

COMMENTS OF THE LEGISLATION COMMITTEE OF DIVISION IV OF THE
D.C. BAR CONCERNING THE COUNCIL FOR COURT EXCELLENCE'S
DRAFT JURY STATUTE FOR THE DISTRICT OF COLUMBIA SUPERIOR COURT

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Dated: March 25, 1985

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The Legislation Committee has reviewed the latest draft of the proposed jury statute prepared by the Council for Court Excellence with assistance from the District of Columbia Superior Court. The Legislation Committee strongly supports legislation which will provide the District of Columbia with control over the jury system its local courts must utilize. It is only proper that, instead of being tied to a jury system it has no control over, and, indeed, one which has too many exemptions, the District's local courts be able to assess what is appropriate for the fair and efficient administration of justice in its courts. Thus, the proposed statute broadens the base from which jurors may be selected and deals creatively with many of the problems that the present jury system has created.

However, while the Committee generally endorses the language of the Council's draft and the separation of the District's jury system from that provided the federal district courts, the Committee submits the following suggestions and comments:

1. Proposed § 11-1906. Source List. The Committee suggests adding the list of individual D.C. income taxpayers as an additional source list for prospective jurors. The present source list has been criticized as being too underinclusive, and, thus, this addition may pick up persons who pay D.C. income tax, but who are neither registered to vote in the District nor the possessers of a D.C. drivers permit.

2. Proposed § 11-1908. Failure to appear or return form; misrepresentation. We recommend that the fine contained in subsections (a) and (b) for prospective jurors who either fail to

appear for jury duty, return a completed juror qualification form or who intentionally misrepresent a material fact on the form should be reduced from \$1,000 to \$300. A fine of \$300 will serve as an effective deterrent, and such fine will remove the offenses described in this section from the category of offenses for which a defendant may demand a jury trial. See D.C. Code § 16-705(b) (1981). The Legislation Committee proposes this recommendation because it believes that the entitlement to a jury trial in such cases will only add to an already existing backlog in the Criminal Division of the Superior Court and will remove the prospect of having sitting jurors decide whether prospective jurors have committed an offense. Such a decision would seem to be more appropriately made by a trial judge. It should be noted, however, that the maximum term of imprisonment could be increased to as much as 90 days (and to 6 months in the case of contempt of court) and still be within the non-jury trial limits set by D.C. § 16-705(b). Thus, the Council could consider changing the seven-day prison terms in subsections (a) and (b). However, the Committee believes that the proposed term of imprisonment provided in subsections (a) and (b) serve as an effective deterrent. In that regard, the Council should review the prison penalties and fines provided in the Maryland Code. There the failure to return a juror qualification form or the failure to appear for jury service carries a \$100 fine or 3 days in jail or

both, and one who wilfully misrepresents facts on the juror qualification form can be fined \$500 or sentenced to 30 days in jail or both.^{1/}

3. Proposed § 11-911(c). Challenging compliance with selection procedures. There is no apparent reason why the United States should not also be listed as a party who may challenge a jury on the ground that the jury was not selected in conformity with the jury statute. Accordingly, the Committee suggests adding the words "the United States" after the words "District of Columbia" in proposed § 11-1911(c).

4. Proposed § 11-1914. Protection of Juror's Employment. Here the Committee agrees that a substantial fine, such as the \$5000 fine provided in the proposed section, is appropriate as a deterrent to employers who may be contemplating actions which would inhibit their employees' ability to serve as jurors. Unlike proposed § 11-1908, it is not likely that an employer being prosecuted for a violation of this proposed section would seek a jury trial and, thus, add to the court's backlog. However, the term of imprisonment should be changed from "one month" to "thirty days" since thirty days is a more precise time limitation and a "month" can vary from 28 to 31/days.^{2/}

^{1/} Md. Code Ann., Courts and Judicial Proceedings, §§ 8-401(b) and (c).

^{2/} The Maryland Code provides for a fine of \$1000 for an employer who fires an employee solely because of time lost by reason of jury service (see Md. Code Ann., Courts and Judicial Proceedings, § 8-401(a)).

5. In light of the fact that the proposed jury statute provides for criminal penalties -- proposed §§ 11-1908, 11-1914 and 11-1917 contain fines and prison terms -- there may be some question regarding whether it is the United States or the District of Columbia which prosecutes these offenses. See D.C. Code § 23-101 (1981). The Committee recommends adding a section at the end of the proposed statute which states: "All prosecutions under this chapter shall be conducted in the name of the District of Columbia by the Corporation Counsel."

6. Proposed § 11-1912. Length of Service. The Committee supports the one day - one trial concept embodied in proposed § 11-1912. This provision will reduce the hardship on employed and self-employed persons who may not be able to earn any salary or wages while serving as a juror. One of the chief goals of the proposed jury statute is to require a much broader cross-section of the members of the community to serve as jurors, and especially as petit jurors. Shortening the length of jury service is a key factor in reaching this goal.

7. The Committee makes a number of minor, grammatical suggestions with respect to the language of the draft. Thus, consistent with proper legislative drafting, the term "Court" should not be capitalized, except in proposed § 11-1903(a). The terms "Master Jury Plan" in proposed § 11-1903(h) should not have either "jury" or "plan" capitalized. In proposed § 11-1913(e) the term "or her" should be placed between the words "his" and "performance". The number "9" in proposed § 11-1914(c) should be spelled out, and the Committee suggests that proposed § 11-1919

(concerning the effective date) read: "The amendments to this chapter made by [this Act] shall take effect 12 months after enactment of [the legislation.]

The Committee looks forward to continued collaborative efforts toward the goal of having this proposed jury statute become the law of the District of Columbia.