

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 2013

Order regarding Post-Pandemic Jury Practices

On May 17, 2023, the Alaska Supreme Court issued an “Order regarding COVID-19 orders.” ([SCO 2007](#)) In this Order, the Court explained that while the time had come to rescind most COVID-19 related orders, certain practices developed and implemented during the pandemic should remain in effect. One area of court system operations that was profoundly impacted by the pandemic was jury trials, with processes for jury selection and juror participation undergoing several changes in the past three years. Among the dozens of orders rescinded by SCO 2007 were many Chief Justice Special Orders related to juries and jury trials. Yet, as with other practices adopted during the pandemic, some changes to the procedures for jury trials have had positive effects. Data collected during the pandemic as the result of many of these practices showed over 50% reduction in time prospective jurors spent waiting before going to the courtroom, and far fewer jurors were sent home without being needed because the full panel was selected, or because a trial folded.¹

¹ In evaluating jury practices, the first thing that is usually looked at is juror utilization, and the goal is to reduce the percentage of “jurors unused in the courtroom.” This number represents the number of jurors in a given trial who were summoned and appeared for service, but were not sworn, excused, or preempted; divided by the number of jurors who appeared. A related goal is to reduce the number of trials that fold; obviously when trials fold all jurors are “unused.”

The NCSC recommends that courts summon only enough jurors to ensure that 90% are sent to a courtroom for voir dire, and that 90% of jurors sent to a courtroom are actually “used” (sworn as a trial juror or alternate, excused for cause or hardship, or removed by peremptory challenge) during jury selection. This standard provides for an overall utilization rate of 81%, ensuring enough ‘extra’ jurors to accommodate most unanticipated circumstances, but not so many that substantial numbers of jurors are unused during voir dire or, worse, left waiting in the jury assembly each day.

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Courts with good juror utilization rates often have strictly enforced panel sizes for different types of cases (e.g., felony, misdemeanor, civil) based on information about the number of jurors needed to impanel juries for those cases.

Jury Managers’ Toolbox: Best Practices for Effective Juror Utilization, National Center for State Courts (2009).

The supreme court asked the Jury Improvement Committee² to consider specific pandemic-related practices and make recommendations regarding which should continue. That committee met over several months and, based on the committee's recommendations, we adopt the following practices.

IT IS ORDERED:

1. Pre-trial Motions: All pre-trial motions should be resolved before trial if reasonably possible. A pre-trial motion that cannot be resolved before the day of trial should be resolved before jurors are called in to the courtroom. For example, if there is a five-hour block set for jury selection, any outstanding pre-trial motions should be taken up in the first hour before jurors enter the courtroom.
2. Number of Jurors Requested: Unless special circumstances warrant a larger number, the number of jurors requested per trial will be limited to:
 - 15-20 for district court trials;
 - 30-35 (split into two groups of roughly equal size) for superior court civil trials; and
 - 40-45 (split into two groups of roughly equal size) for superior court criminal trials.³

If special circumstances warrant requesting a larger number of jurors, the request must be discussed with and approved by the Presiding

² The Jury Improvement Committee members are:

- District Court Judge William T. Montgomery, Bethel (Chair)
- Superior Court Judge Marianna C. Carpeneti, Juneau
- Superior Court Judge Andrew Peterson, Anchorage
- Stacey Marz, Administrative Director
- Carol McAllen, 3rd District Area Court Administrator
- Bodie Kimmel, E-Filing Project Manager and former 2nd District Area Court Administrator
- Stacy Worby, State Jury Coordinator
- Bobbi Jo Katchmar, Fairbanks Jury Clerk Supervisor
- Susan Heisler, Court Case Manager, Ketchikan

³ Calling smaller groups of jurors is beneficial for two reasons. Fewer jurors are unused because it is rare that a judge gets through voir dire with more than 20 people in a two-hour session of court time. Also, if a trial folds, then fewer people are dismissed.

Judge or a judge delegated by the Presiding Judge to handle such requests. Special circumstances may include: (1) case type – murder, sexual assault, minor victim, or where the case has high local interest/notoriety; (2) lengthy trial – expected to last more than one week; or (3) expectation of inclement weather that is reasonably likely to impact the ability for potential jurors to travel to court for voir dire.

The jury clerk will summon the number of jurors as reasonably necessary to achieve the requested panel size; a larger number of jurors may be summoned in court locations that historically have high failure to appear rates for prospective jurors, without seeking advanced approval from the Presiding Judge.

3. Excusals for Hardship: Jurors will submit hardship requests electronically via the online [Jury Dashboard](#). Clerical staff will review excusal requests and issue excusals pursuant to [Administrative Bulletin 66.2](#). Each court location will designate a judge who will rule on excusal requests that are referred from clerical staff for judicial approval.
4. Challenges for Cause: In general, jurors will be asked to respond to an electronic pretrial questionnaire (JV-596; or paper form J-146), and challenges for cause based on the questionnaire responses will be handled before jurors appear in the courtroom.

For trials requiring a large number of jurors, for-cause challenges may be handled in person through the use of a special questionnaire process:

- A special questionnaire must be finalized four to ten business days prior to trial.
- Prospective jurors will be asked to respond to the special questionnaire in person at least two days before the trial is set to begin, unless the court system is able to provide electronic special questionnaires to which jurors could electronically respond.⁴
- Challenges for cause must be addressed per panel, with an initial limit of three panels of 15-20 jurors. Additional panels of 15-20 jurors may be brought in if necessary.

⁴ Alternatively, a clerk may travel to another location to administer a special questionnaire to prospective jurors in the community. This was done in Dillingham in 2018 with positive results.

- The court must promptly contact jurors who are excused for cause so they do not appear for trial.
5. Voir Dire: Voir dire will be conducted with smaller panels of 15-25 jurors called in to the courtroom in staggered sets. The time for jury selection should be limited to five hours, or two-and-a-half hours per panel for two panels, unless the judge has received approval for additional panels due to special circumstances discussed in No. 2.⁵

Note: Judges are encouraged to consider conducting voir dire – or portions thereof such as for cause challenges – remotely where feasible.

6. Peremptory Challenges: All peremptory challenges should be exercised per panel or per individual juror. Peremptory challenges should be exercised simultaneously by both parties.
7. Data: Data regarding jury trials, including juror yield and utilization numbers, trial type, trial fold rates, and length of time taken to seat a jury, will be shared monthly with the Presiding Judges, members of the Jury Improvement Committee, and the Area Court Administrators (ACAs), and the ACAs will distribute the data to the district's judges.
8. Education: Training on best practices in jury selection and related topics should be included annually in the Newer Judge Conference, and as needed in the Judicial Conference. This educational component will discuss how these best practices are more efficient regarding juror time and court resources, and is intended to alleviate judges' concerns with these procedures.

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⁵ A recommendation for how to structure the five-hour voir dire based on the experiences of Jury Improvement Committee members is as follows:

- 30 minutes for introduction and initial questions
- 30 minutes per side for voir dire
- 15 minutes to allow for individual voir dire
- 15 minutes for preemptory challenges
- 30 minutes for breaks (breaks for court staff must be scheduled and provided).

9. Technical Support: The Court System Information Services (IS) department will provide technical support where necessary to implement these procedures.⁶

This Order will remain in effect until rescinded by a later Order or individual provisions are amended by the relevant rules of court.

DATED: August 29, 2023
EFFECTIVE DATE: September 1, 2023

/s/
Chief Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan

/s/
Justice Henderson

/s/
Justice Pate

⁶ For example, IS is currently assisting with a project involving communicating with jurors via text message and email to improve juror communication, juror failure to appear rates, and overall juror experience.