Chapter 7 - Jury Trials

In any court action, whether civil or criminal, when all parties are present before the court and answer ready for trial, they are indicating to the trial judge that they are prepared to select a jury and present their case. Upon this notification to the court, the bailiff must prepare for the responsibilities in the handling of that trial.

• 3-07/010.00 - Bailiff Responsibilities During a Jury Trial

It is very important for the bailiff to discuss procedures with the judge in order to coordinate and be well prepared for the coming trial. Some of these procedures should include:

- The seating and handling of the jury.
- The seating and handling of the defendant.
- The seating and handling of spectators.
- Any security problems.
- The handling of evidence (weapons & narcotics).
- Generally, any other problems that may arise during the trial.

When a jury is in the care of a bailiff, the bailiff's demeanor is of the utmost importance. As a representative of the Sheriff's Department, bailiffs must always be aware that their conduct and appearance reflect directly on the Department. Bailiffs must be especially alert to the fact that while accompanying a jury in public areas the bailiff is the center of attention, and accordingly, must perform in a dignified and professional manner. The bailiff shall treat jurors, vendors, and others with courtesy at all times, refraining from any conversation or conduct which would adversely reflect upon the Department.

The courtroom is a public place, and the bailiff's authority is limited. It may be necessary for the judge to issue a special court order to assist in controlling the activity in the courtroom.

• 3-07/010.05 - Secondary Search of Inmates Prior to Entering a Courtroom During a Jury Trial

Immediately, prior to an inmate entering a courtroom for a jury trial, personnel shall conduct a secondary pat down search. The search should include utilizing a handheld metal detector (if available) to find altered razors or any other metal object on the inmate’s body or clothing. The use of the handheld wand can initially be conducted at the main service level or an adjacent lockup holding area prior to escorting the inmate into the courtroom. Additionally, a visual inspection of the inmate’s mouth shall be conducted. The visual inspection shall include directing the inmate to swipe the interior of his/her mouth to ensure it is void of a slicing device (razor blade).

After the secondary search has been conducted, the inmate should be escorted directly into the courtroom or a secured holding cell. Should the inmate return to the holding cell after court proceedings, personnel shall again conduct the secondary search (including visual search and finger swipe of their mouth) before allowing the inmate to return to the courtroom. If a handheld metal detector is available, the bailiff is encouraged to use it again to ensure a thorough search is conducted.

• 3-07/015.00 - Jury Deliberation Room

"At each court facility where jury cases are heard, the Board of Supervisors shall provide a deliberation room or rooms for use of jurors when they have retired for deliberation. Such deliberation rooms shall be designed to minimize unwarranted intrusions by other persons in the court facility, shall have suitable furnishings, equipment and supplies, and shall also have restroom accommodations for male and female jurors." (California Code of Civil Procedure, 216 (a))

• 3-07/020.00 - Court Policy on Jury Maintenance and Handling

The bailiff should consult with the judge regarding the judge’s particular policy of jury maintenance and handling. The judge should be advised when a particular situation or accommodation cannot be safely or economically achieved. The bailiff's Branch Supervisor must be made aware of all unusual situations regarding jury maintenance and handling.

• 3-07/025.00 - Preparing the Courtroom for a Jury Trial

Prior to the start of the trial, the bailiff shall prepare the courtroom. Part of the preparation should include providing writing materials for the jury, ordering or arranging chairs, signs, the stationing of the marker board and marker board materials, microphones or any special accommodations necessary for that particular trial.

• 3-07/030.00 - Jury Panel

Once the courtroom is prepared and the trial is ready to begin, the clerk will call for a panel of jurors. The panel will be sent from the jury assembly room and each panel will vary in number depending on the judge's evaluation of that particular case.

Prior to the arrival of the prospective jury panel, the bailiff shall reserve seats in the courtroom to accommodate the panel. Spectators will be directed to sit on one side of the courtroom so the jury panel can be kept together.

When the jurors first arrive, one juror will have an envelope containing a random list with the names of each juror in the panel. This envelope shall be given to the clerk.

The bailiff shall, prior to the judge taking the bench, ascertain if the jury panel is complete and instruct them on how to enter the jury box.

• 3-07/030.05 - Presence of Defendant During a Jury Trial

The defendant shall be present during these and all other proceedings of trial, unless otherwise ordered by the court.

• 3-07/030.10 - Selection of Jurors

The bailiff shall reserve seating in the courtroom to accommodate the panel and keep the jurors together.

The court clerk will draw, at random, twelve names from the panel of prospective jurors. Each prospective juror will be assigned a seat in the jury box in the order in which their names were drawn. The clerk will continue to draw names from the panel to replace any juror excused from the original twelve prospective jurors drawn.

When the court clerk calls the jurors forward to take their seats in the jury box, the bailiff shall stand at the gate separating the spectator area from the trial area so that the bailiff may be of assistance to the prospective jurors by directing them to the proper seat; however the security of the in-custody defendant(s) shall not be compromised. Jurors should leave bulky items, books and magazines with the bailiff while in the jury box.

• 3-07/030.15 - Anonymity of Jurors

In some cases the anonymity of jurors has become an issue for their personal safety. Branch Supervisors should inform their bailiffs of the court's procedures regarding the use of jurors identification (California Code of Civil Procedure, 237).

• 3-07/030.20 - Examination of Jurors

The judge will examine the prospective jurors in an attempt to select a fair and impartial jury. The judge will then permit reasonable examination of jurors by counsel for the people and counsel for the defendant; this is known as "voir dire."

Once a juror is challenged and excused, the bailiff will instruct the juror to return to the jury assembly room.

Once the panel is selected and is accepted by both the court and the parties to the litigation, the clerk will swear the jury to try the cause before the court. The remaining jurors may then be excused to return to the jury assembly room.

• 3-07/030.25 - Alternate Jurors

Alternate jurors are occasionally selected to sit with the jury on cases which are anticipated to last a long period of time. Throughout the trial, up to the time of deliberation, the alternates are treated the same and are subject to the same rules as are the members of the regular panel. Alternate jurors are seated as closely as possible to the regular panel. Care should be taken to insure that they are in a position to observe the entire proceedings. Should a member of the regular panel become ill or unable to finish the case, the alternate juror will be appointed by the court to take the excused member's place in the jury box.

The alternate jurors receive the same instructions as the regular jurors, but only the regular panel goes into the jury deliberation room to decide the case. The bailiff or another deputy will be sworn to take charge of the

alternate jurors and to keep them apart from the jury while they are deliberating on the case. Until otherwise instructed by the court, the bailiff shall not speak to jurors, or allow anyone else to speak to them upon any matter connected with the case except by order of the court. Any time the jury is brought back into the courtroom during their deliberations, the alternate jurors must also be present.

• 3-07/030.30 - Instruction to Jurors on Courtroom Procedures

At the first opportunity, the bailiff shall instruct the jury on the rules and procedures of that court:

- The bailiff shall instruct the jury when to enter the courtroom upon reporting, at recesses and upon adjourning.
- The bailiff shall instruct the jury how to use the buzzer system when all are present, and if the bailiff is needed.
- The courtroom telephone number should be made available to the jury for notifying the court if for any reason they will be reporting late or unable to report at all.

• 3-07/035.00 - Order of Trial (Criminal)

The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the court. Prior to taking of testimony, the bailiff shall be familiarized with the evidence in the case. Check all firearms to ensure that

they are unloaded and/or inoperative. The bailiff shall also provide jurors with notebooks and pencils and instruct them that the notes will remain in the courtroom at all times. These materials are to be secured by the bailiff at the end of each day.

- The District Attorney, or other counsel for the people, must open the case and offer the evidence in support of the charge.
- The defense counsel may then open the defense, and offer evidence in support thereof.
- The parties may then respectively offer rebutting testimony only, unless the court, permits them to offer evidence upon their original case.
- When a witness is called to testify, the bailiff shall direct the person to come forward and be sworn, after which the bailiff will direct the person to the witness stand and adjust the microphone. The bailiff shall make sure that no witness is chewing gum or tobacco when they take the witness stand. If a security situation exists in the courtroom, the bailiff will assist in such a manner as not to jeopardize that particular security concern.
- When the evidence is concluded, unless the case is submitted on either side, or on both sides, without argument, the district attorney, or other counsel for the people, and counsel for the defendant may argue the case to the court and jury; the district attorney opens and closes final argument.

Note: Jury trials involving in-custody defendant(s): The in-custody is the primary responsibility of the bailiff. Discuss with the judge and court staff how other duties will be handled when the jury trial involves an in-custody defendant(s).

• 3-07/040.00 - Order of Trial (Civil)

When the jury has been sworn, the trial must proceed in the following order, unless the court, for special reasons, directs otherwise:

- The plaintiff (petitioner), after stating the issue(s) may produce evidence.
- The defendant (respondent) may then open the defense and offer evidence in support thereof. The parties may then respectively offer rebutting evidence only, unless the court, for good reason in furtherance of justice, permits them to offer evidence upon their original case.
- When the evidence is concluded, unless the case is submitted to the jury on either side or on both sides without argument, the plaintiff must commence and may conclude the argument.
- In trials where several defendants have separate defenses, and are represented by different counsel, the court must determine their relative order in the evidence and argument.

• 3-07/045.00 - Court Recesses During Jury Trial

When court recesses during the course of a trial, the bailiff shall announce that everyone remains seated until the judge and jurors leave the courtroom. Defendants in custody shall be returned to the detention area after the jurors have been directed to the jury room.

Before court is to reconvene, the bailiff shall return the defendant to the court; notify the jury to return to the courtroom; and counsel, if not present, should be advised to return to the courtroom before the judge takes the bench. The judge shall then be informed that all parties are ready. This will be accomplished via the clerk or buzzer.

• 3-07/050.00 - Jury Admonishment at Adjournment

The jury must also, at each adjournment of the court, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, nor to form or express any opinion thereon until the cause is finally submitted to them. (1121 PC)

• 3-07/050.05 - Threats Against a Juror

"Every person who threatens a juror with respect to a criminal proceeding in which a verdict has been rendered and who has the intent and apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, is guilty of a misdemeanor." (95.1 PC)

• 3-07/050.10 - Corrupt Influencing of Jurors

"Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, in

respect to his verdict in or decision of any cause, proceeding, pending or about to be brought before him, either:

- By means of any communication, oral or written, had with him except in the regular course of proceedings
- By means of any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings
- By means of any threat, intimidation, persuasion or entreaty
- By means of any promise, or assurance of any pecuniary or other advantage; is punishable by fine not exceeding ten thousand dollars ($10,000) or imprisonment in the state prison." (95 PC)

• 3-07/050.15 - Misconduct of Jurors

Every juror or person drawn or summoned as a juror:

- Who either; makes any promise or agreement to give a verdict or decision for or against any party
- Willfully and corruptly permits any communications to be made to him
- Receives any book, paper, instrument, or information relating to any cause or matter pending before him, except according to the regular course of proceedings

Is punishable by a fine not to exceed ten thousand dollars ($10,000) or by imprisonment in the state prison." (96 PC)

• 3-07/055.00 - View of a Crime Scene by the Jury

When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, or any personal property which has been referred to in the evidence and cannot conveniently be brought into the courtroom, it may order the jury to be conducted in a body, in the custody of the Sheriff, as the case may be, to the place, or to such property, which must be shown to them by a person appointed by the court for that purpose; and the officer must be sworn to suffer no person to speak or communicate with the jury, nor do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time" (1119 PC).

Transportation to the premises to be viewed must be provided by the litigants in a civil case, unless otherwise ordered by the judge. In a criminal case, the bailiff should arrange such transportation through their Branch Office.

It is of the utmost importance that the bailiffs notify supervisors immediately upon receiving information that there will be a viewing of the scene. This will allow the Sheriff's Department reasonable time to comply with the order.

When the court orders that the jury view the crime scene, the following procedures will apply:

- The Branch Office shall be advised of the date, time, location and circumstances regarding

viewing the scene.

- A written court order containing the above mentioned information shall be forwarded as soon as possible to the Branch Office.
- Transportation will be arranged for the jury through the Correctional Services Transportation Bureau. If the defendant is in custody, they will also provide security and transportation for the inmate.
- At the crime scene, the bailiff will direct all questions by the jury to the court.
- The bailiff should instruct all jurors to carry their notebooks and pencils to the crime scene and return them upon dismissal.
- The bailiff shall not allow any form of communication with the jury at the crime scene on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

• 3-07/060.00 - Instructions to Jurors by the Judge

When the attorneys have made their final argument and the case is concluded, the judge will then instruct the jury. The bailiff shall post a notice on the outside of the courtroom door, stating: "No Admittance - Jury Being Instructed." While the instructions are being given, no one is permitted to enter or leave the courtroom.

• 3-07/065.00 - Bailiff's Oath

At the completion of the instructions to the jury, the bailiff shall stand with right hand raised and be sworn by the clerk of the court as follows:

- "You do solemnly swear that you will take charge of the jury and keep them together except on order of court; that you will not speak to them yourself, nor allow anyone else to speak to them on any matter concerned with this case, except on order of court, and that when they have agreed upon a verdict, you will return them into court, so help you God?"

  The bailiff will answer, "I do."

Where there are alternate jurors, the following oath will be sworn to by the bailiff:

- "You do solemnly swear that you will take charge of the alternate juror and that you will keep him apart from the jury therein, until further order of court, so help you God?"

  The bailiff will answer, "I do."

A bailiff shall comply with the provisions of Penal Code 167 PC, applicable to them, as well as to others, which provides, in part:

- "Every person who, by any means whatsoever, willfully and knowingly, and without knowledge and consent of the jury, records, or attempts to record, all or part of the proceedings of any trial jury while it is deliberating or voting, or listens to or observes, or attempts to listen to or observe, the proceedings of any trial jury of which he is not a member while such jury is deliberating or voting is

guilty of a misdemeanor...."

• 3-07/070.00 - Jury Deliberation

After being sworn to take charge of the jury, the bailiff will escort the jury to the jury deliberation room and make sure that necessary articles are furnished to them, such as pencils, paper, etc., and see that all facilities are in order.

The jury shall be secured in the jury room. The bailiff shall not leave the jury unguarded during their deliberation. If the jury room is locked, the bailiff shall be available with the key in the event of an emergency.

"Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence" (1137 PC).

• 3-07/075.00 - Verdict and Instruction Forms, Exhibits

The clerk of the court will give the bailiff the verdict forms, jury instructions (in a criminal case), and whatever exhibits or evidence are permitted to be taken to the jury room.

Note: Many judges do not send jury instructions into the jury room.

• 3-07/080.00 - Viewing Evidence

Occasionally, jurors request to view evidence that is not normally allowed in the jury room for security reasons, such as, weapons, ammunition and narcotics. To ensure the safety of the jury, the bailiff shall adhere to the following basic guidelines prior to taking the aforementioned evidence into the jury room:

- Firearm - check the firearm to ensure that it is unloaded and/or inoperative.
- Ammunition - keep firearm and ammunition separate at all times.
- Knives, daggers, etc., - bailiff must be present.
- Narcotics - verify that the evidence bag is sealed.

During the viewing of the above evidence, the bailiff must be present in the jury room. The bailiff must instruct the jury not to discuss the case and/or evidence in the bailiff's presence.

• 3-07/085.00 - Jury Contact with the Bailiff

The bailiff shall familiarize the jury with the methods used to signal between the jury room and the courtroom so that if they reach a verdict, have a question or an emergency, they may call for the bailiff. The bailiff will remove all unnecessary materials from the jury room prior to deliberation. The jury shall then be secured in the jury room.

• 3-07/085.05 - Bailiff Summoned by Jury

The bailiff, when summoned to the jury room by signal, shall knock before entering. When granted permission, the bailiff may enter and inquire of the reason for being summoned.

Any questions regarding the case shall be relayed to the judge in written form and signed by the foreman of the jury. The bailiff shall not inform anyone except the judge of the inquiry or message from the jury except upon order of the court.

• 3-07/085.10 - Polling of Jury

Occasionally a judge may direct the bailiff to inquire of the jury how they stand, in numbers only, as to a verdict. This may be accomplished as follows:

"The judge has requested me to ask you how you stand as to a verdict on this case. The judge wants this information as to numbers only and without any indication as to which way your verdict is leaning. For example, are you divided six to six, seven to five, or eleven to one; just say the numbers; that is all."

The bailiff shall only give that information to the judge.

• 3-07/090.00 - Return of Jury for Information

After the jury has retired for deliberation, if there is any disagreement between them as to the testimony, if they desire to be informed on any point of law arising in the case, or request to view any evidence that was not taken into the jury room, they must summon the bailiff with the use of the buzzer, and inform the judge in writing of their request.

Counsel and defendants are required to be present unless stipulations are granted for either or all parties to be excused from the proceedings. The jury is brought into the courtroom once the court is prepared to give the information requested by the jury.

• 3-07/095.00 - Presence of Defendant on Return of Verdict

"If charged with a felony the defendant must, before the verdict is received, appear in person, unless, after the exercise of reasonable diligence to procure the presence of the defendant, the court shall find that it will be in the interest of justice that the verdict be received in his absence. If for a misdemeanor, the verdict may be rendered in his absence." (1148 PC)

After the jury has retired to deliberate on the verdict in a criminal case, the bailiff shall advise the defendant to remain either in the courtroom or in the immediate vicinity of the courtroom to be readily available if the jury requests to return to the courtroom.

• 3-07/100.00 - Taking the Verdict

When the jury has agreed upon its verdict, the bailiff who has been placed in charge of the jury will escort them back into the courtroom. When the jury appears, the judge will ask if they have agreed upon a verdict. If the foreman answers in the affirmative, the judge will instruct the jury foreman to hand the verdict forms to the bailiff. The bailiff will then take all the verdict forms from the foreman, without looking at them, and hand them to the judge.

After the verdict has been read by the court clerk, the judge will discharge the jury. The defendant will remain seated until all jurors have left the courtroom, then the judge will finalize the proceedings on the record.

• 3-07/105.00 - Late/After Normal Hours Jury Procedures

When jurors have not been able to secure their cars, the bailiff should make sure that the jurors' cars are locked and the keys brought to a central location for safekeeping. After a jury is dismissed, the bailiff shall assist the jury in retrieving their personal belongings. Do not leave until all jurors have safely departed.

• 3-07/110.00 - Impaneled Juror Illness or Injured

If a juror becomes ill or is injured and paramedics or an ambulance are needed, the bailiff shall immediately activate the emergency procedures for a medical emergency. The judge, court clerk and Branch Supervisor shall be informed of the extent of the illness/injury as soon as possible. The jury supervisor shall also be informed. If the juror is to be taken by ambulance to a hospital, the judge may request that a Deputy accompany the juror. If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefore, the court may order the juror to be discharged and draw the name of an alternate, who shall then take his or her place in the jury box, and be subject to the same rules and regulations as though he or she has been selected as one of the original jurors. (233 California Code of Civil Procedure)

• 3-07/110.05 - Reporting Juror Injuries

Jurors, whether impaneled or not, are classified as county employees. Report all juror injuries to the appropriate jury supervisor who will fill out the ‘Supervisors Report of Industrial Injury Form’. The jury supervisor shall be called even if the juror declines medical treatment. In all cases where the bailiff has personal knowledge of the injury, the bailiff should assist the jury supervisor in preparing the report.
