribly. It was very revealing and he said this kind of survey would be incredibly helpful; ask them what reasonable doubt means, what did you understand about a couple of the legal principles?</p> <p>The subcommittee talked about how to get jurors to fill these questionnaires out; the timing and the incentive: give the survey to the jurors as soon as they're picked and let them know we really value their opinion (this way the jurors can glance at the survey and can be thinking throughout the trial about some of these questions), right after trial, by mail, after they've reached a verdict and are waiting for all parties to return to the courtroom for the verdict? Keep the survey to two pages or less and keep the survey</p>		
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anonymous so that an attorney can't come back and want them. Anonymity: the jurors may not be identified but the cases might and then someone might make a legal issue of that; mentioned solution: make a rule that it can't be used to assail or impeach a verdict. Take it out of the lawyer's hands and get the Chief Justice to approve the court rule. Open ended questions and some on-a-scale type of questions for good information. Use of focus groups – could be good for one specific question, "how much did you understand about what the Judge said", but then you get into a lack of anonymity and how universal are those, when there are so many other variables? Looking at surveys to give us a baseline and where to go from here and then may want to use a focus group. This subcommittee will put together all of the questions they're thinking of, and will present those at the next committee meeting as a starting point.

Costs: How to pay for this survey? Using students/law students to help? Libbi did a study which included about 250 responses from jurors that had served, and that cost her about \$1,000 dollars. Any way to have the jurors do this survey electronically by utilizing laptops and an-online survey? Justice Bender suggested the following: figure out how much this will cost, you need a rule for the Chief Justice to sign, you need a real budget, a real plan, the actual questions, and state the amount of dollars needed.

Discussion around jury privacy issues: jurors' don't like their names being mentioned for polling after the verdict was given: is it time to go back to using numbers instead of names? Actual danger v. Perceptual danger. Who advocates for the jurors privacy? They have no voice. We need to capture this information in the surveys.

<p>Action Items: 1. Create a list (two lists: one for jurors that were summoned for jury duty and did serve, and one for jurors that were summoned and did not serve) of topics and sub-topics for questionnaires including juror safety/security/privacy issues and questions re: voir dire to present at the next meeting for the committee to go over. 2. Estimated dollar numbers to do survey.</p>	<p>Persons Responsible: Libbi Palmer and Juror Issues subcommittee</p>	<p>Deadline: 4/13/07</p>
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Subcommittee Update - Juror Notebooks – Donna Wheeler

The point of the juror notebooks is that it's easier for the Judge to use them, than not to use them. The juror notebook should contain everything they need to know. They can rest assure that they can refer to their notebook for answers, which will help them be able to focus on the case and not worry about other issues. They hear a lot of information from the Jury Commissioner and Judge, but it's nice if they missed something to have that information in writing. Information/materials would include: Hard notebook – better writing surface, tabs for introduction/compensation/restaurants/bathrooms/if you need a cigarette where you can go/ tab for witnesses/ place for instructions. Tailor these notebooks for each district and then to each Judge and their courtroom. Donna has obtained 1200 notebooks (funding paid for the notebooks) and researched the durability of notebooks. After we initially set these up, someone will have to maintain and update these for each trial. Judge Anderson would like to see a tab for what their duties are as jurors, general juror protocol and then each Judge could tailor it to their courtroom. All of the information contained in these notebooks, do we anticipate the jurors will have time to read? The Judge can preliminary explain what the jurors can find in their notebook and then during their first recess the jurors can look through it.

<p>Action Items: 1. Need to find out who can change the payment schedules, ie \$3 for a babysitter is so outdated. 2. Need to line up some Judges to set up some of these notebooks for and have them use them. Need some Criminal and Civil notebooks for each Judge. We'll just focus on District Court for now. We'll focus on Denver and Boulder notebooks to start. 3. Permission to use Google maps – Karen Salaz to inquire.</p>	<p>Persons Responsible: Donna Wheeler and Amy Mailander</p>	<p>Deadline: Ongoing</p>
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Other Issues/Updates:	
Juror Orientation Video – Karen Salaz/SCAO	Filming on Monday, Tuesday and Wednesday of next week (December 4-6, 2006). After numerous e-mails and correspondences from Judges/Clerks of Courts/Jury Commissioners and District Administrators, Karen believes there's a good script for the new video. She anticipates completion of such video to be on or around January 10, 2007.
Voir Dire – Judge Anderson	Voir Dire not a must do, have to do, type of project – ongoing philosophical discussion. Judge Anderson's perception of the problem is: how voir dire is being used. Attorneys are feeling rushed through voir dire – given very limited time for it. Judges are more and more oriented towards putting time limits on voir dire because Judges think lawyers mis-use voir dire, that their not using it for the right purpose so why not limit their time and that its just a waste of time for the kind of questions they're asking. Judge Anderson thinks it's a serious issue because voir dire is being expedited with the possibility of truncating justice.
Report to Jury Commission re: Studies completed and programs – Karen Salaz/SCAO	Karen handed out a Report to Jury Commission re: studies completed and programs implemented to increase juror reporting. The gentlemen from New York and the National Center of State Courts offered whatever assistance they could provide to the committee. The gentleman from New York was so excited that we were looking at this, that he could hardly stand it. Judge Anderson wondered if we had a committee on this and it was concluded that this falls under the Juror Issues Subcommittee. Would Le Anna Mosher want to take this on – Judge Anderson asked that I remind him to contact her in terms of doing some follow through. Karen said she would send this handout to Le Anna electronically.
Communicating with Juries – Carol Rigato/JBITS	National Center for State Courts just published: Communicating with Juries – How to Draft More Understandable Jury Instructions – Carol obtained copies of this literature for everyone and handed them out.
Dates of Next Meeting(s):	Friday, April 13, 2007 (3-5 p.m.) at SCAO, 3 rd floor conference room

Minutes Respectfully Submitted by Amy Mailander