



NOVA LAW REVIEW

SURVEYS

2002 Survey of Florida Juvenile Law

Michael J. Dale

2003 Survey of Florida Public
Employment Law

John Sanchez

ARTICLES AND ESSAYS

Freeing the Innocent: Obtaining Post-Conviction
DNA Testing in Florida

Catherine Arcabascio

Florida Mediation Case Law: Two Decades of Maturation

Fran L. Tetunic

Jury (Dis)Service: Why People Avoid Jury Duty
and What Florida Can Do About It

*Paul W. Rebein
Victor E. Schwartz
Cary Silverman*

Pope's Progeny

James D. Camp, Jr.

NOTES AND COMMENTS

The Validity of Binding Arbitration Agreements
and Children's Personal Injury Claims in Florida
After *Shea v. Global Travel Marketing, Inc.*

Douglas P. Gerber

Making the Case for Effective Assistance of Counsel in
Involuntary Termination of Parental Rights Proceedings

Michele R. Forte

VOLUME 28
NUMBER 1
FALL 2003

JURY (DIS)SERVICE: WHY PEOPLE AVOID JURY DUTY AND WHAT FLORIDA CAN DO ABOUT IT

PAUL W. REBEIN*
VICTOR E. SCHWARTZ**
CARY SILVERMAN***

A JUROR'S PRAYER

Dear God, please give me an excuse in a hurry,
Something good to keep me off this stupid jury.
My job! My kids! My sick Aunt Bea!
Who could survive even a day without me?
And you should know, by the way, I'm deaf in one ear,
So when a witness testifies, I won't be able to hear.
Here comes the defense lawyer, eyes right on me.
"Just because my client's been charged, do you think he's guilty?"
"Actually, I do," I say, trying hard not to smirk.
"If not of this crime, then because he's a jerk!"
But be warned, Mr. State Attorney, don't think I'll help you,
You see, I hate the police, informants, and prosecutors, too!
Now is the time, the *voir dire est fini*,
Please, God, don't let them pick me.
Did I mention I'm scheduled for brain surgery?

* Paul W. Rebein is a partner in the Tampa office of Shook, Hardy & Bacon L.L.P., where he practices business litigation, products liability litigation, and civil rights litigation. He received his B.A. from the University of Kansas in 1989 and his J.D. from the University of Virginia in 1992. He is the author of numerous articles on jury trial tactics.

** Victor E. Schwartz, a former Dean of the University of Cincinnati College of Law, is a senior partner and chairs the Public Policy Group in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P. Mr. Schwartz is co-author of the most widely used torts casebook in the United States, PROSSER, WADE AND SCHWARTZ'S TORTS (10th ed. 2000), and author of COMPARATIVE NEGLIGENCE (3d ed. 1994 & Supp. 1999). He is private sector chair of the Civil Justice Task Force of the American Legislative Exchange Council, has authored hundreds of law review articles, and frequently speaks before national audiences interested in civil justice issues. Mr. Schwartz obtained his B.A. *summa cum laude* from Boston University in 1962 and his J.D. *magna cum laude* from Columbia University in 1965.

*** Cary Silverman is an associate in the law firm of Shook, Hardy & Bacon L.L.P. in Washington, D.C. He received a B.S. in Management Science from the State University of New York College at Geneseo in 1997, an M.P.A. from The George Washington University in 2000, and a J.D. with honors from The George Washington University Law School in 2000, where he served as Managing Editor of *The Environmental Lawyer*.

I.	INTRODUCTION.....	144
II.	IMPROVING JURY SERVICE.....	145
	A. <i>Address the Loss of Income</i>	146
	B. <i>Eliminate Free Passes From Jury Service</i>	150
	C. <i>Limit Excuses to True Hardship</i>	152
	D. <i>Protect Employment Rights</i>	154
	E. <i>Small Business Protections</i>	155
	F. <i>Provide an Appropriate Penalty for No-Shows</i>	155
III.	CONCLUSION.....	156

I. INTRODUCTION

Unfortunately, the sentiments expressed in the *Juror's Prayer* seem prevalent among jurors in Florida. Many citizens do not want to serve on juries and will do almost anything to get out of it. How many times has a friend, family member, or client called you with the question: "I just received a jury summons, what do I need to say to get out of it?"

Others take a different approach: they just blow it off. Take former baseball star Pete Rose, for example. Twice Rose failed to respond to a jury summons in Palm Beach County.¹ Did he think nobody would notice? But before you judge Mr. Rose too harshly, consider this fact: only *one in four* jurors was showing up in Palm Beach County at the time Mr. Rose was a no-show.² Given this pitiful response, who can blame Mr. Rose for thinking jury service was optional?³

1. Nicole Sterghos Brochu, *Thinking of Ignoring Jury Duty? Think Again*, FLA. SUN-SENTINEL, Sept. 18, 2000, at 1B.

2. *Id.*

3. *Id.* Juror response rates have reached crisis levels in many courts throughout the nation. According to the American Judicature Society, in some urban jurisdictions, fewer than ten percent of all summoned citizens show up in court. See ROBERT G. BOATRIGHT, *IMPROVING CITIZEN RESPONSE TO JURY SUMMONSES: A REPORT WITH RECOMMENDATIONS* vii (Am. Judicature Soc'y 1998). Others have estimated that as many as two-thirds of the approximately fifteen million Americans summoned annually do not report for jury service. See David Schneider, *Jury Deliberations and the Need for Jury Reform: An Outsider's View*, 36 JUDGES J. 23, 25 (1997). While a portion of this non-response rate is attributable to out-of-date records and summonses that are mailed to the wrong addresses, many citizens simply ignore their civic obligation and opportunity to serve. See Ted M. Eades, *Revisiting the Jury System in Texas: A Study of the Jury Pool in Dallas County*, 54 SMU L. REV. 1813, 1815 (2001). For example, a recent joint study conducted by the Dallas Morning News and Southern Methodist University found that in Dallas County, Texas, "at least 80% of the people summoned each week for jury duty disregard their summonses and refuse to participate in the system." *Id.*

Why do so many people recoil at the mere mention of juror duty? It is not, as one might expect, that there has been a decline in respect for the jury system. To the contrary, according to an American Bar Association (ABA) opinion poll, seventy-eight percent of the public rate our jury system as the fairest method of determining guilt or innocence; sixty-nine percent consider juries to be the most important part of the justice system.⁴ Given this apparent conflict, it is important to consider why so many Floridians seek to avoid jury service, and to find ways to address their concerns.

This article examines some of the reasons behind the problem and offers practical solutions. The bottom line is that Florida's jury service laws need to be made more "user-friendly." Otherwise, Floridians will continue to try to avoid jury service. When this happens, the rights of civil and criminal litigants are thwarted because they are not tried by a jury truly made up of "their peers." Their peers are not on the jury. They are back at work.

II. IMPROVING JURY SERVICE

There are many ways to make jury service a more pleasant experience for Florida's citizens. Some courts have focused on improving jury services and facilities.⁵ Other efforts have aimed at making jury service a more interesting and active process.⁶ A Jury Innovations Committee convened by the Supreme Court of Florida examined some of these issues.⁷ That Committee was composed of appellate and circuit court judges, court administrators, attorneys, and former jurors.⁸ In May of 2001, the Committee submitted a final report to the Supreme Court of Florida, recommending forty-eight jury service improvements in Florida.⁹

4. A.B.A., PERCEPTIONS OF THE U.S. JUSTICE SYSTEM 6-7 (1998), available at <http://www.abanet.org/media/perception/perceptions.pdf> (last visited Apr. 12, 2003).

5. See, e.g., James Needham, *A Citizen's Suggestions for Minimum Standards for Jury Facilities and Juror Treatment*, 36 JUDGES J. No. 4, at 32-33 (1997) (suggesting ways to improve treatment of jurors in the courthouse).

6. See, e.g., Rebecca L. Kourlis & John Leopold, *Colorado Jury Reform*, 29 COLO. LAW. 21, 23 (2000); Janessa E. Shtabsky, Comment, *A More Active Jury: Has Arizona Set the Standard For Reform With Its New Jury Rules?*, 28 ARIZ. ST. L.J. 1009, 1011 (1996).

7. See generally FLA. JURY INNOVATIONS COMM., FINAL REPORT (2001), available at <http://www.flcourts.org/pubinfo/documents/JuryInnovationsFinalReport.pdf> (last visited Apr. 12, 2003).

8. *Id.* at 2.

9. See generally *id.* The Supreme Court of Florida issued an Administrative Order on October 17, 2003 adopting many of these recommendations and referring them to court committees and the Florida Legislature for action. See *In re* Final Report of Jury Innovations Comm., Administrative Order No.A0SC03-41 (Fla. Oct. 17, 2003), available at

Some jury improvements can and should be implemented by courts. But, there are also certain measures that the legislature should take to safeguard the right to a representative jury. Florida should enact jury service improvement legislation modeled after a "Jury Patriotism Act" recently developed by the American Legislative Exchange Council (ALEC), the nation's largest bipartisan membership organization of state legislators, with over 2,400 members nationwide.¹⁰ The Jury Patriotism Act would eliminate certain disqualifications, exemptions, and flimsy hardship excuses that allow many to avoid jury service.¹¹ The Act also would lessen the burdens placed on citizens that render them unable to serve, or discourage their service on juries.¹²

The Jury Patriotism Act finds support across the political spectrum. Just a few of its supporters include the AFL-CIO, National Black Chamber of Commerce, National Federation of Independent Business, and National Association of Wholesaler-Distributors. Elected officials have responded to this broad-based support. Within months after its development, laws based on the model Jury Patriotism Act were enacted in Arizona, Louisiana, and Utah.¹³ In October 2003, legislation based on the Jury Patriotism Act was endorsed by the Council of State Governments, a nonpartisan, nonprofit organization that seeks to foster excellence in state government.

A. *Address the Loss of Income*

One significant reason that people avoid jury duty is the financial burden service may impose. Under current Florida law, people who do not receive compensation from their employers during jury duty receive fifteen dollars per day during the first three days of service from the court.¹⁴ Any-

http://www.flcourts.org/pubinfo/summaries/briefs/03/03-41/Filed_10-17-2003_Administrative_Order.pdf (last visited Oct. 31, 2003).

10. See Victor E. Schwartz et al., *The Jury Patriotism Act: Making Jury Service More Appealing and Rewarding to Citizens*, at <http://www.alec.org/meSWFiles/pdf/0309.pdf> (Apr. 2003).

11. AM. LEG. EXCH. COUNCIL, JURY PATRIOTISM ACT § 4(a)-(b), at <http://www.alec.org/viewpage.cfm?pgname=2.1cc43> (last visited Sept. 4, 2003).

12. See *id.* at § 5-6.

13. See H.B. 2520, 46th Leg., 1st Reg. Sess. (Ariz. 2003) (signed by Gov. Janet Napolitano on May 12, 2003); H.B. 324, Gen. Sess. (Utah 2003) (signed by Gov. Michael Leavitt on Mar. 17, 2003); H.B. 2008 (La. 2003) (signed by Gov. Mike Foster on June 27, 2003). In the 2003 session, Representative Christopher Smith (D-Dist. 93) introduced a bill (H.B. 1441) in the Florida Legislature based on the model Jury Patriotism Act.

14. See FLA. STAT. § 40.24(3)(b) (2002). Miami-Dade County currently requires employers located or residing in the county, and having over ten full-time employees, to pay their

one who serves for more than three days is paid thirty dollars per day upon the fourth day of jury service and thereafter.¹⁵ These amounts may barely cover the daily cost of transportation, parking, and lunch, let alone support the family of a juror who is not receiving other compensation during jury service. The ABA has recognized that “[f]ew persons making more than minimum wage can afford [the] . . . sudden and involuntary cut in pay imposed by jury service.”¹⁶

The lack of available compensation may be particularly troublesome for jurors selected to serve on lengthy civil trials. Although somewhere between one-half and three-quarters of all trials conclude within three days, and very few cases extend beyond ten days, jurors who find themselves called to serve on the rare, lengthy trial may be subject to extreme financial hardship.¹⁷

Lack of adequate compensation for jurors has several unfortunate results. Some jurors may opt to simply not show up in court. Those with jobs who will lose their salary during jury service are likely to plead with the court to be excused, particularly when the trial is expected to last several days, weeks, or months. Many Florida courts must excuse from service many laborers, salespersons, parents with childcare expenses, and professionals because of the economic hardship that they may suffer.¹⁸ Those who

employees during the entire period of jury service. See MIAMI-DADE COUNTY, FLA., CODE §§ 11-31, 11-32 (1998).

15. See FLA. STAT. § 40.24(4). Florida’s juror compensation is about average when compared to other states. See NAT’L CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS 89 (2002), available at http://www.ncsconline.org/D_Research/csp/2002_Files/2002_Main_Page.html (stating that, in 1999, the average daily juror fee in state courts for less than five days of service was just eighteen dollars and fifty three cents per day, and, after five days, the average amount increased to twenty four dollars and twenty six cents per day). *Id.* at 90. Generally, juror compensation ranges from absolutely nothing on the first day of service to forty dollars per day. *Id.* at 89; see, e.g., CAL. CIV. PROC. CODE § 215 (Supp. 2003) (compensating jurors fifteen dollars per day after the first day of service); N.Y. JUDICIARY LAW §§ 521, 521-a (McKinney 1992 & Supp. 2003) (requiring employers to pay up to forty dollars of an employee’s compensation for the first three days of jury service, with the state paying the juror fee only to those jurors not receiving employer compensation, and increasing the fee by six dollars when a trial extends more than thirty days). Federal courts throughout the country pay jurors a forty dollar fee per day for their service. See 28 U.S.C. § 1871(b)(1) (1994).

16. A.B.A., STANDARDS RELATING TO JUROR USE & MANAGEMENT 133 (1993).

17. See ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE U.S. COURTS 165, tbl. C-8 (2002), available at <http://www.uscourts.gov/judbus2002/contents.html> (finding that seventy-five percent of all civil and criminal trials in the federal courts were completed within three days and four percent extended beyond nine days during the twelve month period ending September 30, 2002); U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CIVIL TRIAL CASES AND VERDICTS IN LARGE COUNTIES, 1996, at 13 (1999), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ctcvlc96.pdf> (finding that the median number of days in jury trials in the nation’s seventy-five largest counties was four days).

18. See STANDARDS RELATED TO JUROR USE & MANAGEMENT, *supra* note 16, at 133–34.

remain in the jury pool are primarily those "who are not employed or whose employer[s] will continue to pay their salary,"¹⁹ and may be forced to make an inequitable and unfair personal sacrifice. "Consequently, the basic democratic right to be tried by a jury of one's peers may [be largely illusory in a system whose juries are] . . . disproportionately composed of retired and unemployed individuals, especially in lengthy trials."²⁰ Such juries may be non-diverse and unrepresentative of the community as a whole.²¹ They also may produce arbitrary results for plaintiffs, defendants, and prosecutors.²² Equally important, many people who would like to serve on a jury, and have both a right and obligation to do so, are not, in practice, able to participate.²³

Better compensation of jurors may be the key to obtaining more representative juries. As discussed above, loss of income is a primary reason why some jurors do not appear in court or request an excuse from service. It is equally clear that although jury participation is indeed a civic duty, jurors should not bear an extraordinary financial loss for their service, particularly when called to decide disputes between private parties.

"Ideally, [Florida] would be able to provide greater daily compensation for jurors. After all, jury service is a civic obligation. In these times of tight state budgets, however, significantly increasing the juror fee through payments out of the state treasury may not be a realistic option . . ."²⁴ Even as long ago as 1993, the ABA recognized that "raising juror fees to compensate citizens for their time at current wage levels would place a nearly impossible

19. *See id.*

20. Schwartz et al., *supra* note 10, at 4 (citing *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975) (ruling that "the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial" and striking down the systematic exclusion of women from jury venires)).

21. *Id.*

22. *Id.*

23. *See* FLA. CONST. art. I, § 22 ("The right of trial by jury shall be secure to all and remain inviolate."); *Taylor*, 419 U.S. at 528 (1975) (ruling that "the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial" and striking down the systematic exclusion of women from jury venires); *Batson v. Kentucky*, 476 U.S. 79, 97 (1986) (ruling that use of peremptory challenges to exclude African American jurors from petit juries unconstitutionally denied a person participation in jury service because of his race under the Sixth and Fourteenth Amendments); *Patton v. Mississippi*, 332 U.S. 463, 469 (1947) (holding that a state may not deprive a class of citizens the right to serve on a jury, either by statute or by administrative practices).

24. Schwartz et al., *supra* note 10, at 4-5.

burden on many financially hard-pressed jurisdictions."²⁵ "This observation is no less true today."²⁶

In order to ensure that all people have the opportunity to serve on a jury, the Jury Patriotism Act includes an innovative lengthy trial fund that would make it less likely that working Floridians would be excused from jury service when a civil trial is expected to last several days, weeks, or months.²⁷

Although the number of jurors selected to serve on lengthy civil trials is relatively small, those who find themselves in the jury box on a long products liability, commercial litigation, or intellectual property case may suffer severe financial hardship. Absent extreme circumstances warranting the judge's intervention, these jurors are required to serve for the entire trial, which may [be] several weeks or months. While jurors indeed have a civic duty to serve, there is a limit on how much an individual citizen can be asked to sacrifice for the civil justice system, particularly when the case involves a dispute between private parties. Adoption of a Lengthy Trial Fund would lessen the hardship on Floridians who serve on such trials.²⁸

The fund, which would be fully financed through a minimal court-filing fee, would provide wage replacement or supplementation to jurors who serve on civil trials lasting longer than three days.²⁹ These individuals would be eligible to receive supplemental compensation from the fund "if they otherwise would be excused from service due to financial hardship."³⁰ Any juror who is not fully compensated by his or her employer would be eligible for

25. STANDARDS RELATED TO JUROR USE & MANAGEMENT, *supra* note 16, at 134.

26. Schwartz et al., *supra* note 10, at 5.

27. AM. LEG. EXCH. COUNCIL, *supra* note 11, at § 6.

The ALEC model act does not provide wage replacement or supplementation for jurors selected for criminal trials. In most states, citizens are generally summoned for petit jury service and may then find themselves serving on either a civil or criminal matter. The authors recognize that jurors selected to serve on lengthy criminal trials are subject to the same financial strain as jurors selected for civil trials. However, the model act recognizes that civil litigants, through their attorneys' appearance fees, should not be required to fund the criminal justice system. That is a state obligation. Nor can criminal defendants or prosecutors be asked to contribute to the lengthy trial fund. For this reason, states might consider providing special compensation to jurors in lengthy criminal trials, but that reform is beyond the scope of ALEC's model act.

Schwartz et al., *supra* note 10, at 17 n. 65.

28. *Id.* at 5.

29. *Id.* Recently, the Michigan legislature adopted its own "Juror Compensation Reimbursement Fund." Like the Jury Patriotism Act, the Michigan Fund relies, in part, on a small increase in court filing fees to increase compensation to jurors serving on lengthy trials. See H.B. 4551, 4552 and S.B. 1448, 1452, 2001-2002 Leg. Sess. (Mich. 2002).

30. *Id.* (citing AM. LEG. EXCH. COUNCIL, *supra* note 11 at § 6(C)(2)).

additional wage replacement or supplementation after the tenth day of service on a civil jury.³¹ This system would lend considerable support to jurors serving on lengthy trials.³²

B. *Eliminate Free Passes From Jury Service*

Some people get out of jury duty because Florida law gives them a free pass. For example, Florida disqualifies several government officials, judges, and court clerks from jury service.³³ Law enforcement officers and investigative personnel are excused by the court upon request.³⁴ Practicing attorneys and physicians are treated slightly differently; they are excused from service at the discretion of the judge.³⁵

When some groups of people are regularly dismissed from jury service, others bear more than their fair share of the burden.³⁶ "The privileged should not be allowed to escape jury duty, as some escaped military service in Vietnam, and leave those with less political or financial clout with the burden of service."³⁷ Furthermore, the absence of certain individuals from jury pools eliminates many important perspectives.³⁸ When members of certain occupations do not serve on a jury, the judicial system does not benefit from their life experiences, values, or education.³⁹

On the other hand, a jury that lacks professionals, or is disproportionately composed of unemployed or retired individuals, may lack the collective knowledge of a more representative jury.⁴⁰ It is also possible that this small slice of our society may not have the background to properly evaluate or weigh complex technical, scientific, or other evidence.⁴¹ Such jurors may even believe that their role is to transfer wealth and not render justice on the

31. *Id.*

32. Schwartz et al., *supra* note 10, at 5.

33. See FLA. STAT. § 40.013(2)(a) (2002).

34. See § 40.013(2)(b).

35. See § 40.013(5). Florida law also excuses expectant mothers, parents who are not employed full time with custody of children under six years of age or upon request, and persons who are responsible for the care of persons with physical or mental disability upon request. See §§ 40.013(4), (9).

36. See STANDARDS RELATED TO JUROR USE & MANAGEMENT, *supra* note 16, at 51.

37. Schwartz et al., *supra* note 10, at 5.

38. *Id.*

39. *Id.*

40. *Id.* at 6.

41. *Id.* at 5.

merits of the case.⁴² Plaintiffs and defendants would all benefit from the diverse experience, values, and education of a truly representative jury.⁴³

The first step to a more representative jury is the elimination of unnecessary or antiquated exemptions from service.⁴⁴ Approximately two-thirds of the states have recognized that occupational exemptions to jury service are elitist and unnecessary, and have taken the positive step of repealing such privileges.⁴⁵

Evidence [from these states] suggests that . . . those who [currently] receive special exemptions from jury service [in Florida] do not believe they are too valuable to take time off to sit on a jury, or too biased or influential to serve. For example, when New York doctors were asked whether they should be exempt from jury service following New York's [elimination of all of the state's twenty-six occupational exemptions], only [twelve] percent said that physicians should be exempt from service. New York lawyers had a similar reaction.⁴⁶

For example, according to one study in New York, "only [three] percent and [ten] percent of Manhattan and Brooklyn attorneys, respectively, thought they should be exempt from jury service."⁴⁷ Even state executive officers and sitting judges in other states make time for jury service.⁴⁸ For example, "Rudolph Giuliani, despite being a sitting mayor, lawyer, and former prosecutor, also made headlines when he was summoned and selected to serve on a jury hearing a [seven] million [dollar] civil suit in 1999."⁴⁹ Most recently, summoned Juror No. 142 revealed on an "anonymous" qualification form for federal jury duty in New York that his former occupation was "President of the United States" and that he felt that he could be fair and impartial "despite

42. Schwartz et al., *supra* note 10, at 5.

43. *Id.* at 1.

44. *Id.*

45. *Id.* at 6.

46. *Id.* (citing Julia Vitullo-Martin et al., *Five Years of Jury Reform: Final Report on Juror Concerns to the Unified Court System 2*, 10-11 (Citizens Jury Project, Vera Inst. Of Justice 2000), available at http://www.vera.org/publication_pdf/juryfinal.pdf).

47. Schwartz et al., *supra* note 10, at 6.

48. See *Governor Excused from Jury Duty*, YORK NEWS TIMES, Aug. 30, 2002, available at http://yorknewstimes.com/stories/083002/nat_0830020037.shtml (reporting that Texas Governor Rick Perry appeared in court for jury service and was designated "Juror No. 1" on a challenge to a speeding ticket); Linda P. Campbell, *Three Judges Summoned for Duty on Other Side of Bench; One of Them State District Judge Bob McCoy, is on a Jury Hearing a Medical Malpractice Case*, FORT WORTH STAR-TELEGRAM, Apr. 4, 2000, at 3.

49. Schwartz et al., *supra* note 10, at 6.

his 'unusual experience with the O.I.C.,' otherwise known as the Office of Independent Counsel."⁵⁰ "If . . . ex-presidents are not beyond jury service, no one should expect that their profession puts them above this civic duty."⁵¹

Florida's Jury Innovations Committee has also recommended elimination of occupational exemptions.⁵² Consistent with the Committee's recommendation, the Jury Patriotism Act would eliminate the current disqualifications from jury service and automatic exemptions that apply to various groups.⁵³ Rather than grant automatic or discretionary exemptions from jury service, the Act would permit members of these groups to request a hardship excuse.⁵⁴ It would more fairly distribute the burden of jury duty and provide for a jury pool that better reflects the experience and values of the entire community.

C. *Limit Excuses to True Hardship*

Those who do not qualify for a complete exemption from service under existing Florida law can request to be excused from jury service upon a showing of "hardship, extreme inconvenience, or public necessity."⁵⁵ Some people who are called for jury service, particularly professionals, small business owners, and wage earners, may abuse this provision to avoid their civic responsibility. For this reason, the Jury Patriotism Act would repeal Florida's current vague standard, and provide further guidance to the courts on acceptable grounds for hardship excuses. The Act would permit an excuse from jury service only for "undue or extreme physical or financial hardship," which would arise in three circumstances.

50. See Benjamin Weiser, *Civic Duty, Sure, But Wasn't the White House Enough?*, N.Y. TIMES, Mar. 1, 2003, at B1. Ultimately, the judge excused William Jefferson Clinton due to concern that having the former president sit on the jury might sensationalize the trial. *Id.*

51. Schwartz et al., *supra* note 10, at 6.

52. See FLA. JURY INNOVATIONS REPORT, *supra* note 7, at 22 (recommending that Florida's list of statutory exemptions "should be greatly reduced to include only felons who have not completed their entire sentence" and that all others not be excused unless "they show in a particularized manner justification for the inability to serve"). *Id.* For reasons no explained in its administrative order, the Supreme Court of Florida declined to approve this recommendation. See *In re* Final Report of Jury Innovations Comm., *supra* note 9, at 6.

53. Compare FLA. STAT § 40.013(5) (2002), with AM. LEG. EXCH. COUNCIL, *supra* note 11.

54. See FLA. JURY INNOVATIONS COMM., *supra* note 7, at 22. The Jury Innovations Committee recommended that the statutory exemptions from service (other than for "felons who have not completed their entire sentence, including probation, parole, and community control") should be eliminated. *Id.*

55. § 40.013(6).

The Act would permit an excuse from jury service only for "undue or extreme physical or financial hardship," which would arise in three circumstances: (1) when a person who is responsible for the care of a child, or an elderly or disabled person, would be unable to find alternative care or supervision during jury service; (2) when the prospective juror would incur costs or a loss of income that would have a "substantial adverse impact" on his or her ability to pay daily living expenses; or (3) if the prospective juror would suffer physical illness or disease by serving.⁵⁶ Under the Act's hardship standard, the loss of income from employment or other activities would not automatically permit one to avoid jury service.⁵⁷ These grounds would more closely reflect true hardship and limit the opportunity for abuse.⁵⁸

In addition to limiting the available grounds for a hardship excuse, the legislation would establish a procedure to make it more likely that the excuses will be faithfully applied.⁵⁹ Jurors would be required to provide the court with documentation supporting their request for an excuse.⁶⁰ This minimal requirement would ensure that jurors are not inventing or exaggerat-

56. See AM. LEG. EXCH. COUNCIL, *supra* note 11, at § 4(b)(3).

57. *Id.* at § 4(b)(4).

58. *Id.* at 8. The ALEC model act is not the first to restrict permissible hardship excuses. A similar provision in Mississippi provides that all qualified persons must serve as jurors unless excused by the court for one of the following causes:

(a) when the juror is ill, or when on account of serious illness in the juror's family, the presence of the juror is required at home, (b) when the juror's attendance would cause a serious financial loss to the juror or to the juror's business, or (c) when the juror is under an emergency, fairly equivalent to those mentioned in the foregoing clauses (a) and (b).

MISS. CODE ANN. § 13-5-23 (2002). In fact, the Mississippi statute goes even further in defining the standard for granting the above excuses:

An excuse of illness under clause (a) may be made to the clerk of [the] court outside of open court by providing the clerk with either a certificate of a licensed physician or an affidavit of the juror, stating that the juror is ill or that there is a serious illness in the juror's family. The test of an excuse under clause (b) shall be whether, if the juror were incapacitated by illness or otherwise for a week, some other persons would be available or could reasonably be procured to carry on the business for the week, and the test of an excuse under clause (c) shall be such as to be the fair equivalent, under the circumstances of that prescribed under clause (b). In cases under clauses (b) and (c) the excuse must be made by the juror, in open court, under oath.

Id.

59. See STANDARDS RELATED TO JUROR USE & MANAGEMENT, *supra* note 16, at 53-54. Standard 6 of the ABA's *Standards Related to Juror Use and Management* also emphasizes the need for procedural safeguards in the administration of excuses from jury service. *Id.* The standard recommends that courts require individuals to present excuses in writing and that they present their excuses to a judge or senior court official (such as the jury commissioner or a senior court manager), and that courts adopt and apply a strict uniform policy for the granting of excuses. *Id.*

60. See MISS. CODE ANN. § 13-5-23 (2002) (text provided *supra* note 58) (requiring documentation of a medical excuse and a statement under oath in open court to support other hardship excuses).

ing claimed hardships. For instance, a person claiming a medical condition could provide a statement from a physician. One who claims financial hardship might submit a copy of his or her tax return or pay stub. Potential jurors who are caring for a young child or other family member might provide the court with a sworn statement providing the reason that he or she cannot obtain alternative care. The model act also places the responsibility for making hardship determinations with a judge, rather than with a clerk of the court or an administrative staff member.⁶¹ This requirement demonstrates the seriousness of the jury service obligation within the judicial system. It also would have an important practical effect. People may think twice about articulating a bogus hardship excuse when in a courtroom, before a judge, and faced with the threat of a sanction.

D. *Protect Employment Rights*

Florida law prohibits employers from discharging or threatening to dismiss employees who are called for jury service.⁶² The Jury Patriotism Act provides even more protection for employees.⁶³ First, it protects employees from any adverse action taken as a result of their responding to a juror summons.⁶⁴ The Act also explicitly states that a business may not require its

61. AM. LEG. EXCH. COUNCIL, *supra* note 11, at § 4(b)(1).

62. FLA. STAT. § 40.271(2) (2002).

63. AM. LEG. EXCH. COUNCIL, *supra* note 11.

64. *Id.* at § 95. Several states provide employees with such protection. *See, e.g.*, D.C. CODE ANN. § 11-1913(a) (2001) (prohibiting an employer from depriving an employee of employment, threatening, or otherwise coercing an employee because the employee serves as a juror); IOWA CODE ANN. § 607A.45 (2003) (prohibiting an employer from depriving an employee of employment or threatening or otherwise coercing an employee because he or she is called for jury service); MISS. CODE ANN. § 13-5-23 (2002) (prohibiting an employer or other person from persuading or attempting to persuade any juror to avoid jury service, or intimidating or threatening any juror in that respect); MO. REV. STAT. § 494.460(1) (West 1996) (prohibiting an employer from terminating, disciplining, or threatening to take adverse action against an employee because he or she is called for jury service); TENN. CODE ANN. § 22-4-108(F)(1) (1994) (prohibiting an employer from discharging or otherwise discriminating against an employee because he or she is called for jury service); UTAH CODE ANN. § 78-46-21(1) (1953) (prohibiting an employer from depriving an employee of employment or threatening or otherwise coercing an employee because the employee responds to a juror summons); WASH. REV. CODE ANN. § 2.36.165(2) (West 2003) (prohibiting an employer from depriving an employee of employment or threatening, coercing, harassing, or denying promotional opportunities to an employee who takes time off for jury service); W. VA. CODE ANN. § 52-3-1(d) (Michie 2000) (requiring an employer to excuse an employee from work in order to respond to a juror summons and prohibiting an employer from discriminating against an employee because he or she is summoned to jury service).

employees to use their annual, vacation, or sick leave time for jury service.⁶⁵ Employees should not fear that by responding to a juror summons, they might be required to sacrifice their annual vacation. This provision is one reason why the AFL-CIO supports the ALEC model act.

E. *Small Business Protections*

The Jury Patriotism Act also seeks to protect small businesses from problems that may arise when their employees are called to jury service.⁶⁶ For example, the Act addresses the potential that a small business may lose two or more employees to jury service at the same time. Such a situation may be particularly hard on small businesses.⁶⁷ For this reason, the Act requires courts to postpone and reschedule the jury service of a summoned juror if another employee of his or her business is already serving jury duty.⁶⁸ Employer groups, including the National Federation of Independent Business (NFIB), support this provision of the Act.⁶⁹

F. *Provide an Appropriate Penalty for No-Shows*

Research shows that a significant number of those who do not respond to juror summonses fail to do so because they have little fear of receiving a penalty, or believe that the penalty will be a mere "slap on the wrist."⁷⁰ In Florida, those who do not respond to a jury summons face a fine of not more than \$100 and may be held in contempt of court.⁷¹ When the penalty for not showing up for jury service is comparable to a speeding ticket, it is no wonder that so many people disregard their jury summons with impunity. Furthermore, courts have little resources to follow up and penalize those who do not show. It is no secret that what is already a minimal fine rarely is imposed.

In light of the added flexibility, shorter term, and better protection of compensation during jury service, those who still chose to discard their civic

65. AM. LEG. EXCH. COUNCIL, *supra* note 11, at § 5(b). Colorado is one of the few states that provides similar protection of employee benefits during jury service. See COLO. REV. STAT. § 13-71-134 (2002).

66. AM. LEG. EXCH. COUNCIL, *supra* note 11, at § 5(e).

67. *Id.*

68. *Id.*

69. Schwartz et al., *supra* note 10, at 2.

70. See, e.g., BOATRIGHT, *supra* note 3, at 136 (indicating that 56.3% of nonrespondents believed that the penalty for failing to appear for jury service would be light and only 29.2% believed the penalty would be strictly enforced).

71. See FLA. STAT § 40.23(3) (2001).

duty should be punished appropriately. Jury service is an important obligation of citizenship. Criminal defendants rely on a representative jury to receive a fair trial. Parties in civil litigation also have a right to a representative jury. A person's failure to appear in court not only damages the judicial system, it may also impair the rights of litigants. Ignoring a jury summons is an offense more serious than driving a few miles over the posted speed limit. It should be dealt with accordingly.

The Jury Patriotism Act would punish a summoned juror's failure to appear in court as a misdemeanor.⁷² This penalty would communicate to jurors the importance of jury service and notify them that avoiding one's civic responsibility will be criminally punished. Under this provision, citizens who fail to appear for jury service will have a criminal record, a threat sufficient to cause them to pause before simply ignoring a jury summons.

Alternatively, the Florida Legislature might consider raising the maximum fine for nonrespondents from \$100 to \$500, while continuing enforcement through contempt of court proceedings. It might also provide judges with the discretion to require no-shows to complete community service, in addition to, or in lieu of, paying a fine. In any case, these penalties should be applied more consistently in order to encourage citizens to appear for jury service.⁷³

III. CONCLUSION

Floridians continue to overwhelmingly support the jury system. Yet, many people fail to appear for jury duty when summoned or strive to get out of jury duty once they enter the courthouse. Few of these individuals lack a sense of civil duty. Rather, they are discouraged from jury service by the hardship and headache imposed by a system that does not provide adequate financial compensation, leaves little or no flexibility, and may place a severe inconvenience on their life. Moreover, the current occupational exemptions and standard for an excuse from service provide many people with an easy means of escape from jury service.

Florida should enact legislation based on ALEC's model Jury Patriotism Act to break down the barriers that frustrate jury service in Florida. Floridians, regardless of income or occupation, would then be more willing and better able to fulfill their patriotic duty to serve on a jury.

72. AM. LEG. EXCH. COUNCIL, *supra* note 11, at § 3(d).

73. "The point is not to punish people, but to encourage people to answer the summons and make arrangements to do their jury service." Troy Anderson, *Show Up or Else: Courts Get Tough: Ignore Another Jury Summons and Get \$1,500 Fine*, L.A. DAILY NEWS, Jan. 19, 2003, available at 2002 WL 5528920 (quoting Pomona, California Supervising Judge).