

SUMMARY JURY TRIAL – UNTAPPED TOOL FOR EFFECTIVE STATE COURTS,
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Trial judges throughout the United States realize that with burgeoning civil trial lists and overloaded criminal and family court dockets, it is absolutely necessary for the administration of justice that complementary dispute resolution programs exist in every court district.

One very effective complementary dispute resolution process is the summary jury trial, devised by Judge Thomas Lambros, of the United States District Court for the Northern District of Ohio. This technique involves the use of a sitting jury panel to hear cases presented to them in a summary fashion by the attorneys involved in the litigation. Participation in the program is totally voluntary, with the choice being left to the litigants' attorneys and claims managers for defendant carriers. The purpose of the summary jury trial is to provide the parties with a cost-efficient way to learn the probable outcome of an actual jury trial. Since there is little or no live testimony before the jury, an abbreviated trial may last anywhere from two hours to one full day.

No record is made of the summary jury trial proceedings; however, it is conducted with the same decorum as a trial. Regular jury panels may be employed and four challenges to each side are allowed. The attorneys are allowed great leeway in presenting a summary in the form of an opening and closing argument and they are entitled to give the jury copies of all relevant medical reports, parts of depositions and interrogatories. At the conclusion of the trial, the judge gives an abbreviated charge as to the law. The jury then retires to deliberate and return a verdict. The summary jury is advisory, but is not told until afterward that its verdict is advisory and that the technique is a settlement procedure. The judge and the attorneys are permitted to question the jury on the results of their verdict. All parties interested in the litigation, both plaintiff, defendant and claims managers for the carriers, are in open court to question the jurors and listen to their remarks about the case. These remarks are then used by the trial judge immediately after the verdict to try to settle the case.

All cases presented for summary jury trials must be trial ready with no formal motions pending. All discovery must be completed before the summary jury process is used. Moreover, following the advisory verdict, no party is thereafter allowed to change the theory of the case. In the event that the case does not settle immediately following use of the technique, it is critical that the case is given a firm trial date approximately thirty days after the summary jury trial verdict is rendered.

Cases may be selected for the summary jury trial process by the civil case manager, the trial judge, motion judge, or a law clerk. Criteria that is used to determine what cases should be suggested for summary jury trial are outlined below.

I anticipate that the case will be complex, expensive, and lengthy. Prime cases are those where the parties need a "reality check" in listening to a real jury render a verdict on the summary of the specific facts involved in their litigation. I have also found that summary jury trials are a good method where there is a lot of animosity among the parties in a normal settlement mode or where a continuing relationship may exist after the trial is concluded. The

program is strictly voluntary; the judge, the attorneys, the case managers, and other parties involved in the litigation must consent thereto.

Experience has shown us that the jurors really enjoy the experience. The trial judge explains to them that they are part of a unique experiment and that they are only going to hear summaries and not live testimony. It is a great public relations tool because jurors are not idly waiting in the jury waiting room for a regular trial to begin, and they handle a case from beginning to end. It also provides a cathartic effect on the litigants. It is good jury utilization, and jury managers are extremely positive about the program. Many advantages come out of the use of the summary jury trial – it is quick, inexpensive, meaningful, and the public relations with jurors are outstanding.

Obstacles to the use of summary jury trials are that the bench must be educated on the process, the organized bar must be sold on the program, and the public must be advised of its use and effectiveness in resolving issues quickly. Some critics say that it is a duplication of a real trial, and it may be too popular – attorneys may want to use it, not as an additional means of settlement, but to delay the start of a trial. However, the advantages of summary jury trials far outweigh the disadvantages, as shown by the New Jersey experience with summary jury trials.

Since the program's inception in Gloucester County, sixty cases were settled before trial, approximately twelve were tried by the author, and eleven settled after the summary jury trial. The one case that did not settle under the summary jury trial process went to a real trial, presided over by the same trial judge, with the same result of a no cause for action rendered in the case. The program has saved countless months of judges' time and countless dollars since its inception. No specific data have been obtained concerning the actual savings to litigants, lawyers, and insurance companies; however, it can be estimated that the savings are substantial.

The Gloucester County experience indicates that the summary jury trial technique is an effective and cost-efficient way to handle cases in our civil court system. However, for this to be accomplished, the judges, the bar, the insurance industry, the business community, and the public must be educated about the existence of the program, the process used, and the unique features and benefits incorporated. The compelling features of summary jury trials are that they save time, money and give clients a reality check when they hear a real jury given them a verdict. More important, summary jury trials give the trial judge another complementary dispute resolution procedure that can be suggested to the litigants to amicably settle their case, saving additional trial time for the court. The trial judge must remember that in dealing with the summary jury trial, it is a *settlement* technique, which may be adaptable, with the consent of the parties, to a low/high verdict and/or a binding verdict. This option would be left to the parties and the trial judge in the jurisdiction where the summary jury trial is being heard. Experience has shown that the technique's effectiveness can be further enhanced by its use in a binding format particularly with a high/low agreement. Clearly, in such instances, the court system benefits since there is no possibility of a later trial *de novo*. Furthermore, each side benefits since it can avoid costs while providing for some degree of certainty in the outcome.

The trial judge must be aware that once the summary jury trial is completed, the jury must be told that their verdict was advisory and that the members participated in an innovative

settlement experience. Once returned to the jury pool, the jurors should be advised that they must listen to further instructions by the trial judge who will then try the next case in which they are selected.

The summary jury trial process is unique. It serves as a wonderful, cost-effective, and efficient case management tool that should be used in the administration of justice throughout the country.