

Jury Managers' Toolbox

Best Practices for Jury Summons Enforcement

Overview

Non-response and failure-to-appear (FTA) rates for jury service can significantly undermine jury system efficiency. Nationally, FTA rates average 9%, but rates as high as 50% have been reported by some courts. Timely and consistent follow up on jurors who fail to respond to a jury questionnaire or who fail to appear for service is a key feature of a well-run jury operation. Specifically, it increases overall jury yield, improves the representativeness of the jury pool, and increases overall efficiency.

Second Notice/Summons Programs

Sending a second notice or second summons to the non-responsive or FTA juror is the single most efficient and cost-effective method of follow-up. NCSC research on summons enforcement programs found that FTA rates are 24 to 46 percent lower in courts that send a second notice/summons compared to courts that do not use this approach.¹ Implementation of a second notice/summons program typically involves only printing, postage, and minimal staff resources. Most commercial jury software includes the capacity to automate this type of program with ease.

¹ More than half (54%) of all courts use a second notice/summons program for summons enforcement; nearly one-quarter (24%) of courts use this approach as the only form of summons enforcement. NCSC *State-of-the-States Survey of Jury Improvement Efforts* (April 2007).

Timeliness and **consistency** are the most important factors in this type of summons enforcement. An NCSC survey of courts that send a second notice or summons to non-responsive or FTA jurors found that courts with the lowest FTA rates initiated follow up on all non-responsive or FTA jurors within 3 weeks of the response or appearance date. Courts whose enforcement efforts were less timely or who did so only on a sporadic basis had significantly higher non-response/FTA rates.

Generally, the results of the second notice/summons are similar to those for the first summons. For example, if half of the persons responding to a jury summons are qualified and available for jury service, half of the jurors responding to the second notice or summons will be qualified and available. Thereafter the overall proportion of qualified jurors resulting from subsequent enforcement efforts (e.g., third notice/summons, Order to Show Cause calendars, arrest warrants) tends to decline.

Subsequent Enforcement Efforts

More than half of state courts engage in other summons enforcement efforts including issuing Order to Show Cause (OSC) notices (36%), issuing bench warrants for non-responsive and FTA jurors (24%), and imposing fines (14%). If done carefully, these efforts send a powerful

message to the public about importance that the court places on jury service. Nevertheless, the NCSC recommends that these types of summons enforcement programs be implemented as a supplement to a second notice/summons program.

These more aggressive summons enforcement programs tend to be more labor-intensive (and consequently, more expensive) than the second notice/summons programs and have less of an impact on non-response and FTA rates. For jurors who are statutorily qualified for service, the ultimate goal of all such programs should be the juror's completion of jury service. Fines or other penalties for non-response or failure to appear may be imposed, but those penalties should not substitute for the completion of jury service. In any event, the court should carefully consult its respective state statutes and court rules to ensure compliance with legal requirements for these programs.

A preliminary issue for courts that wish to implement a more aggressive enforcement program is the scope of the program. Courts generally adopt one of three approaches whose advantages and disadvantages are discussed below.

1. The court takes more aggressive enforcement efforts against all non-responsive and FTA jurors. This approach has the benefit of complete neutrality and consistency with respect to which non-responsive and FTA jurors are singled out for more aggressive enforcement, but has several disadvantages. The cost of taking aggressive measures against all non-responsive and FTA jurors can be prohibitive for courts with large numbers of such persons. Moreover, the court may risk significant public disapproval if aggressive

enforcement is taken against individuals who might otherwise have been eligible for exemption or excusal (e.g., elderly, infirm, active military, etc.).

2. The court randomly selects a specific number or proportion of non-responsive or FTA jurors for more aggressive enforcement.

This approach permits the court to control costs by limiting the number of persons who may be subject to more aggressive enforcement efforts. Effective media relations and public outreach are necessary to ensure that the community is kept aware of the court's commitment to jury summons enforcement, but without disclosing the overall probability of enforcement against any individual non-responsive or FTA juror. A purely random selection approach also carries the same risk of public disapproval for aggressive enforcement against otherwise sympathetic jurors.

3. The court undertakes more aggressive enforcement efforts only against the most recalcitrant non-responsive and FTA jurors.

This approach likewise permits the court to control costs by defining the eligible population of potential respondents subject to more aggressive enforcement efforts and it substantially reduces the risk of public disapproval for overly aggressive measures imposed on sympathetic jurors. It does, however, require more effort to ensure that only the most recalcitrant jurors are targeted.

Regardless of which approach the court implements, the NCSC has found that supplemental enforcement efforts are most effective when local media is invited to observe the proceedings and is provided with sufficient background information to explain the rationale for the summons enforcement. Media

coverage helps educate the public about the importance of responding immediately to a jury summons as well as reinforces the notion that the court will enforce its rules regarding jury summons by issuing an order from the judge to

round up recalcitrant jurors. It can be difficult to hold the attention of local media unless OSC calendars are scheduled with sufficient infrequency (e.g., not more often than quarterly).

Disclaimer: The guidelines discussed in this document have been prepared by the National Center for State Courts and are intended to reflect the best practices used by courts to minimize non-response and failure-to-appear (FTA) rates.