

BEFORE THE
DISTRICT OF COLUMBIA SUPERIOR COURT

COMMENTS OF THE SECTION ON COURTS,
LAWYERS, AND THE ADMINISTRATION OF JUSTICE
OF THE DISTRICT OF COLUMBIA BAR
REGARDING PROPOSED AMENDMENTS TO
SUPERIOR COURT CRIMINAL RULES 6 AND 30

Cornish F. Hitchcock, Co-Chair
Robert N. Weiner, Co-Chair
Carol Elder Bruce
Richard B. Hoffman
Jeffrey F. Liss
Randell Hunt Norton
Arthur B. Spitzer

Gregg H. S. Golden, Co-Chair
Richard B. Nettler, Co-Chair

Committee on Court Rules

Steering Committee of the
Section on Courts, Lawyers,
and the Administration
of Justice

June 1989

STANDARD DISCLAIMER

"The views expressed herein represent only those of the
Section on Courts, Lawyers, and the Administration of Justice
of the District of Columbia Bar and not those of the District
of Columbia Bar or of its Board of Governors."

SUMMARY

The D.C. Superior Court has published for comment proposed amendments to Criminal Rules 6 and 30, dealing respectively with designation of alternate grand jurors and the timing of the judge's instruction to the petit jury. The Section on Courts, Lawyers, and the Administration of Justice of the D.C. Bar approves of the proposed amendment to Rule 6. The Section also approves of the principle of allowing greater flexibility in when the judge may charge the jury, but believes that the judge's discretion should not be unlimited, and proposes that the timing of the charge be subject to the objection of the parties.

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The District of Columbia Superior has published for comment proposed amendments to Superior Court Criminal Rules 6 and 30. In both amendments, the Court has taken steps to eliminate gender-specific references (e.g., replacing an indefinite "him" with a reference to a specified officer or party), and the D.C. Bar's Section on Courts, Lawyers, and the Administration of Justice supports this step.

The amendment to Rule 6 permits the Chief Judge to designate alternate grand jurors at the time the grand jury is selected, rather than waiting until a later time. The Section believes that this amendment is likely to improve the efficiency of the grand jury's operations without adversely affecting the rights of any interested person. We support this change.

The amendment to Rule 30 permits the Court in a criminal case to instruct the jury before or after the parties have completed closing argument, or at both times. As written, the timing is left entirely to the discretion of the Court. This is a change from existing

practice, which permits the Court to instruct the jury only after closing argument. The Section agrees that greater flexibility is desirable, and recognizes that in some cases it may be advantageous to instruct the jury before argument, or before and after argument.

However, the customary practice has been to instruct the jury after closing argument. Post-argument instructions enable the Court to give effective curative instructions which admonish the jury to disregard improper comments during closing argument without unduly emphasizing or highlighting the error. Doing away with post-argument instructions entirely would make curative instructions much less effective. For this reason, the Section believes that the customary practice should not be changed over the objection of counsel. Accordingly, we recommend that Rule 30 be amended to read as follows:

At the close of the evidence or at such earlier times during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. At the same time, copies of such requests shall be furnished to all parties. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The Court may instruct the jury before or after the arguments are completed, or at both times, unless a party objects; in which case the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless that party objects thereto

before the jury retires to consider its verdict, stating distinctly the matter to which that party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury.

1707 L Street, N.W.
Sixth Floor
Washington, D.C.
20036-4202
(202) 331-4364
FAX (202) 223-7726
Sections Infoline
(202) 223-7729

SECTIONS

THE DISTRICT OF COLUMBIA BAR



Memorandum

Katherine A. Mazzaferri
Executive Director

Lynne M. Lester
Manager

TO: Section Chairpersons
FROM: Lynne M. Lester *LM*
DATE: July 6, 1989
SUBJECT: Public Statements

Please find enclosed for your review, three public statements issued by the Courts, Lawyers and the Administration of Justice Section. Until I am notified of your Section's 1989-90 chairperson(s), you will continue to receive public statements and other pertinent Section information.

Have a great summer!

Enclosures

cc: Katherine A. Mazzaferri, Esq.

COURTS, LAWYERS AND THE
ADMINISTRATION OF JUSTICE SECTION

Steering Committee:

Cornish F. Hitchcock, Cochair
Robert N. Weiner, Cochair
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The District of Columbia Bar

Committees:

Court Rules
Legislation

July 10, 1989

BY HAND

Ms. Melinda Grochowski
Sections Office
D.C. Bar
7th Floor
1707 L Street, N.W.
Washington, D.C. 20036

Dear Melinda:

Attached is a corrected version of the Section's comments on Proposed Rules 104, 701.1 and 711 of the U.S. District Court for the District of Columbia. Please circulate the revised version.

The Proposed Rules were published on May 31st, with a 45-day period for comments. By my calculation, comments are thus due on July 17th. (July 15th falls on Saturday.)

Sincerely yours,

Robert N. Weiner

Attachment/1