

SUMMARY OF STATEMENT

The Section on Courts, Lawyers and the Administration of Justice supports the Jury Trial Amendment Act of 1994 introduced into the Council to govern the authority of the Superior Court to take a criminal verdict from eleven jurors in circumstances analogous to those provided for federal courts.

COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE SECTION



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June 17, 1994

The Honorable James A. Nathanson
Chair, Committee on the Judiciary
John A. Wilson Building - Room 108
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Jury Trial Amendment Act of 1994

Dear Chairman Nathanson:

The District of Columbia Bar's Section on Courts, Lawyers and the Administration of Justice, and the Section's Court Rules and Legislation Committees, submit these comments concerning the Jury Trial Amendment Act of 1994, to amend D.C. Code § 16-705(c).¹ The proposed legislation would permit the Superior Court, in criminal cases, to take a verdict from eleven jurors where the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict.

The Section is aware that the Federal Rules of Criminal Procedure provide such authority to federal courts in criminal cases, that challenges to such a rule on constitutional grounds have not been successful, and that the courts have found such authority useful from a judicial management perspective. However, the District of Columbia Court of Appeals held in Flemming v. United States, 546 A.2d 1001 (D.C. 1988), that the local courts had no authority to adopt a similar rule authorizing such verdicts in the absence of consent from all parties to a criminal prosecution because such a rule would conflict with D.C. Code § 16-705.

¹ The views expressed herein represent only those of the Courts, Lawyers and the Administration of Justice Section of the D.C. Bar and not those of the D.C. Bar or its Board of Governors.

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In Flemming, the Court considered a 1985 amendment to Super. Ct. Crim. R. 23(b) which authorized the Superior Court to accept a verdict from eleven jurors if it was necessary to excuse a juror for just cause after the jury had retired to consider a verdict. The rule amendment was added to make the rule identical to Fed. R. Crim. P. 23(b). The Court concluded that the rule change violated D.C. Code § 16-705(c), which guarantees a criminal defendant a twelve-person jury and § 16-701 which requires that Superior Court rules be consistent with pertinent statutes. The proposed legislation would allow the Superior Court to adopt the same rule invalidated in Flemming and make the local criminal rules consistent with the federal rules.

The Section supports the amendment of section 16-705(c) and the Jury Trial Amendment Act of 1994.

Sincerely yours,

Cochairs, Section on Courts,
Lawyers and the Administration
of Justice

- and -

Richard Nettler²
Chair, Legislation Committee of
the Section on Courts, Lawyers
and the Administration of
Justice