

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet

Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-203: Trial Jury Management

1. **Effect of the proposal:** Modifies 5-203 to incorporate new provisions made necessary by revisions during the 2007 legislative session to the Title 21 jury statutes. Also tightens existing 5-203 language to clarify that provisions are mandatory and not voluntary.

2. **Significant new or changed provisions:** Requires the jury commissioner to give jurors 10-days notice to appear at court. Establishes the approval process for a plan for alternative summoning submitted by a superior court with multiple court locations in a county.

3. **Committee actions and comments:**
 - Presiding Justices of the Peace (6/13/07)
 - Presiding Municipal Court Judges (6/13/07)
 - Limited Jurisdiction Court Administrators Association (6/13/07)
 - Superior Court Clerks/Jury Commissioners (6/13/07 and 10/5/07)
 - State Bar of Arizona (10/5/07)
 - Committee on Limited Jurisdiction Courts (9/26/07 and 11/14/07)
 - Committee on Superior Court (9/28/07 and 11/30/07)
 - Presiding Superior Court Judges (6/19/07 and 10/23/07)
 - Superior Court Administrators (6/13/07 and 10/5/07)

(See attached table of comments.)

4. **Controversial issues:** None.

5. **Recommendation:** That ACJA Section 5-203 be adopted and become effective January 1, 2008.

**Comments and Responses to
ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
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PARAGRAPH	COMMENT	SUBMITTED BY	RESPONSE
Suggested new provision	You might want to add a provision that explains what to do when a lawyer asks a judge for a list of jurors prior to the day of trial.	Judge	Not incorporated. Criminal Rule 18.3 and Civil Rule 47(a)(4) already explain that juror information is to be provided to the parties <u>on the day of trial.</u>
D.	Statute requires that when a jury trial is requested in a Forcible Entry and Detainer case, the trial must be held within three days. Therefore, a juror cannot be summoned <u>ten</u> days before the juror is required to attend as provided in “D.” Similarly, when a change of plea falls through and a trial must be scheduled quickly to meet Rule 8 time requirements, the court may not be able to provide a juror ten-days notice.	Clerk, Judges, Committee on LJC	Section was modified to say: “The jury commissioner or jury manager shall summon jurors at least ten days before the jurors are required to attend, <u>unless otherwise required by rule or statute.</u> ”
F.	Perhaps the code section should give better guidance as to who should be designated as the “jury manager” in a LJC.	Committee on LJC	The phrase: “jury manager, <u>as defined in A.R.S. § 21-101(3) . . .</u> ” was added to section “F” to clarify that the term “jury manager” is now defined in statute, and this definition applies to the code as well.
E.	Only “substantial” changes to an alternative summoning plan should be required to go through the extensive circulation process called for in E(2). The jury commissioner should be permitted to be make technical changes to a plan through a streamlined process.	Presiding Judge	E(3) was modified to require that only “substantial” modifications to a plan must go through the circulation process called for in E(2). An additional sentence was added at the end of E(3) to require the jury commissioner to provide a copy of a modified plan to the AOC, regardless of whether the modification is “substantial” or technical.

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[Added text is shown underlined, deleted text by ~~strikethrough~~]

~~**A. Use of These Standards.** These standards are intended in part as mandates and in part as guidelines. The language of the standards distinguishes required standards from those described in advisory terms, for which either absolute adherence is not possible in every court, such as the standards relating to jury facilities, or because the subject matter of the standard does not lend itself to mandatory requirements, such as when to grant requests to postpone jury service.~~

A. Master Jury List. The jury commissioner shall produce the master jury list required by A.R.S. § 21-301 at least twice each year.

B. Use of Automation. The use of a jury management automation system as provided in ACJA § 1-501(B) is encouraged.

C. Procedures for Determining Eligibility of Trial and Grand Jurors.

1. Each person shall return the questionnaire fully answered to the jury commissioner or jury manager who issued the questionnaire within ten days after receiving it.

2. The jury commissioner or jury manager shall give seven days notice to any person ordered to appear pursuant to A.R.S. § 21-315(B) to testify under oath or affirmation concerning the person's qualifications or grounds for excuse or to complete a questionnaire.

D. Summoning Procedures. The jury commissioner or jury manager shall summon jurors at least ten days before the jurors are required to attend, unless otherwise required by rule or statute.

E. Alternative Juror Summoning Procedures.

1. Upon approval, a superior court with multiple court locations in a county may use alternative juror summoning procedures. To obtain approval, the jury commissioner shall submit a plan for alternative summoning to the approving authority, which is either the presiding judge of the superior court or the chief justice of the supreme court, containing the following:

a. The reason for proposing the alternative summoning procedures;

b. A detailed explanation of the alternative procedures to be used for summoning jurors to each court location;

- c. An explanation of how the alternative procedures provide for the summoning of jurors from a fair cross section of the communities within the county;
 - d. Any additional justification of the reasonableness of the alternative procedures; and
 - e. An explanation of how the alternative procedures satisfy the requirements of the constitutions of the United States and State of Arizona.
- 2. Before submitting a plan for alternative summoning for approval, the jury commissioner shall circulate the plan to the State Bar of Arizona, the county bar association, the county attorney's office, the county public defender's office, and other interested parties, as appropriate, for comment. If comments are received, the jury commissioner shall consider the comments and make changes to the plan as appropriate. The jury commissioner shall then submit the plan and any comments not incorporated to the approving authority. Approval may be obtained in one of two ways:
 - a. Approval by presiding judge. If the jury commissioner submits the plan to the presiding judge for approval, the presiding judge shall forward a copy of the plan and all comments to the Administrative Office of the Courts (AOC). The AOC shall review the plan, obtain expert advice as appropriate, and provide comments to the presiding judge within 90 days. Following receipt of the AOC comments, the presiding judge shall either approve the plan by administrative order, request modifications or reject the plan. An approval shall be effective for a period not to exceed five years.
 - b. Approval by the chief justice. If the jury commissioner submits the plan to the chief justice for approval, the AOC shall review the plan, obtain expert advice as appropriate, and place it on an agenda of the Arizona Judicial Council. At the Council meeting, parties may appear and offer comments. The Council shall recommend approval, approval with modifications or disapproval. The chief justice shall then either approve the plan by administrative order, request modifications or reject the plan. An approval shall be effective for a period not to exceed five years.
- 3. A plan, or substantial modifications to a plan, shall only be implemented after approval through the procedure outlined in subsection (E) (2) above. Upon advance written notice the presiding judge or chief justice may withdraw approval of a plan due to a significant change in law or circumstances and provide the jury commissioner the opportunity to submit an acceptable modification of the plan. Any plan approved for implementation shall be reviewed by the jury commissioner at least every five years to determine if the plan requires modification. The jury commissioner shall submit any required modifications or recommend that the plan be renewed without modification, in the manner provided in subsection (E) (2) above. Whenever a plan is modified, the jury commissioner shall promptly forward a copy of the new plan to the AOC.
- 4. The jury commissioner shall post the current plan for alternative summoning to the jury

commissioner's website.

F. Jury Manager. The presiding judge of each limited jurisdiction court shall designate a jury manager, as defined in A.R.S. § 21-101(3) and shall send notice of such designation to:

Court Services Division
Administrative Office of the Courts
1501 W. Washington, Suite 410
Phoenix, AZ 85007
Fax: (602) 452-3659
Ph: (602) 452-3453

BG. Selection of Prospective Jurors.

- ~~1. Opportunity for jury service. The opportunity for jury service shall not be denied or limited on the basis of race, sex, national origin, color, ethnicity, ancestry, gender, age, religious belief, income, occupation, disability, or sexual orientation.~~
- ~~2. Master jury list.~~
 - ~~a. The master jury list shall be as representative and as inclusive of the eligible adult population in the jurisdiction as possible. The court should review and update the master jury list periodically. A master jury list is representative of the population to the extent the percentages of cognizable group membership in the list equal the corresponding percentages in the population. A master jury list is inclusive of the population to the extent it includes all eligible members of the entire population in the jurisdiction.~~
 - ~~b. The names of potential jurors shall be drawn from a master jury list in accordance with statute (A.R.S. §§21-311, 312 and 313).~~
- ~~3. Random selection procedures.~~
 - ~~a. Random selection procedures shall be used throughout the juror selection process. Any automated or manual method that provides each eligible and available person with an equal probability of selection may be used, except when a court orders an adjustment for underrepresented populations.~~
 - ~~b. Random selection procedures shall be employed in:~~
 - ~~(1) Selecting persons to be summoned for jury service;~~
 - ~~(2) Assigning prospective jurors to panels; and~~
 - ~~(3) Calling prospective jurors for voir dire.~~
 - ~~c. Departures from the principle of random selection are appropriate:~~

- ~~(1) To exclude persons ineligible for service in accordance with subsection (B)(4);~~
- ~~(2) To excuse or postpone prospective jurors in accordance with subsection (B)(7);~~
- ~~(3) To remove prospective jurors for cause or if challenged peremptorily in accordance with subsections (C)(2) and (3).~~

~~4. Eligibility for jury service. A.R.S. §21-201 establishes an individual's eligibility for jury service as follows:~~

~~Every juror, grand and trial, shall be at least eighteen years of age and meet the following qualifications:~~

- ~~1. Be a citizen of the United States.~~
- ~~2. Be a resident of the jurisdiction in which he is summoned to serve.~~
- ~~3. Never have been convicted of a felony, unless the juror's civil rights have been restored.~~
- ~~4. Is not currently adjudicated mentally incompetent or insane.~~

~~5. Term of trial jury service.~~

~~a. Effective January 1, 2005, A.R.S. §21-336.01 establishes a term of service for trial jurors as follows:~~

~~A. A person's jury service obligation is fulfilled when the person does any of the following:~~

- ~~1. Serves on one trial until being excused or discharged.~~
- ~~2. Appears at court but is not assigned to a trial division for selection of a jury before the end of that day.~~
- ~~3. Is assigned on one day to one or more trial divisions for jury selection and serves through the completion of jury selection or is excused.~~
- ~~4. Complies with a request to telephone a court or check a court's website to determine whether to report on a particular day, for four days within a thirty day period.~~
- ~~5. Provides the court with a valid telephone number and stands to serve on the same day, for a period of two days.~~

~~b. If necessary, the presiding judge in coordination with the jury commissioner shall, pursuant to A.R.S. §21-336.01(B), apply to the supreme court for exemption from the one day one trial system for a specified period of time not to exceed one year. To~~

~~qualify for exemption, the court must demonstrate that:~~

- ~~(1) The cost of implementing the system is so high that the trial court would be unable to provide essential services to the public if required to implement such a system; or~~
- ~~(2) The requirements of the statute cannot be met because of the size of the population in the jurisdiction compared to the number of jury trials.~~

~~6. Term of grand jury service.~~

~~a. County grand jurors. The term of service for county grand jurors shall be determined pursuant to A.R.S. §21-403, which provides:~~

~~... a term designated by the presiding judge of the superior court which shall not exceed one hundred twenty days, unless at the end of such period the grand jury is serving in connection with unfinished inquiries or investigations, in which event the term may be extended by the presiding judge, upon petition by the county attorney stating the reasons therefor, until the conclusion of the investigation.~~

~~b. State grand jurors. The term of service for state grand jurors shall be determined pursuant to A.R.S. §21-421(e), which provides:~~

~~The regular term of the state grand jury shall be six months. The term may be shortened by the assignment judge at the request of the attorney general. The term may be extended by the assignment judge for a specified time period upon a verified, written petition by the attorney general stating that an extension is needed to conclude a grand jury inquiry begun prior to the expiration of its term.~~

~~c. Frequency of service. In no event shall either a county or state grand juror be asked to serve more than two days per week.~~

7H. Exemption, eExcuse, and postponement. ~~No automatic excuses or exemptions from jury service shall be permitted unless specified by statute. The following procedures shall apply to exempting, excusing and postponing jury service:~~ Prospective jurors seeking to postpone their jury service shall be permitted to submit a request by phone, mail, in person, or electronically if the court offers this option. Court officials shall promptly respond to requests to postpone service or to be excused from service. Any time a juror is granted a postponement or is excused from service, the court shall make an appropriate record of its decision.

~~a. The following are grounds for exemption or excuse from jury service:~~

- ~~(1) Qualified peace officers who make a timely application pursuant to A.R.S. §21-202.~~
- ~~(2) The individual suffers from a mental or physical condition causing that person to be~~

incapable of performing jury service. A supporting statement from a physician who is licensed pursuant to Title 32 must be provided.

- ~~(3) Jury service by this individual would substantially and materially affect the public interest or welfare in an adverse manner.~~
- ~~(4) Jury service would cause undue or extreme physical or financial hardship to the prospective juror or a person under the prospective juror's care or supervision. This excuse must be supported by documentation such as income tax returns, payroll records, medical statements, proof of dependency or guardianship and is limited to the following circumstances:
 - ~~(a) Jury service would require abandoning a person under the potential juror's care or supervision due to the impossibility of obtaining an appropriate substitute caregiver.~~
 - ~~(b) The potential juror would incur costs that would have a substantial adverse impact on the payment of the person's necessary daily living expenses or on those for whom the potential juror provides regular employment or the principal means of support.~~
 - ~~(c) The potential juror would suffer physical hardship that would result in illness or disease.~~
 - ~~(d) The potential juror is not currently capable of understanding the English language.~~~~
- ~~(5) An individual who was selected to serve on a jury in Arizona is not required to serve again in any court in this state for two years following the juror's service. A.R.S. §21-335.~~

~~b. Undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from the prospective juror's place of employment.~~

~~c. The following are grounds for postponement from jury service:~~

- ~~(1) Postponement shall be granted to an individual who works for an employer with five or fewer full-time employees, or their equivalent, if during the same period another employee of that employer is serving as a juror. A.R.S. §21-236(D).~~
- ~~(2) A jury commissioner shall postpone service not more than two times for those requesting postponement. A subsequent request for postponement may be granted based on a finding that an extreme emergency exists that could not have been anticipated at the time of the previous postponements. A.R.S. §21-336.~~

~~d. The presiding judge shall adopt specific uniform guidelines for determining requests to postpone service and to be excused from service. Prospective jurors seeking to postpone their jury service shall be permitted to submit a request by phone, mail, in person, or electronically if the court offers this option. Prospective jurors seeking to be excused from jury service shall submit a written request that complies with the court's specific~~

~~guidelines. Court officials shall promptly respond to requests to postpone service or to be excused from service. Any time a juror is granted a postponement or is excused from service, the court shall make an appropriate record of its decision.~~

CI. Selection of a Particular Jury. [No change in text]

DJ. Efficient Jury Management.

1. Administration of the jury system. The judicial department shall be solely responsible for administering the jury system in compliance with statute and this section.
2. Notification and summoning. The following procedures shall apply to notifying and summoning jurors:
 - a. The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person shall be phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems.
 - b. A summons shall clearly explain how and when the recipient must respond and the consequences of a failure to respond. The summons shall also contain clear directions on where to report for service.
 - c. A summons shall clearly state the process for a prospective juror to seek excuse or postponement of their jury service.
 - d. The questionnaire shall be phrased and organized to facilitate quick and accurate screening, and should request only information essential for:
 - (1) Determining whether a person meets the criteria for eligibility;
 - (2) Providing basic background information ordinarily sought during voir dire examination; and
 - (3) Efficiently managing the jury system.
 - e. Written policies and procedures shall be established for monitoring failures to respond to summons and for taking appropriate action when failures occur.
3. Monitoring the jury system. Courts shall periodically monitor the performance of their jury system and should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:
 - a. The representativeness of the master jury list;

- b. The inclusiveness of the master jury list;
 - c. The effectiveness of qualification and summoning procedures;
 - d. The responsiveness of individual citizens to jury service summonses;
 - e. The efficient utilization of jurors;
 - f. The cost effectiveness of the jury system; and
 - g. The court's ability to meet jurors' needs.
4. Juror utilization. To the extent feasible within operational and budgetary limitations, ~~C~~ourts shall implement the following ~~practices~~ relating to the number of jurors summoned to the courthouse:
- a. ~~Courts should employ practices~~ Adopt procedures that achieve optimum juror utilization with a minimum of inconvenience to jurors.
 - b. ~~Courts should~~ determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury service and the number assigned to jury panels.
 - c. ~~Courts should~~ eCoordinate jury management and calendar management for effective juror utilization.
5. Jury facilities. To the extent possible within budgetary limitations, ~~C~~ourts shall provide adequate and suitable environment for jurors where possible facilities for jurors, arranged to minimize contact between jurors, parties, counsel, and the public. This These facilities should include:
- a. Safe, convenient and free parking;
 - b. Entrance and registration areas that are clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse;
 - c. A pleasant and safe waiting facility furnished with suitable amenities; and
 - d. Safe and secure jury deliberation rooms with adequate space, furnishings and facilities, ~~conducive to reaching a fair verdict; and~~
 - e. ~~Juror facilities arranged to minimize contact between jurors, parties, counsel, and the public.~~

6. Juror compensation. Persons called for jury service shall be promptly compensated for fees and mileage pursuant to statute and local court policy. ~~Every effort shall be made to compensate jurors within two weeks of termination of service.~~

EK. Juror Performance and Deliberations Orientation.

1. ~~Juror orientation and instruction. The following practices should be observed in orienting and instructing jurors:~~
 - a. Courts ~~should~~ shall provide some form of orientation ~~or instructions~~ to persons called for jury service ~~at all the following points:~~
 - (1) ~~Upon~~ initial contact prior to service.
 - (2) ~~Upon~~ first appearance at the courthouse, and
 - (3) ~~Upon~~ reporting to a courtroom for voir dire.
 - (4) ~~Directly following~~ empanelment.
 - (5) ~~During the trial.~~
 - (6) ~~Prior to deliberations.~~
 - (7) ~~After the verdict has been rendered or when a proceeding terminates without a verdict.~~
 - b. Orientation programs should be designed to increase prospective jurors' understanding of the judicial system, ~~and~~ prepare them to serve competently as jurors, ~~and should~~ be presented in a uniform and efficient manner using a combination of written, oral, electronic and audiovisual materials. Any orientation materials provided to jurors shall be consistent with this section and all applicable rules and statutes. Any handbook used to orient jurors shall be approved by the supreme court.

L. Juror Performance and Deliberations.

- e1. Juror Instruction. Courts shall strive to instruct the jury in plain and understandable language regarding the applicable law and the conduct of deliberation. In instructing a jury, the judge should:
 - (1)a. Give preliminary instructions directly following empanelment of the jury that explain the jury's role, the trial procedures including note-taking and questioning by jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles in the case at issue;
 - (2)b. Prior to the commencement of deliberations, instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations. Such instructions should be recorded or reduced to writing and made available to the jurors during

deliberations; and

- ~~(3)~~c. Prepare and deliver instructions which are readily understood by individuals unfamiliar with the legal system.

~~d.~~2. Courts shall give jurors legally permissible post-verdict advice and information. Before dismissing a jury at the conclusion of the case, the judge should:

- ~~(1)~~a. Release the jurors from their duty of confidentiality;
- ~~(2)~~b. Explain their rights regarding inquiries from counsel, the media or any person;
- ~~(3)~~c. Either advise them that they are discharged from service or specify where they must report; and
- ~~(4)~~d. Express appreciation to the jurors for their service.

e.3. All communications between the judge and members of the jury panel from the time of reporting to the courtroom for voir dire until dismissal shall be in writing or on the record in open court. Counsel for each party shall be informed of such communication and given the opportunity to be heard.

~~2.~~ 4. Jury size and unanimity of verdict. In determining jury size and number of jurors required to return a verdict in criminal and civil cases, courts shall comply with Arizona law.

~~3.~~ 5. Jury anonymity. When polling a jury at verdict, the judge and clerk shall not identify the individual jurors by name, but shall use such other methods or form of identification as may be appropriate to ensure an accurate record of the poll and to accommodate the jurors' privacy.

4. 6. Jury deliberations. Courts shall ~~The following conditions and procedures should be observed to~~ ensure impartiality and enhance rational decision-making during jury deliberations. The following conditions and procedures should be observed:

- a. The judge should instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with subsection ~~(E)(1)(e)(L)(1)(b)~~.
- b. The deliberation room should conform to the recommendations set forth in subsection ~~(D)(5)(d)(J)(5)(d)~~.
- c. The jury should not be sequestered except under the circumstances and procedures set forth in subsection ~~(E)(5)(L)(7)~~.
- d. A jury should not be required to deliberate after normal working hours unless the judge after consultation with counsel and the jury determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interests of justice.

- e. Personnel who escort and assist jurors during deliberation should receive appropriate training.

5.7. Sequestration of jurors. The following practices should be observed in sequestering a jury:

- a. A jury should be sequestered only for the purpose of insulating its members from improper information or influences.
- b. The judge has the discretion to sequester a jury on the motion of counsel or on the judge's initiative. The judge also has the responsibility to oversee the conditions of sequestration.
- c. ~~Training should be provided to personnel who escort and assist jurors during sequestration. Use of personnel actively engaged in law enforcement for escorting and assisting jurors during sequestration is discouraged.~~

M. Jury Assistance. To ensure impartiality during jury deliberations courts shall ensure that appropriately trained personnel escort and assist jurors during sequestration and deliberation. Use of personnel actively engaged in law enforcement for escorting and assisting jurors during sequestration is discouraged.

N. Frequency of Grand Juror Service. A county or state grand juror shall not be asked to serve more than two days per week, unless approved by the presiding judge.