VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 720

An Act to amend and reenact §§ 8.01-187, 8.01-345, 8.01-346, and 25.1-229 of the Code of Virginia, relating to jury selection in condemnation cases.

[S 1068]

Approved March 21, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-187, 8.01-345, 8.01-346, and 25.1-229 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-187. Condemnation jurors to determine compensation for property taken or damaged.

Whenever it is determined in a declaratory judgment proceeding that a person's property has been taken or damaged within the meaning of Article I, Section 11 of the Constitution of Virginia and compensation has not been paid or any action taken to determine the compensation within sixty days following the entry of such judgment order or decree, the court which entered the order or decree may, upon motion of such person after reasonable notice to the adverse party, enter a further order appointing ~~commissioners~~ *condemnation jurors* to determine the compensation. The appointment of ~~commissioners~~ *condemnation jurors* and all proceedings thereafter shall be governed by the procedure prescribed for the condemning authority.

§ 8.01-345. Lists of qualified persons to be prepared by jury commissioners; random selection process.

The commissioners shall, not later than December 1 following their appointment, submit a list showing the names, addresses, *freeholder status* and, if available, the occupations of such of the inhabitants of their respective counties or cities as are well qualified under § 8.01-337 to serve as jurors and are not excluded or exempt by §§ 8.01-338 to 8.01-341 and 8.01-342. Such master jury list shall be used in selecting jurors for a twelve-month period beginning on the first day of the first term of court in the calendar year next succeeding December 1. The number of persons selected for each court shall be as specified in the order appointing the commissioners.

The jury commissioners shall utilize random selection techniques, either manual, mechanical or electronic, using a current voter registration list and, where feasible, a list of persons issued a driver's license as defined in § 46.2-100 from the Department of Motor Vehicles, city or county directories, telephone books, personal property tax rolls, and other such lists as may be designated and approved by the chief judge of the circuit, to select the jurors representative of the broad community interests, to be placed on the master jury list. The commissioners shall make reasonable effort to exclude the names of deceased persons and unqualified persons from the master jury list. After such random selection, the commissioners shall apply such statutory exceptions and exemptions as may be applicable to the names so selected. The chief judge shall promulgate such procedural rules as are necessary to ensure the integrity of the random selection process and to ensure compliance with other provisions of law with respect to jury selection and service.

Where a city and county adjoin, in whole or in part, the names of the inhabitants of a city shall not be placed upon the county list, nor those of a county upon the city list except in those cases in which the circuit court of the county and the circuit court of the city have concurrent jurisdiction of both civil and criminal cases arising within the territorial limits of such county or city. However, in the case of the City of Franklin and the County of Southampton, the number of jurors selected from Southampton County shall be proportionate to the number of jurors selected from the City of Franklin based upon the respective populations of the county and city.

§ 8.01-346. Lists to be delivered to clerk and safely kept by him; addition and removal of names.

The list so prepared shall be delivered to the clerk of the court to be safely kept by him. *The list shall include a notation indicating those persons who are freeholders.* The judge may from time to time order the commissioners to add to the list such additional number of jurors as the court shall direct and to strike therefrom any who have become disqualified or exempt.

§ 25.1-229. Selection of jurors.

A. ~~The jury commissioners established pursuant to Chapter 11 (§ 8.01-336 et seq.) of Title 8.01 shall select condemnation jurors.~~ Except as otherwise provided in this ~~subsection~~ *section*, the provisions of ~~§§ 8.01-345, 8.01-346, 8.01-347, 8.01-356, and 8.01-358 relating to procedures for preparing this list from which members will be chosen, penalties for failure to appear and voir dire examination~~ *Chapter 11 (§ 8.01-336 et seq.) of Title 8.01* shall apply to *the selection of* condemnation ~~jurors~~ *juries*, mutatis mutandis. While preserving the random selection process set forth in § 8.01-345, the jury commissioner shall determine the freeholder status of individuals randomly selected by reference to tax rolls or other reliable data the judge of the circuit court deems appropriate.

B. ~~The condemnation jury shall be comprised of five members. The members of the condemnation jury shall be drawn from the list submitted by the jury commission. The clerk shall, in the presence of the judge, after thoroughly mixing the ballots in the box, openly draw nine names therefrom. At the same time, the names of at least two additional persons shall be drawn to act as alternate jurors in the event of the death, absence, or disability of any acting juror. However, all~~ *All* of the acting jurors and all of the names drawn for alternate jurors shall be freeholders of property within the jurisdiction. ~~As soon as practicable thereafter, the clerk shall serve notice on the jurors so drawn to appear in court on the date set for trial. Alternatively, the procedures for selection by mechanical or electronic techniques as provided in § 8.01-350.1 may be utilized.~~

~~C. After each ballot containing a juror's name has been drawn, it shall be placed in a secure envelope maintained for the purpose of holding drawn ballots. The envelope shall be kept in the ballot box. No drawn ballot shall be returned to the pool of undrawn ballots until the pool has been exhausted, except as may be required to ensure that the required number of names drawn are freeholders of property within the jurisdiction. However, the clerk shall immediately return to the pool of undrawn ballots the ballot of any juror who was drawn but was excused by the court from appearing or was not required to appear because of trial cancellation. When the pool is exhausted, all ballots shall be returned to the box and drawing shall begin again. Alternatively, the procedures for selection by mechanical or electronic techniques as provided in § 8.01-350.1 may be utilized.~~

~~D. It shall be the duty of the clerk to notify each juror whose name has been drawn of the date on which he is to appear to hear the case. The notice shall be in writing and shall be delivered at least seven days prior to the trial. The clerk shall also promptly notify in writing the jurors who have been struck by pretrial challenge that they need not appear.~~

~~E. The court shall have the discretionary power to excuse a juror's attendance on any given day or for any specific case upon request of the juror for good cause shown. If a juror is so excused seven or more days prior to trial, a replacement juror shall be drawn and notified under the procedures provided in this section.~~

~~F.~~ On the day set for trial, jurors who appear shall be called to be sworn on their voir dire until a disinterested and impartial panel is obtained. A juror may be stricken for cause. From the impartial panel the judge shall randomly select 13 jurors. From the panel of 13 jurors each party shall have four preemptory strikes. *The court may appoint alternate jurors. Five persons from a panel of not fewer than 13 jurors shall constitute a jury in a condemnation case.* If fewer than seven jurors remain before the court prior to the exercise of peremptory strikes, the trial may proceed and be heard by less than five jurors provided the parties agree. However, no trial shall proceed with fewer than three jurors.

~~G~~ *C.* The conclusion of the jurors need not be unanimous, and a majority of the jurors may act in the name of the jury.

~~H~~ *D.* In condemnation proceedings instituted by the Commonwealth Transportation Commissioner, a person owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360 shall be deemed to be an "owner" for purposes of this section.