



January 20, 2022

Via E-mail

Hon. Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Post-Conference Comments on Jury Selection

Dear Judge Grant:

The New Jersey Civil Justice Institute (“NJCJI”) is a nonpartisan coalition of the state’s largest employers, leading trade associations, and small businesses. NJCJI’s mission is to promote a fair and predictable civil justice system in New Jersey, which is an essential ingredient for a functioning economy. This correspondence serves to provide additional comments on the issues discussed at the 2021 Judicial Conference on Jury Selection.

Introduction

One of the main reasons that potential jurors request to be excused from jury service is financial hardship. For many people, it is difficult to take even a day away from work to serve on a jury, let alone serve in a long, complicated trial that could last weeks or months. Similarly, caretakers of small children and the elderly cannot easily take time away from their responsibilities, because their absence means that someone else must step into the role, typically at a significant cost. This leads to understandable self-elimination of many potential jurors, and as a result, a less diverse jury pool. NJCJI therefore proposes two programs to lessen the financial burden of jury service, allowing more New Jerseyans to serve on juries.

First, NJCJI proposes a **Small Business Jury Service Pay Tax Credit**. This tax credit would entitle eligible employers who pay an employee’s regular salary or wages for the first five (5) days of jury service to a credit against the employer’s New Jersey state tax liability. This would be an efficient and direct way of making sure New Jerseyans are financially secure during jury service, without creating more administrative burdens on jurors who are already sacrificing their time to serve.

Second, NJCJI proposes the creation of a **Lengthy Trial Fund** (“LTF”) to pay jurors who serve for more than five (5) days and receive less than full compensation from their employer. If a juror is not engaged in paid work, that juror would still be eligible for a minimum \$50 per day payment. A juror would receive a maximum of \$300 per day.

Small Business Jury Service Pay Tax Credit

A convenient way for jurors to be reimbursed for their time is for their employers to pay them for the first five (5) days of service. Rather than requiring employed jurors to apply and wait to be reimbursed, employed jurors can continue receiving their regular paycheck directly from their employer for at least some of the duration of their service. For longer trials, this plan will complement the LTF, for which jurors would be eligible after five (5) days of jury service. In return for promoting civic service by paying employees who serve on juries, employers would be entitled to a tax credit against their New Jersey state tax liability.

Under this plan, the details of which are attached hereto as **Exhibit A**, the eligible employer would receive a credit equal to 50% of the regular salary or wages paid to the employee while the employee served as a juror, up to the total annual amount of \$1,250 per employer. Eligible employers are businesses with fewer than fifty (50) employees that have a written policy that: (1) provides five (5) days of annual paid leave for full-time employees to serve on juries; (2) for part-time employees, provides an amount of annual paid leave for jury service that is not less than an amount that bears the same ratio to the annual paid jury service for full-time employees; (3) allows the juror-employee to retain any juror fee or mileage reimbursement from the court; and (4) does not deduct annual, vacation, or sick leave for payment of regular salary or wages during jury service. The credit will be awarded within one (1) year of the employee's completion of jury service.

Lengthy Trial Fund

The LTF, fully explained in the attached **Exhibit B**, will provide full or partial wage replacement or supplementation to jurors who serve as petit jurors in trials that last longer than five (5) days. After being imbued with the authority to establish the LTF by the Legislature, the Court would promulgate *Rules* establishing the LTF and procedures for its administration, auditing, investment, disbursements, and reporting.

The money will come from a \$10 fee collected from each attorney who files a civil complaint, files an answer to a civil complaint, or moves to intervene in a civil case. This fee will specifically fund the LTF. These fees will be forwarded to the LTF Administrator. Exempt from this fee are: (1) government attorneys appearing in the course of their official duties; (2) *pro se* litigants; (3) actions brought *in forma pauperis* in which the court finds that a party cannot afford to pay the costs of litigation; (4) small-claims court cases; and (5) claims for certain types of social-services-related determinations. In sum, routine civil litigation will pay for the LTF.

When anticipating a lengthy trial, the court will notify potential jurors that they may qualify for LTF reimbursement. Jurors may then apply to be reimbursed for their service when it lasts more than five (5) days. The juror receives reimbursement that covers the difference between a minimum fee (\$50) and the actual amount the juror earns, up to \$300. Jurors applying for LTF reimbursement will be required to disclose their regular earnings, the amount their employer will pay during the jury service, and verification (or, for self-employed or jurors who receive other compensation, an affidavit) of the juror's gross weekly income. The court may request more information of the applying juror.

The LTF will be a self-funding circuit: the people accessing the court for relief will reimburse the people serving on juries for trials that would otherwise be too financially burdensome. There would be no new burden on taxpayers. It is a simple solution.

And, as the state of Arizona demonstrates, LTFs work. The Arizona Lengthy Trial Fund (“ALTF”) has been in existence for over a decade. The ALTF has been self-sustaining, and its revenues have consistently exceeded its expenditures. More importantly, a study confirmed that the ALTF achieved its aim of enabling jurors to serve on juries who would otherwise be unable to participate due to financial hardship. In turn, this resulted in more diverse juries. It also made the jury selection process faster and more efficient, requiring smaller venires. Eliminating financial hardship as a concern for potential jurors eliminated a major reason that most jurors cited in seeking to be excused from participation.

Conclusion

NJCJI applauds the Judiciary’s leadership and efforts to make jury service more accessible to all New Jersey citizens. NJCJI hopes that these proposals help advance the Judiciary’s goals in this regard as reflected in its upcoming report on the jury selection process. Likewise, NJCJI will support necessary legislation implementing these proposals. If Your Honor has any questions about this comment or would like to discuss this matter, then please do not hesitate to contact me directly.

Respectfully submitted,



Anthony M. Anastasio
President
New Jersey Civil Justice Institute

EXHIBIT A

SMALL BUSINESS JURY SERVICE PAY TAX CREDIT PROPOSAL

Section __. Paid Leave for Jury Service Tax Credit for Eligible Employers.

(A) If an eligible employer agrees to pay an employee's regular salary or wages during an absence required for jury service, then the eligible employer is entitled to a credit against the eligible employer's state tax liability.

(B) The amount of the credit provided by this section shall be:

(1) Equal to 50% of the regular salary or wages paid to the employee while the employee was on leave for jury service; and

(2) Shall not exceed \$1,250 annually per employer.

(C) For purposes of this section, "eligible employer" means a private employer that has:

(1) Less than 50 employees; and

(2) A written policy that:

(a) Provides, for full-time employees, not less than 5 days of annual paid leave for jury service;

(b) Provides, for part-time employees, an amount of annual paid leave for jury service that is not less than an amount which bears the same ratio to the amount of annual paid jury service leave that is provided to a full-time employee as (i) the number of hours the employee is expected to work during any week, bears to (ii) the number of hours an equivalent full-time employee is expected to work during the week;

(c) Provides that an employee may retain any juror fee or mileage reimbursement provided by the court; and

(d) Does not deduct annual, vacation, or sick leave for payment of regular salary or wages during jury service.

(D) The credit shall be taken within one year of the employee's completion of jury service.

EXPLANATION:

According to a National Center for State Court survey, three-quarters of large private employers, including nonprofit organizations, and public employers, pay employees their regular wages or salaries during jury service. In contrast, only one-third of jurors employed in small, private businesses (less than 50 employees) receive compensation from their employers during their service. Many of these individuals are part-time employees or contract workers who are not eligible for employment benefits such as

compensation during jury service.¹ It may be exceptionally difficult for these individuals to serve on juries. They have no assurance that they will receive anything beyond a nominal per diem from the court, which, in New Jersey, is just \$5 for each day of jury service and increases to \$40 per day beginning on the fourth day of jury service. These amounts are often insufficient to cover the cost of parking, lunch, and transportation.

Efforts to raise state per diems with inflation have historically lagged or failed. New Jersey's \$5 per diem has not increased in decades. In any event, per diems are intended to cover out-of-pocket costs of those who serve as jurors, not replace lost income.

Providing employers who continue to compensate their employees during jury service with a tax credit is likely to encourage adoption of such policies by making this employment benefit more affordable. The proposed legislation targets where the need is greatest by making the benefit available to small businesses who adopt a written policy providing full- and part-time employees with their regular salary or wages for at least five days of jury service per year (after which compensation from the lengthy trial fund, if adopted, would become available). It recommends a 50% tax credit, effectively splitting the cost of helping citizens serve without financial hardship between the private employer and the state. The proposal recommends capping the tax credit at \$1,250 per year, regardless of the number of employees called for jury service. This level would roughly cover 50% of ten days of compensating employees during jury service per year based on the national average income. The percentage of the credit, the amount of the annual cap, and eligibility criteria for the credit can be altered to reduce the fiscal impact on the state. Courts may also be able to significantly reduce the fiscal impact of the tax credit through adopting best practices that most efficiently use juror time.

New Jersey has an opportunity to be a leader by enacting this proposal. This concept has received the endorsement of task forces in states such as California,² Ohio,³ and Pennsylvania,⁴ though no state appears to have enacted a tax credit of this kind.⁵

¹ Paula L. Hannaford-Agor, [Increasing the Jury Pool: Impact of the Employer Tax Credit](#), Prepared for the Administrative Office of the Courts, Judicial Council of California, at 5 (Aug. 2004).

² Report of the Blue Ribbon Commission on Jury System Improvement, Recommendation 3.27 at 45-47 (May 17, 1996); Final Report: Task Force on Jury System Improvements, Recommendation 3.27 at 38-40 (rev. April 2004).

³ [Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service](#), at 29 (Feb. 2004).

⁴ First Judicial District of Pennsylvania, [Juror Participation Initiative](#), at 33 (2018).

⁵ Some states provide similar tax credits when an employer offers paid leave for other socially beneficial activities, such as organ or bone marrow donation. See, e.g., [Ark. Code § 11-3-205](#); [Colo. Rev. Stat. § 39-22-540](#); [La. Rev. Stat. § 47:287.758](#); [N.J. Pub. Law 2019, c.444](#); [72 Pa. Stat. § 8803](#).

EXHIBIT B

LENGTHY TRIAL FUND PROPOSAL

Title 22A is amended by adding thereto a new section to read as follows:

22A:1-1.2. Jury Service Lengthy Trial Fund.

(A) Purpose. This section establishes a Lengthy Trial Fund to safeguard the opportunity of all people to serve on juries charged with deciding guilt in criminal prosecutions and liability in complex civil cases regardless of occupation or economic status. The Lengthy Trial Fund shall be used to reduce the economic hardship caused by serving on lengthy trials and promote diversity of those participating in jury service by paying full or partial earnings replacement or supplementation to persons who serve as petit jurors for more than five days and receive less than full compensation from their employers.

(B) Judicial Administration. The New Jersey Supreme Court shall promulgate rules to establish a Lengthy Trial Fund that shall be used to provide full or partial wage replacement or wage supplementation to jurors who serve as petit jurors in civil or criminal trials for more than five days.

(1) Court rules shall provide for the following:

- (a) The selection and appointment of an Administrator for the Fund.
- (b) Procedures for the administration of the Fund, including payments of salaries of the Administrator and other necessary personnel.
- (c) Procedures for the accounting, auditing and investment of money in the Lengthy Trial Fund.
- (d) A report by the Supreme Court on the administration of the Lengthy Trial Fund in its annual report on the judicial branch, setting forth the money collected for and disbursed from the Fund.

(2) Filing Fee.

- (a) Notwithstanding any other fees required under State law, each trial court in the State shall collect from each attorney who files a civil complaint, answers to civil complaints, and motions to intervene in civil cases, unless otherwise exempted under the provisions of this Section, a fee of \$10 per case to be paid into the Lengthy Trial Fund. All such fees shall be forwarded to the Administrator of the Lengthy Trial Fund for deposit.
- (b) The following attorneys and causes of action are exempt from payment of the Lengthy Trial Fund fee:
 - (i) Government attorneys appearing in the course of their official duties;
 - (ii) Pro se litigants;

(iii) Actions brought in forma pauperis in which a court has found that a party cannot afford to pay the costs of litigation;

(iv) Cases in small claims court or the state equivalent thereof; and

(v) Claims seeking social security disability determinations; individual veterans' compensation or disability determinations; recoupment actions for government backed educational loans or mortgages; child custody and support cases; and any other filings designated by rule that involve minimal use of court resources and that customarily are not afforded the opportunity for a trial by jury.

(C) Eligibility. Subject to the availability of monies, monies in the Lengthy Trial Fund shall be used to pay full or partial earnings replacement or supplementation to jurors who serve as petit jurors for more than five days and who receive less than full compensation. The amount of replacement or supplemental earnings shall be at least \$50 dollars but not more than \$300 per day per juror beginning on the first day of jury service. Jurors who earn less than \$50 per day, are retired, or otherwise not employed are eligible for a \$50 per day minimum payment.

(D) Reimbursement Procedures. A juror whose jury service lasts more than five days may submit a request for payment from the fund. The amount a juror receives from the fund is limited to the difference between the jury fee prescribed in N.J.S.A. 22A:1-1.1 and the actual amount of earnings a juror earns, not less than \$50, up to the maximum level payable under subsection (C), minus any amount the juror actually received from the juror's employer during the same time period. A juror who requests payment from the fund:

(1) Shall disclose on the form the juror's regular earnings, the amount the juror's employer will pay during the term of jury service starting on the first day and thereafter, the amount of replacement or supplemental earnings being requested and any other information that the jury commissioner deems necessary.

(2) Before receiving payment from the fund, shall submit verification from the juror's employer, if any, regarding the earnings information that is provided under paragraph 1. This verification may include the employee's most recent earnings statement or a similar document.

(3) In order to verify the weekly income if the juror is self-employed or receives compensation other than wages, shall provide a sworn affidavit attesting to the juror's approximate gross weekly income, together with any other information that the court requires.

Documents submitted pursuant to this paragraph are not public records and shall not be disclosed to the general public.

(E) Notice. When the court anticipates a lengthy trial, prospective jurors shall be informed that they may qualify for additional juror compensation.

(F) Program Administration. The Supreme Court shall promulgate rules to implement and administer the Lengthy Trial Fund. Rules shall provide for the following:

- (1) The selection and appointment of an Administrator for the fund.
- (2) Procedures for the administration of the Fund, including payments of salaries of the Administrator and other necessary personnel.
- (3) Procedures for the accounting, auditing and investment of money in the Lengthy Trial Fund.
- (4) The Supreme Court shall report on the administration of the Lengthy Trial Fund in its annual report on the judicial branch, setting forth the money collected for and disbursed from the fund.

EXPLANATION:

Most citizens summoned for jury service in New Jersey receive just five dollars for each of the first three days of attendance at court. Jurors receive forty dollars from the court on the fourth and subsequent days of service. This increased juror pay is helpful but may not provide sufficient compensation to jurors selected to serve on lengthy trials, particularly if they are not receiving their usual income during their service. Only full-time state employees are entitled to receive their usual compensation for each day the person is present for jury service in lieu of any payment for juror service. Private employers may pay their employees during jury service but are not required to do so.

While relatively few trials extend beyond five days, these cases often involve complex litigation and present high stakes for those involved. In lengthy civil cases, a person's livelihood or business may be on the line. In criminal cases, a person's life and liberty may be in jeopardy. It is particularly important to protect the right to a representative jury in such cases.

Jurors who find themselves called to serve on the rare, lengthy trial may be subject to extreme financial hardship. For this reason, when it is apparent that a trial will be long and complex, it is likely that the court will excuse many working citizens due to the financial burden jury service will place on them, their families, or their business. Summoned jurors may complete a certification form indicating whether they will be paid during jury service and how many days they can serve without a severe financial hardship.¹ New Jersey's Jury Selection Standards advise judges that jurors who express hardship problems, such as absence from work without pay, "should be liberally excused, particularly where the trial is anticipated to require more than two or three days or extend into the following week."²

¹ New Jersey Judiciary, [Certification in Support of Request to be Excused from Jury Service Due to Severe Financial Hardship](#) (rev. 1/2020).

² Administrative Office of the Courts, State of New Jersey, Approved Jury Selection Standards, Including Model Voir Dire Questions, [Directive #21-06](#), Dec. 11, 2006.

The unavailability of funds to compensate jurors adversely affects the justice system. For example, the *Courier Post* reported that jurors were hard to find for a criminal trial because “many of those excused told the court they would not be paid by their employers if jury service extended beyond a few days.”³ Courts often find they have no other choice given that they do not have the resources to provide any significant compensation above the jury fee. As one juror who was paid by his employer during his time on a murder trial recognized, “if you’re going to get reimbursed by your company then it’s fine to serve. But a lot of people can’t afford to do it.”⁴

Those who do serve on such trials make an extraordinary sacrifice. For example, on a five-month civil trial in Monmouth County, one juror, a physical therapist, lost an estimated \$30,000, and had to pay for childcare.⁵ Another, a school teacher received her usual salary during the academic year, but lost income she ordinarily makes during the summer months. In hindsight, the jurors themselves “suggested legislation to better aid jurors who might not be financially devastated but sufficiently burdened by serving” on lengthy trials.⁶

When a plaintiff’s attorney sought supplemental compensation for jurors serving on a lengthy product liability case in Atlantic City, the court found it did not have the legal authority to do so.⁷ One juror, a 35-year-old administrator, was later excused in the midst of the trial because her employer would only pay her for two weeks of jury duty.⁸

A Lengthy Trial Fund (LTF) will make it less likely that New Jersey citizens will be excused from jury service on lengthy trials or suffer hardship during their service. Arizona has successfully operated an LTF since 2004. This program has expanded the opportunity for jurors of all occupations and income levels to serve on juries.

In its first year in operation in Arizona, the fund provided approximately \$130,000 in compensation to 172 jurors serving on forty (40) lengthy trials, including twenty-five (25) civil cases, fourteen (14) criminal cases, and one (1) juvenile case.⁹ In more recent years, the fund is helping about 1,000 jurors each year, which each person receiving, on

³ See Renee Winkler, *Jurors Hard to Find for Trial*, *Courier-Post*, July 1, 2004, at 2B (reporting on the difficulty in selecting a jury to hear the assault case of a paroled North Jersey cop killer).

⁴ Madelaine Vitale, *If You Don’t Want to be a Juror, It’s Likely You’re Not Wanted*, *Press of Atlantic City*, June 9, 2003, at C1.

⁵ Karen Sudo, *Long Trial Challenged Axelrod Jury*, *Asbury Park Press*, Oct. 24, 2005.

⁶ *Id.*

⁷ Lisa Brennan, *Plaintiffs Seek Diversity in Voir Dire*, *N.J. Law Journal*, vol. 183, no. 6, Feb. 6, 2006, at 349.

⁸ *Vioxx Video May Aid Plaintiffs*, *N.J. Record*, at B01.

⁹ G. Thomas Munsterman & Cary Silverman, [Arizona’s Experience with the Jury Patriotism Act: Assessing the First Year of New Jury Reforms](#), 45 *Judges’ J.* 18, 20 (2006).

average, \$600 during his or her service on a lengthy trial.¹⁰ In 2013, for example, the fund provided \$518,000 in compensation to 869 jurors, at an average of \$52.33 per day, on trials lasting an average of 11.4 days.¹¹

Funded by a \$15 fee on complaints, answers, and interventions, the Arizona fund has consistently run a surplus. This has allowed the legislature, with the support of the judiciary, to expand eligibility for compensation from the fund. Now, a juror who serves more than five days is eligible to receive compensation from the fund of up to \$300 per day beginning on his or her first day of jury service. In addition, the fund, as implemented in Arizona, effectively increases the minimum state per diem from \$12 to \$40 per day for any juror who serves more than five days.

In 2014, the Director of the NCSC's Center for Jury Studies celebrated Arizona's Lengthy Trial Fund as a "ten-year success story."¹² After examining the demographic composition of jurors receiving compensation from the LTF, Paula Hannaford-Agor finds that "the ALTF enables jurors to serve who would otherwise be unable to participate as trial jurors due to financial hardship. As a result, impaneled juries are considerably more diverse than they would have been if the ALTF were not available as supplemental financial support."¹³

The proposed legislation closely tracks Arizona's experience.¹⁴ Under this proposal:

- (1) Eligibility for payment from the lengthy trial fund begins after the fifth day of service;
- (2) Eligible jurors may receive compensation up to the maximum level for their entire period of jury service (beginning on the first day), if they serve more than five days;
- (3) All jurors who serve for more than five days receive minimum compensation of \$50 per day (which would include the state's current \$40 per diem); and
- (4) The fund would be financed through a filing fee placed on complaints, answers, and motions to intervene. If this is not administrative feasible in New Jersey, the fee could be placed on the filing of new complaints only.

¹⁰ Cary Silverman, [ALEC's Jury Patriotism Act Reduces Hardship for Thousands of Jurors and Ensures Representative Juries on Complex Cases](#), Inside ALEC, at 6 (Apr. 2012).

¹¹ Paula Hannaford-Agor, *The Arizona Lengthy Trial Fund – A Ten-Year Success Story*, Court Manager, vol. 29, iss. 2, at 48-49 (May 2014).

¹² *Id.*

¹³ *Id.* at 49.

¹⁴ [Ariz. Rev. Stat. § 21-222](#); [Ariz. St. Code of Jud. Admin. § 5-109](#).

The proposal also incorporates a provision based on Arizona's Code of Judicial Administration, which requires the court to inform prospective jurors that they may qualify for additional compensation when the court anticipates a lengthy trial.

Adoption of an LTF is routinely recommended by judicial task forces, other organizations, and the public as an opportunity to ensure more diverse representation on lengthy trials.¹⁵ For example, in 2016, the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness suggested that the state adopt an LTF to reduce economic hardship that results in jury pools that do not accurately reflect the state's growing diversity."¹⁶ Likewise, a *Denver Post* editorial advocated for adoption of an LTF to protect jurors from crippling costs, observing, "Higher pay for jurors on long trials would create a broader and more diverse jury pool, and would also be fairer to all."¹⁷

Yet, only two states, Arizona and Oklahoma, have an LTF in place.¹⁸ As Ms. Hannaford-Agor concludes, "It is clear from Arizona's experience over the past decade that this program works as it was originally intended and is financially self-sustaining. So now the question becomes what is everyone waiting for?"¹⁹

¹⁵ See, e.g., Council for Court Excellence, [Jury Service Revisited: Upgrades for the 21st Century](#), at 17 (2015) (recommending that the District of Columbia establish a Lengthy Trial Fund); G. Thomas Munsterman et al., [Jury Trial Innovations](#), at 27-28 (2d ed. 2006) (including the Lengthy Trial Fund as an innovative system to relieve financial hardship for those who will lose income while serving on long trials).

¹⁶ Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness, [Best Practice for Jury Selection and Service in Pennsylvania](#), at 18 (Aug. 2016); see also First Judicial District of Pennsylvania, [Juror Participation Initiative](#), at 11, 21, 33 (2018) (supporting adoption of Lengthy Trial Fund).

¹⁷ Editorial, [For Long Trials, Raise the Pay for Jurors](#), *Denver Post*, Jan. 20, 2015.

¹⁸ Oklahoma has a variation of the Lengthy Trial Fund in place since 2005, but no data is publicly available on its use. See [Okla. Stat. § 28-86\(D\)](#); [In the Matter of the Implementation of the Lengthy Trial Fund](#), 114 P.3d 441 (Okla. 2005). Oklahoma's LTF is funded by a \$10 fee on the filing of a civil complaint and provides replacement or supplemental compensation to jurors who serve more than ten days, and may provide up to \$50 per day from the fourth through tenth day of jury service for jurors who experience significant financial hardship.

¹⁹ Hannaford-Agor, *The Arizona Lengthy Trial Fund – A Ten-Year Success Story*, *supra*, at 53.