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Purpose

The purpose of this handbook is to provide those having contact with jurors with direction and guidance as to their responsibilities during the course of jury trials.

Accidental Juror Misconduct

Appeals of jury verdicts are very expensive, time consuming, and unpopular with the general public. There have been a number of appeals resulting from some accidental, improper conduct caused by a juror reading a newspaper or magazine article on either the trial or the subject matter of the trial; jurors doing independent research on the subject of the trial, jurors having spouses visit while sequestered and those managing the jurors responding to questions that should have gone to the judge etc. Sometimes in dealing with jurors common sense does not apply, easily answerable questions have to be referred to the judge. Those dealing with jurors have an opportunity to reduce the risk of appeals and save a great deal of expense.

Employees with juror contact can, and do, make a difference in the life of a juror and the successful completion of a jury trial.

Thank you for your service to the citizens of the State of Nebraska.



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Jury trial Management

Jury managers are often, although not always a bailiff. The term "bailiff" or "bailie" originated in medieval England. The English bailie was an officer or agent appointed by feudal lords to perform a variety of duties. In addition to collecting rents and assisting the other officers to keep order on the premises, the bailie was a minor law enforcement officer. He later became a king's officer, subordinate to the sheriff, who was essentially a conservator of the peace within his village or district. The old English word for village was "wick," hence the term "bailiwick" signifying the bailie's village -- the territory within which he had jurisdiction. That term carries the same meaning today as applied to the territorial extent of an officer's authority. The term bailiff or bailie itself is a derivation of the old English term "bail," which meant custody of jurisdiction. One in custody was "in bail," as he would be if in prison or in a court of justice. The "Old Bailey" of London is a surviving vestige of the ancient usage. (Fisher, *Law of Arrest*, Sec. 14, p. 26)

During a jury trial, the bailiff, or other employee managing the jury serve as an aide to the judge who makes the appointment. They assist the judge in the smooth functioning of the courtroom and perform such tasks as are assigned by the judge. Their primary function is to tend to the jury. Jurors have a tremendous responsibility because they ultimately will be called upon to render a verdict at the completion of their deliberations. It is the duty of whoever is managing to the jury to keep the jurors isolated and free from any outside influence that may affect their verdict. Once deliberations begin a those managing the jury must not answer any questions posed by a juror other than purely administrative questions. "Administrative questions" do not include, "how long must we be here today?" If in doubt always take a jurors question to the judge. It is the role of the judge to determine the correct response to questions.



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Duties

A. General Responsibilities of those managing the jury Include:

1. Exercising tact, courtesy, and discretion in dealing with attorneys, jurors, and litigants.
2. Maintaining confidentiality and impartiality. Anything said or occurring which the judge does not make a part of the public record (taken down by the court reporter) is confidential and is not to be discussed with anyone.
3. Maintaining the appearance of fairness by not discussing the merits of a case with anyone other than the judge.
4. Being responsible for the custody, comfort, and deportment of jurors during the trial and jury deliberations. Those managing the jury must assume all responsibility for jurors during deliberations and sequestration, making sure not to respond to questions posed by jurors, instead taking questions to the judge.
5. Obtaining guidance from the judge. Those managing the jury must always consult with the judge for direction if any questions arise concerning procedure. It is important that those managing the jury not take any unilateral action without first obtaining guidance from the judge. To do otherwise could result in prejudice to the litigants, which, in turn, could result in a mistrial or new trial.
6. Maintaining a professional attitude and demeanor. Remember you are an officer of the court who has direct personal contact with attorneys, litigants, jurors and the general public. You have the opportunity to help to establish confidence in, and enhance the perception of, the judicial system.



B. Specific Duties: Arrange the courtroom;
See that the litigants and counsel are ready;
Take a roll call of the jurors; and
Make sure the jury room is supplied with pens, paper, and beverages

In many counties the clerk of the district court or an employee in that office may perform some of the ministerial duties that those managing the jury would otherwise have. The person managing the jury should coordinate with the clerk as to these tasks:

Escort jurors to and from the jury room during court session;
Act as liaison between jurors and judge;
Respond to general juror concerns not related to the trial, such as parking, phone calls, job concerns and medical needs as directed by the judge;
Guard against and prevent the introduction into the jury room or use of extraneous items, including laptop computers and reading material;
Bring to the attention of the judge any materials those managing the jury feels might be objectionable;
Keep the jurors isolated and free from any outside influences;
Be particularly vigilant in the jury room as to all of the questions that might influence a jury;
Not fraternize with jurors or an individual juror at any time during the jury trial;
Arrange for transportation if the judge decides to have the jurors view premises involved in the case, in which event, the jurors are in the custody of those managing the jury.

1. Be responsible for the jurors during the viewing;
2. Not permit anyone, except the judge, or such person as the judge allows, to speak to the jurors;
3. Not permit the jurors individually to take any measurements or conduct experiments on the premises; and
4. Refrain from discussing anything concerning the case or the premises with the jurors.

C. Duties of those managing the jury during deliberations are to:
Prepare the jury room for deliberations;

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- Make sure that all extraneous items such as newspapers, magazines, books, playing cards, games, handiwork, cellular phones, laptop computers, and pagers are removed;
 - Make sure alternate jurors do not go into the jury room or have any further contact with the jurors once they have retired to deliberate;
 - Escort the jurors to the jury room and give them any verbal instructions (e.g., whether the door will be locked, how to signal those managing the jury, how to request a phone call, etc.);
 - Not deliver any communication, working tool, or equipment to a juror without permission of the judge;
 - Make a phone call requested by a juror with the judge's permission; however, those managing the jury cannot deliver a message to a juror while the jury is in deliberation; Make sure all jury requests are in writing and signed, and deliver them to the judge;
 - Deliver jury instructions, verdict forms and envelopes, and received exhibits (marked and provided by the court reporter) to the jury; (**Any item not received in evidence should not go to the jury room unless specifically allowed by the judge**).
 - Do not tell the jurors that they may ask questions; however, should questions arise, take any questions from the presiding juror, in writing and signed by the presiding juror, to the judge;
 - Deliver any questions to the judge and return the judge's written response to the jury; (The written question and answer will be filed with the clerk, so those managing the jury must make sure that these are not discarded.)
 - Maintain the security of the jury room;
 - Not enter the jury room during deliberations, but be available to the jury by remaining within summoning distance;
 - Not listen to the jury's deliberations nor reveal to anyone any impression she/he may have gained as to what the jury's verdict might be;
 - Exercise all caution to avoid any exposure of the jury to outside influences;
 - Notify the judge (through the clerk, if necessary) and the deputies, if it is a criminal case, immediately upon being advised that a verdict has been reached;
 - Notify the attorneys about the verdict having been reached;
 - Escort the jurors to the courtroom for the reading of the verdict when everyone is assembled;
 - Receive the verdict forms, both signed and unsigned, when directed by the judge, after they have been carried into the courtroom by the presiding juror; and



Escort the jurors back to the jury room upon completion of the reading of the verdict.

D. Sequestration duties of those managing the jury are to:

(Sequestration during deliberations means that the jury must stay together and isolated from all outside influences until they decide on a verdict. They are kept together at meal times and may not go home at night. The jury manager must ensure that the jury is free from outside contact which includes telephone calls from family members or visitation during the times that the jury is outside of the jury room.)

Forewarn the jurors — ahead of any sequestration — so relevant parties will know of the possible sequestration.

Ask the jurors to make notes of phone numbers and personal messages to be delivered to their families and relay these messages as soon as practical;

Provide meals for the jurors during the trial day and/or deliberations; (Meals may be brought to the jury room or jurors may be taken to a restaurant. Clerk's office may make reservations so coordination with those managing the jury may be necessary.)

Make transportation arrangements to take jurors to a restaurant;

Seat the jurors together and require that they not discuss the case among themselves (as the judge will have directed), not use public restrooms without supervision and not consume alcohol;

Limit, to the maximum, outside contact including access to radio or television reports, newspapers, or other means of reporting the trial;

Assume responsibility for the housing, transportation, and security arrangements in the event of overnight sequestrations;

Communicate with the housing facility regarding room reservations, transportation, and security (the hotel must be willing and able to arrange the sequestered jury in an isolated and secure location);

Escort the jurors to the housing facility and distribute the room keys and keep a list of corresponding rooms and jurors;

Inform the housing facility that the telephones are to be removed from the jurors rooms or disabled; (Any telephone calls should go to those managing the jury's room. The facility should be informed that jurors are not to be contacted in any way by hotel personnel.)

Allow the jurors to assemble in one room before retiring for the night where they



Can talk, play cards, or watch television at the discretion of the judge and if facilities are available;

Monitor the television so that jurors will not listen to or watch any programs which may report the case at hand or cases of a similar nature; (The judge will decide whether television sets will be left in the individual rooms.)

Assemble the jurors for breakfast (this may be done by the sheriff or a deputy) and then return the jurors to the courthouse for further deliberation;

Ensure that personnel who assists with security avoids having any conversation with jurors, sitting with them during meals, or socializing with them in any way; (Personnel are to be in uniform and only perform their responsibility of providing security.) and

Report any problems to the judge.



4 The Law

The following are statutes of the State of Nebraska pertaining to those managing the jury:

24-350. BAILLIFFS; TERM; COMPENSATION. The judge of the district court may, if the business of the court requires, appoint a bailiff or bailiffs. In counties having more than sixty thousand inhabitants, the bailiff shall be appointed and shall hold office for a term of one year unless sooner removed by the appointing judge. In counties having not more than sixty thousand inhabitants, the appointment shall continue only so long as is necessary. The bailiff shall receive for their services either (a) an annual salary in an amount to be fixed by the county board, payable in monthly installments from the county general fund, or (b) a per diem in an amount to be fixed by the county board, payable monthly from the county general fund.

25-1108. VIEW OF PROPERTY OR PLACE BY JURY. Whenever, in the opinion of the court, it is proper for the jury to have a view of property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed shall speak to them on any subject connected with the trial.

25-1109. CAUSE SUBMITTED; ACTION AND CONDUCT OF JURY. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night and at their meals. The officer having them in his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.



before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

29-2022. JURY; CONDUCT AFTER SUBMISSION. When a case is finally submitted to the jury, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court. The officer having them in charge shall not suffer any communication to be made to them, or make any himself, except to ask them whether they have agreed upon a verdict, unless by order of the court; nor shall he communicate to anyone, before the verdict is delivered, any matter in relation to the state of their deliberations. If the jury are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person on the subject of the trial.



5 Appellate Decisions

The following is a summary of case law of Nebraska and neighboring jurisdictions pertaining to those managing the jurors and their conduct.

State v. Floyd 272 Neb. 898, 725 N.W.2d 817 (2007) The bailiff's improper communication with jurors prejudiced defendant and denied him a fair trial. While communications concerning administrative matters may not be prejudicial, when communications involve matters of law, the risk of prejudice is present and communication by the bailiff to jurors on such matters is improper. The bailiff's statement that jurors would be required to deliberate the rest of the week, prejudiced defendant and denied him a fair trial; the bailiff's communication was made when the jury had been ordered to return to deliberations after the court determined that the jury's verdicts on the murder and manslaughter charges were not unanimous, the communication was made to the lone dissenting juror, and focused on the effect of the juror's dissent would have on the length of deliberations

State v. Nissen, 252 Neb. 51, 560 N.W. 2d 157 (1997). Unauthorized communications between jurors and third persons or witnesses during the course of jury deliberations are absolutely forbidden and will invalidate the verdict unless the communication is shown to be harmless. The husband of a sequestered juror spent the night with her in the motel housing the jury during the time in which the jury was engaged in deliberations in a criminal trial. The Nebraska Supreme Court stated that "(0)ne of the major purposes of assigning personnel to take charge of a jury is to see to it that its members are protected from outside influences and kept safe..."

State v. Menuey, 239 Neb. 513, 476 N.W. 2d 846 (1991). Once a case has been submitted to the jury, the jurors are to have no communication with nonjurors. A bailiff's misconduct in allowing a discharged alternate juror to be present in the jury room during the start of deliberations violated a defendant's due process right to a fair and impartial trial. However, the misconduct did not prejudice the defendant



And impartial trial. However, the misconduct did not prejudice the defendant where the alternate was present in the jury room for only 10 minutes, did not take part in deliberations, and did not influence jurors in their decisions.

Loving v. Baker's Supermarkets, Inc., 238 Neb. 727, 472 N.W. 2d 695 (1991). Extraneous material considered by a jury •may be deemed prejudicial and a ground for setting aside a verdict. The bailiff the jury inadvertently took into the jury room, along with the exhibits which had been received in evidence, four documents which had not been received in evidence. The Nebraska Supreme Court granted a new trial.

Priest v. McConnell, 219 Neb. 328, 363 N.W. 2d 173 (1985). The bailiff improperly furnished the jury with a dictionary for its use during deliberations. A new trial was granted due to possible prejudice to the rights of one of the parties.

State v. Lampman, 342 N.W. 2d 77 (Iowa Ct. App. 1983). A conviction should be reversed because of misconduct by an officer of the court (bailiff) only if the misconduct probably influenced or prejudiced the jury against the defendant.

State v. Jurek, 376 N.W. 2d 233 (Minn. Ct. App. 1985). A bailiff is the custodian of the jury whose duty is to guard the jury in its deliberations, not guide it. This duty commences when the bailiff is sworn by the court and continues until the jury reaches a verdict. A Bailiff sworn by the court cannot engage another unsworn bailiff to supervise the jury without prior court permission.

Demaray v. Ridl, 249 N.W. 2d 219 (N.D. 1976). The failure of the bailiff to bring jurors to the court for answers to their questions and the bailiff taking it upon himself to refer jurors to the court's instructions warrant a new trial.

Wittmeier v. Post, 78 S.E. 520, 105 N.W. 2d 65 (1960). Where the jury, during its deliberations, advised the bailiff that the jury wished to hear testimony of the defendant, wished to have words used in the instructions explained to them by the judge, and desired a dictionary, the bailiff's denial of such requests in the absence of the judge was an improper assumption of power and would require a granting of a new trial.

To permit a court officer to associate unnecessarily with jurors and to answer questions upon



Bunda v. Hardwick, 376 Mich. 317, 138 N.W. 2d 305 (1965). A court officer should not converse with the jurors in the jury room during trial or listen to them discussing the case prior to deliberation, and a bailiff who does so acts improperly.

To permit a court officer to associate unnecessarily with jurors and to answer questions upon points of procedure, deprives litigants of the right to a decision grounded solely upon evidence produced in open court.

A court officer who is put in charge of a jury to prevent, as far as practicable, outside sources from influencing the verdict, should not be permitted to be a source of such influence.

A court officer should not converse with jurors at any time except as necessary to direct them where to go and when, and, if they ask him any questions in any way related to the case on trial, he should tell them that he is not permitted to make any comment upon the case or its contents but that he will take any written questions they may have to the judge.

Stayberg v. Henderson, 277 Minn. 16, 151 N.W. 2d 290 (1967). If the bailiff, when asked by the jurors to contact the judge for clarification of the court's instructions, advised jurors that it was not his business to contact the judge and that he could not do so, such conduct on the bailiff's part would be improper in that it reflected upon the dignity of the court and removed the trial judge from the control of the case.

11. *Seitz v. Seitz*, 35 Wis. 2d 282, 151 N.W. 2d 86 (1967). Anyone managing the jury should refuse to answer any inquiry from a juror other than to inform him/her that any communication must be made by the presiding juror in open court.



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Conclusion

Litigants are entitled to a fair trial. The those managing the jury, as officials, must do all within his/her power to see that the jurors are not subjected to anything which may improperly influence a verdict. Those managing the jury who use this handbook should be able to avoid many pitfalls. If you have any questions about what you see, hear, what you do or are about to do, contact the judge for guidance.

Remember, an ounce of judicial prevention could be worth a pound of appellate cure.

Appendix 1

OUTLINE OF STEPS IN A TRIAL

- I. Selection of a Jury
 - Challenge for cause
 - Peremptory challenges
- II. Opening Statements by Counsel
- III. Plaintiff's Case is Presented
 - A. Testimony of witnesses
 - Plaintiffs direct examination
 - Defendant's cross-examination
 - Redirect examination
 - Re-cross examination
 - B. Offer of exhibits (*Done during course of examination of witnesses*)
 - Court admits exhibit, or
 - Court refuses exhibit; it is not evidence
- IV. Presentation of Defendant's Case
 - A. Testimony of witnesses
 1. Defendant's direct examination
 2. Plaintiffs cross examination
 - Redirect examination
 - Recross examination
 3. Plaintiff rests
 - B. Offer of exhibits (*Done during course of examination of witnesses*)
 - Court admits exhibits, or
 - Court refuses exhibit and it does not become evidence
- V. Jury Instruction Conference: Counsel and judge confer as to what instructions to give jury
- VI. Final Arguments
 - Plaintiff's argument
 - Defendant's argument
 - Plaintiffs rebuttal
- VII. Court charges jury, reads instructions aloud (*Sometimes this is done before final arguments are made*)
- VIII. Jury Deliberates
- IX. Court receives verdict or discharges jury if it cannot reach a verdict

Appendix 2
ACKNOWLEDGMENT

*I acknowledge that I have read the
"Handbook for Those managing the jury During
Jury Duty"
and understand my duties and
responsibilities as an officer of the court.*

Signature: _____

Date: _____

*(This form should be signed by the those managing the
jury prior to the commencement of duties.)*