

MARIN COUNTY SHERIFF'S OFFICE
COURT SERVICES POLICY AND PROCEDURE MANUAL

CHAPTER 03 – FACILITY OPERATIONS
CRT 05-01
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JURY TRIAL PROCEDURE

POLICY

It is the policy of the Marin County Sheriff's Office to provide an operational guideline for the handling of public jury trials. Civil or Criminal Grand Juries are not covered by this policy.

PROCEDURE

Introduction

Jury trials may be of two types, civil or criminal. Criminal jury trials may involve multiple defendants or witnesses that are in the custody of the Sheriff and therefore require specialized training for the proper retention of custody and control of inmates during criminal jury trials. In rare circumstances, an inmate may be a party or witness in a civil action.

No Deputy shall be the primary Bailiff for any jury trial or take charge of a deliberating jury unless that Deputy has completed the Court Services Division field training program or is training under the direct supervision of a Court Services Division Field Training Officer.

There are few instances in which a Deputy Sheriff would have greater exposure to the public, other public officers and the media than as a Bailiff in a criminal jury trial of public notoriety. Bailiffs therefore, are expected to present and comport themselves in a professional manner that reflects positively on themselves and the Department at all times during public jury trials.

Especially in lengthy criminal jury trials, as the trial proceeds for weeks or even months, the "investment" in time and public resources becomes significant. Bailiffs should therefore attempt to closely follow the procedures detailed below and adhere to the training provided by Court Services training officers to prevent conduct or mistakes that could "taint" a jury and lead to a successful mistrial motion.

Civil and criminal jury trials are divided into distinct phases which include the jury selection process, the evidence or trial phase and the verdict phase. In criminal cases only, additional phases involving the jury may include trial of prior convictions phase, and in capital cases, the punishment phase.

Procedure by Trial Phase

Jury selection phase

The Federal and State Constitutions guarantee criminal defendant's facing prosecution for public crimes punishable by imprisonment the right to a jury trial by their peers selected at random from the community. This is achieved initially by the random issuance of jury subpoenas by Jury Services requiring citizens from Marin County to appear for jury duty. Jurors first assemble in the Jury Services office and receive basic orientation and a juror I.D., tag that identifies them by number only. When jurors are brought as a group to the courtroom they are called a jury panel. The panel is escorted by an officer of Jury Services and turned over to the Bailiff and the court for jury selection and seating.

Jury Services does not screen jurors for fitness. Bailiffs should expect to deal with a group of 80 to 100 individuals at a time. There may be individuals with significant physical disabilities, mental disabilities, language, sight or hearing impairment. The Bailiff may also be confronted with disruptive persons and individuals they recognize from the jail or prior law enforcement related contacts. Bailiffs must exercise tact and good judgment in assisting impaired persons and identifying individuals that may not be able to cooperate in the jury process. These individuals should be quickly identified to the trial judge by the Bailiff outside the presence of the jury panel.

Once the jury panel is seated the clerk of the court may conduct a roll call and administer the juror's oath. The process of jury selection will commence what is known as "voir dire." Voir dire may take several hours up to several weeks to complete.

During the jury selection process, Bailiffs must not discuss the facts of the case, the nature of the charges or the possible punishment with potential jurors. All related questions must be directed to the trial judge. Bailiffs must remain neutral in their demeanor throughout the trial process.

Trial phase

In civil cases, once the jury is selected and the trial commences the Bailiff's presence may be waived by the trial judge until the trial phase concludes and the jury is ready to deliberate. This is common, as there is little for the Bailiff to do unless the case involves participants that may present a danger to themselves or others in the courtroom.

In criminal cases, Bailiffs may be waived when no defendant or witness is in-custody and the charges are relatively minor such as driving under the influence. In most criminal jury trials involving violence and in felony jury trials, Bailiffs remain present throughout the trial phase even when the defendant is not in-custody. This is done to keep order and insure the safe handling of evidence as described below. In almost all such cases, the defendant's non-custody status is subject to revocation by the trial judge at any time. Occasionally, the defendant's own bail bondsmen will attend the trial and observe the defendant's demeanor and progress of the case. A bondsman can surrender the defendant on the bond at anytime outside the presence of the jury.

The evidence phase of the trial is completed in both criminal and civil jury trials when both sides "rest." At this point the parties argue the case to the jury and the judge issues final instructions to the jury on how to conduct deliberations. In civil cases where the Bailiff was waived, the clerk will call for the assigned Bailiff to return to the courtroom to take the Bailiff oath and be "sworn" on the jury. Being sworn means the Bailiff takes physical charge of the jury and assumes responsibility over them.

In criminal cases, the Bailiff will be sworn at the end of the reading of instructions by the trial

judge and the Bailiff will take charge of and assume responsibility for the jury.

Verdict Phase

The sworn Bailiff escorts the jury out of the courtroom and into their designated jury room behind the courtroom. The Bailiff's oath requires that the Bailiff not allow the jury any unauthorized contact with the outside world except through the Bailiff. The Bailiff will count the jury in the jury room and instruct them how to properly use of the Bailiff call button present in every jury room. The Bailiff will test the call button then post the outside of the jury room door with a "jury deliberating" sign and lock the door. The Bailiff will return to the courtroom and meet with the courtroom clerk to take possession of all "admitted" evidence. Admitted evidence is the evidence introduced during the trial and admitted into the record of evidence by the judge. It is the responsibility of the clerk of the court to provide only the admitted evidence to the Bailiff. Bailiffs should be aware that they are part of the chain of custody for admitted evidence once they take possession of it. The Bailiff will take the evidence directly to the jury room and leave it locked in with the jury.

The schedule of jury deliberation varies and is set by the trial judge and sometimes by the jury itself. Juries are permitted to leave the jury room to take breaks and go to lunch. The Bailiff will release the jury and tell them when to return as directed by the judge. The jury room is kept locked at all times to preserve the chain of custody of evidence and the juror's notes regarding deliberations. During sensitive cases the sworn Bailiff may be required to escort the jury to and from lunch to ensure their security.

Questions by the jury are taken out of the jury room by the sworn Bailiff and delivered directly to the trial judge. Once the jury informs the sworn Bailiff that they have reached a verdict, the Bailiff identifies the foreperson of the jury by name, and tells the trial judge that a verdict has been reached and the name of the foreperson. The jury is returned by the sworn Bailiff to the courtroom when requested by the trial judge. The jury room remains locked after the jury exits. If the verdict is rendered and the judge releases the jury, the Bailiff may open the jury room and return the evidence back to the clerk of the court completing the Bailiffs chain of custody of evidence.

Procedures for in-custody jury trials

In-custody jury trials require additional procedures to insure the proper supervision and retention of the inmate, the safety of court staff and the public, and the prevention of a mistrial by exposing the defendant's custody status to the jury.

While it is the goal to safely complete jury trials involving in-custody defendants, Bailiffs should take all reasonable actions dictated by violent or threatening conduct by inmates or others in the courtroom without regard to legal consequence on the trial process.

Bailiffs should anticipate violence originating from sources other than the defendant such as the victim's family, defendant's family, friends, and gang member associates of the defendant, victims or witnesses. The history of the Marin County Courts is replete with examples of violent incidents initiated by or involving all of these groups.

Bailiffs should also keep in mind and plan for events beyond human control such as a power outage blacking out the courtroom or an earthquake.

Good communications is essential to a successful and smoothly run in-custody jury trial. The Bailiff must communicate his/her actions and needs to the trial judge, the courtroom clerk, and the attorneys prior to the start of trial each day and as each phase of the trial proceeds to prevent an accidental mistrial. The primary Bailiff in the in-custody jury trial must closely follow the proceedings and know who and what is in the courtroom at all times. For example, poor

communications with defense counsel could lead to the attorney calling the inmate to the witness stand with no notice to the Bailiff. The Bailiff will have to request an immediate recess or follow the inmate across the courtroom to the witness stand. Either action may "give away" the defendant's custody status to the jury. Poor communications can also lead to dangerous actions by third parties, such as the prosecutor or defense counsel inadvertently placing a weapon that is evidence within arms reach of the inmate.

Inmates going through a jury trial will wear civilian clothing provided to the jail by their lawyer or the office of the Public Defender. Bailiffs will dress the inmate in their Pod at the Marin County Jail. After searching the clothing thoroughly, Bailiffs will dress-in the inmate under direct supervision. Bailiffs will retain belts and neckties up until entering the courtroom with the inmate, if the inmate was provided with them.

Prior to entry of the inmate into the courtroom, the primary Bailiff will search the courtroom paying particular attention to the area where the inmate will sit. The Bailiff will make sure that no jury panel members or jurors are present in the courtroom and that all rear doors of the courtroom are closed. The purpose of civilian clothing is to prevent the inmate's custody status from being exposed to the jury panel or the jury members. It is advisable during the jury selection phase to tape paper over the porthole windows in the front courtroom doors to prevent those outside the courtroom from seeing the inmate enter from the holding cell.

During jury selection when jury panels are coming in through the front of the courtroom, it is advisable to have a second Bailiff present to control the panel and insure orderly seating. It is also helpful to prevent prospective civilian jurors from approaching the primary Bailiff and inmate defendant. If no second Bailiff is available and the inmate or the case is not of risk significance, the primary Bailiff can have the clerk of the court open the courtroom door and let the panel enter. The primary Bailiff must bring the inmate defendant into the courtroom and have him/her ready and the holding cell door secured before the jury panel is permitted to enter the courtroom. During court recesses, the primary Bailiff must make sure that all jury panel members have exited the courtroom and the courtroom front door is secured before moving the inmate defendant to the holding cell. During jury selection and throughout the trial, inmate defendants should be instructed to tell their attorneys if the inmate needs to break to use the restroom. The attorney will request a recess on the inmate's behalf.

Inmate defendants may be provided with pencils, pens and writing pads to use at counsel table during the proceedings. The primary Bailiff should search and insure that these items or other items such as paper-clips etc. do not get retained or secreted by the inmate prior to being taken into the holding cell.

Once the jury has been selected and the trial starts, the judge will instruct the jury on entering and exiting the courtroom via the rear courtroom door to go to the jury room. Juries will check-in at the Bailiff's desk and go directly to the jury room during the trial and verdict phases making the Bailiff's work simplified in securing the courtroom for inmate defendant movement.

The bailiff shall request that a Security Deputy be present when necessary for the security and control of an in-custody defendant. He/she will consult with the Court Security Sergeant and Jail Classification to determine how many Security Deputies will be deemed appropriate.

In-custody defendants dressed in jail clothes or wearing physical restraint devices, such as handcuffs, shackles, etc., are not to be viewed by jurors unless approved/ordered by the judge.

The bailiff will endeavor to protect the jury from criminal acts or accidental "tainting."

Any questions by the jury regarding court procedure, protocol, regulations, etc, will be directed to the court.

The bailiff shall not participate in any conversation, discussion, or explanation of the trial participants, evidence, or procedure in the presence of the jury.

The bailiff shall inspect and secure, as appropriate, all weapons and other evidence brought into the court.

All firearms brought into court as evidence shall be inspected by the bailiff to ensure weapons are:

Unloaded

Mechanically inhibited from firing (trigger locks, flex cuffs, etc.)

Kept separate from ammunition

All weapons or items the Bailiff determines could be a threat to the court shall be kept separate from the defendant and under the direct supervision of the investigating officer or Bailiff. Once such a weapon is admitted into evidence, the clerk will supervise the weapon. Any exceptions shall be by direction of the court.

Narcotics shall be maintained by the investigating officer until admitted into evidence, whereupon the clerk will maintain control and supervision. (Narcotics which are hazardous by nature shall not be allowed into the courtroom, refer Courts Joint Order 92-03.)

Evidence other than weapons or narcotics shall be maintained by the investigating officer or DA until admitted into evidence (refer Courts Joint Order 92-03).

The Bailiff may be directed by the court to handle or assume control of specific evidence during the course of the trial or by previous arrangement with counsel and the court. The Clerk's office or District Attorney's Office is responsible for the permanent control and custody of any evidence submitted to the court.

Miscellaneous jury trial duties are:

Preparing the courtroom for special seating

Securing special equipment such as chalkboards, partitions, etc.

Posting "witness excluded" and "jury being instructed" signs by direction of the court.

Assisting in the handling of special witnesses, such as children, undercover officers, etc.

Controlling the media

Providing security for in-camera hearings

Handling special requests by counsel in the courtroom

Jury deliberation phase

Upon conclusion of the trial phase, the court will instruct the jury on the laws they are to apply to the case. When jury instruction is complete, the bailiff will be sworn in by the clerk to protect the jury from intrusion or tampering during their deliberations.

Prior to the jurors occupying the jury room, the bailiff should ensure that the necessary table, chairs, pencils, and paper are present; all other items should be removed. The Bailiff shall make a security check of the jury room.

The jury will then be escorted to the jury room. Once the jury is sequestered in the jury room, all admitted evidence is placed with the jurors as directed by the court. (Drugs and weapons require special handling and supervision.)

The Bailiff will then set and test the jury buzzer system. The Bailiff will advise the jury that they will be locked in the Jury Room and that if they need anything they should use the buzzer system.

The Bailiff will then place a "Jury Deliberating - Do Not Enter" sign on the Jury Room door and lock the jury into the jury room.

The jury room will be under the Bailiff's exclusive jurisdiction. The Bailiff will respond when summoned by the jury.

The Bailiff will not answer jury questions. All jury questions shall be addressed in writing to the judge, who may write a response or direct the jury to return to the courtroom for further information. The court may also direct that counsel and the defendant be present.

Should the court be assigned a new matter while the jury is deliberating, the Bailiff's first Duty is to safeguard the jury. If additional personnel are required, the Bailiff shall contact the Sergeant.

Whenever the jury is not present in the jury room, the jury room shall be locked. During overnight recess, the evidence shall be secured by the clerk or locked in the Jury Room by order of the court.

When the jury reaches a verdict, the Bailiff will advise the judge.

The Bailiff should assess the need for additional personnel prior to the verdict being read.

Jurors will remain in the jury room until counsel, clerk, court reporter, and defendant are present in the court.

The jury will then be returned to the courtroom, when ordered by the court, and the proceedings called to order.

The jury foreperson will give the verdict form to the bailiff who will hand it to the judge.

Penalty phase

If the verdict is guilty, the defendant usually is ordered to appear at a later date for sentencing. There are exceptions:

In serious felony cases, the jury may be retained to hear arguments addressing sentencing of the defendant.

Juries may also hear arguments dealing with a defendant's prior convictions.

Should a jury be retained, the Bailiff will continue his duties safeguarding the jury, handling in-custody defendants, and assisting the court.

When the jury has rendered a decision regarding sentencing or prior convictions, they are excused by the court.

The Bailiff will escort the jurors out of the building upon their request.

After the deliberations are complete, the Bailiff shall be responsible for the return of exhibits to the court. The court clerk shall be responsible for cleaning the jury room.

RELATED STANDARDS:

None

AFFECTED DIVISIONS:

None

DATE OF REVISIONS:

6/1/2001

By order of:

CAPTAIN DAVID M. AUGUSTUS
BUREAU OF DETENTION SERVICES