

## Selected Portions of Jury Orientation Instructions Concerning Jury Trial Procedure

The first order of business is to introduce you to the attorneys who will be handling the case. I believe that the case set today involves a criminal complaint. As a result, I will introduce you to the prosecuting attorney. He/she will normally be seated in front of the microphone to my left; seated next to him/her will be the arresting officer. I will then introduce you to the attorney for the defendant; he/she will be seated in front of the microphone to my right, and seated next to the attorney will be his/her client.

Once the introductions have been concluded, then the bailiff will ask that all of you stand. He/she is the person that is seated to my right. He/she will administer an oath to you, which in essence says that you will truthfully answer any questions asked of you in connection with the jury selection process. Once that has been completed, then the bailiff will call a list of eight names. The first person is to take the seat to my far left in the front row of the jury box, with the next three people filling out the next three seats in the front row. The fifth person will be asked to take a seat at the far left in the back row of the jury box and the next three people will fill out those next three seats. At that point I will ask you certain questions individually. Essentially they would be as follows:

1. I would make sure you live within the court's territorial boundaries.
2. I would inform you of the charge or charges in this case and ask you if there is anything about those charges in and of themselves that would make it difficult for you to be fair and impartial.
3. I would also ask you if you are familiar with any of the parties involved with the case; that would be the people seated at the trial tables that have been referred to previously.

Once I have completed the question and answer process, I would turn you over to the attorneys handling the case. The prosecuting attorney, since he/she has the burden of going forward, would go next. He/she would ask you certain questions and once he/she is finished, then the attorney for the defendant.

I hope you understand that the questions that are asked of you are not an attempt to pry into your personal life, but only to obtain as fair and impartial a jury as possible.

Once the question and answer process has been completed, each side has the right to make certain challenges as to the people seated. There are two types of challenges. There is what we call a challenge for cause; that would be a specific reason as to why a particular side would feel it would be difficult for a certain person to be fair and impartial. I would rule on that challenge and, if the finding is well taken, then that person is simply excused. The other type of challenge is a peremptory challenge. For that type of challenge, no reason needs to be given. It is like an automatic challenge, and if a person is challenged on that basis they are automatically excused.

There are an unlimited number of challenges for cause, but there are a limited number of peremptory challenges. If you are challenged and excused, since this is the only case

you have been assigned to, you are free to leave the building because your jury service would have been concluded at that point, or you are welcome to stay and watch the proceedings as you wish. Once a juror has been excused, another name is called by the bailiff and that person would be asked to take the seat that has been vacated by the excused juror.

Once eight jurors are seated without challenge, a ninth name is called and that person would be asked to take the fifth seat in the back row. He/she would be seated as a potential alternate. The alternate is just like the other eight jurors with one exception. The same question and answer process and challenges apply to the alternate as apply to the other eight jurors. The alternate juror is asked to listen to the evidence and law just as carefully as everyone else. However, at the end of the case, just prior to the jury retiring to deliberate on their verdict, if none of the other eight jurors have been excused for any purpose, then the alternate would be excused at that time. If, however, there has been a need to excuse one of the other eight jurors, the alternate would simply assume that person's place and would participate in the jury deliberation along with the other seven jurors.

In any event, once we have seated eight jurors and an alternate, those people seated would be asked to stand and the bailiff would administer another oath to them, which in essence says that they will faithfully respond to their duties as jurors in connection with the case before the court.

At that point we will take a recess. If there are any jurors who have not been picked at that time, then they will be excused since their jury service has been completed. Again, they may remain and watch the proceedings. From my prior experience in this court, the jury should be picked by 11:30 a.m. So you should know by that time whether or not you will be needed for the remainder of the trial. For those people who are selected for the jury, we will take about a 15-minute recess. You will be allowed access to a telephone for work, babysitting or any other purpose that you might have at that point.

When court reconvenes, I will read to you a preliminary set of instructions of law, which is about 5–10 minutes in length and covers some of the issues we are dealing with today and some that we are not. It sets up the basic framework for the trial; that being, you as jurors are the sole triers of fact in the case. In other words, it is for you to decide what the facts of the case are based on the testimony that you hear from the witnesses and also any exhibits that are admitted into evidence. I, as the Judge, have no input whatsoever as to the facts. If you feel you have some idea as to what I feel the facts are, you are to disregard them. On the other hand, as to the law, you are to accept the law without question, apply it to the facts and render your verdict accordingly.

Another issue specifically mentioned by the preliminary set of instructions concerns note taking and jurors asking questions. It is the policy of the court to allow jurors to take notes and ask witnesses questions. Now, I am not trying to say that you should or should not take notes or ask questions. That is a decision you will have to make for yourself. Each of you will be given a notebook and a pen. Each notebook will contain a pad for taking notes and blank pages for writing questions. The notebooks and pens will be picked up during any recess and then returned to you when we reconvene. When you retire to deliberate on your verdict, you will be allowed to retain your notes, if any,

concerning the facts in the case. The notes you take are for your own personal use. You should not defer to a juror simply because they took notes. Note taking should not distract you from hearing the evidence.

If you have a question which you would like a witness to answer, you must put it in writing on a page in your notebook marked "witness questions" at the top. After the examination of a witness by the parties has concluded, the bailiff will collect a page from the notebook of each of the jurors and refer all questions to the court for review. If you do not have a question which you wish to ask, please write "no question" on your piece of paper. If permissible under the rules of evidence, the question will be asked by the court, although it may be rephrased. Please do not be offended or hold it against one or both of the parties if your question is not read. It is for the Judge alone to decide which questions are read. The reason some questions are not permissible may be very technical and impossible to explain ahead of time. Also, you are not under any obligation whatsoever to ask questions.

Once the preliminary set of instructions has been concluded, then the parties will give their opening statements. First, the prosecuting attorney would go forward with his/her opening statement and then the defendant. Opening statement is an opportunity for each side to indicate to you what evidence they anticipate will be presented in connection with the case.

Once opening statements have concluded, the prosecuting attorney will present evidence through witnesses and any exhibits that he/she might have, the defense having the opportunity to cross-examine (that means ask questions of) the prosecution's witnesses. Once they have completed their case and rested, the defense has the opportunity to present any evidence that they wish.

A couple things to keep in mind: First, the burden of going forward and also the burden of proof rests with the prosecution throughout the trial. As a result, if the defense feels that the prosecution has not met their burden, they may decide to rest without presenting any evidence at all. If that is the case, you will simply base your verdict on the testimony from the witnesses for the prosecution with the exhibits that have been admitted, if any. Second, if the defendant decides not to take the stand, you are not to consider his/her failure to testify for any purpose. In other words, you cannot penalize somebody for exercising his or her constitutional right against self incrimination. If the defendant or anyone else takes the witness stand, they are subject to cross-examination by the prosecutor.

Once the evidence is in on both sides, then each side has a right to make a closing argument. That would simply be their argument to you based upon the testimony presented as to why they feel their side should prevail. In other words, why the prosecution feels that you should find the defendant guilty, and why the defense feels you should find the defendant not guilty.

Another point: The opening statements, the questions that are asked of you during jury selection, statements made by the attorneys during the course of the trial, and the closing remarks are not evidence. You cannot base your verdict on what was said by the attorneys during the course of the trial. Those statements are not evidence. Your

verdict should not be based upon them. Now, certainly, you can use those statements as an aid in your analysis of the evidence, but you cannot base the factual determination upon what you heard from one of the attorneys. In other words, they may say something that is not part of the evidence and, if it is not part of the evidence, you cannot base your verdict upon it.

Once closing arguments have been concluded, the court will give the final instructions of law in the case, which is about 15–25 minutes in length. A copy of the instructions will be given to you so that you can follow them as it is read to you. It is also the policy of the court to allow you to take those copies of the instructions with you when you retire to deliberate, to refer to as needed in connection with the law in the case. As the instructions indicate, once you retire, you are to select a foreman or forewoman, whose purpose is to simply conduct the course of the discussion.

Once you have reached a verdict, and in a criminal case the verdict must be unanimous, you are to inform the bailiff by phone, at which time you will be returned to the courtroom where the verdict will be read. At that time, the non-prevailing party has a right to request that the jurors be polled. If there is a request to poll the jurors, and it does happen fairly frequently, the Judge will ask each one of you what your verdict is. Once the verdict has been confirmed, then your role as jurors has been completed and you are free to leave at that time.

There are other issues concerning the trial process. First, if there is something that occurs during the trial that you feel should be brought to the court's attention, please bring that matter first to the attention of the bailiff. If it is a matter he/she cannot resolve, he/she would have you talk to the Judge. Also, during a recess, two things: One, you are not to have any contact with any of the parties or potential witnesses that might have been identified to you. You will be given badges that identify you as jurors, so that should not arise, but keep that in mind. Two, during the periods of recess, do not discuss the case amongst your fellow jurors, or anyone else for that matter. You are more than welcome to discuss anything else that you wish. The reason we do not want you to discuss the case itself is that we do not want you to form any premature opinions until all the evidence is in.

During the trial there may be certain stipulations. A stipulation is an agreement amongst the parties that they accept a certain piece of evidence as fact without further proof. It is often used when there are certain issues that are not in dispute that can be relatively time-consuming.

It is also common during the course of the trial that there may be certain objections to questions asked. I can do one of two things: I can either sustain the objection, that means I find it to be well taken, or I can overrule it, which means that I find that it is not well taken. If the answer has come in and I sustain the objection, you are to disregard that answer; it is not part of the evidence and should not be considered by you. It is not my policy to advise jurors each time that does occur, so keep that in mind. On the other hand, if I overrule the objection and the answer has come in, then it is allowed to stand. If the answer has not come in, if I sustain the objection, then of course the answer will not be permitted. If I overrule it, then the answer would be allowed to come in.

There may be certain issues of law that arise during the course of the trial. If the matter is not a lengthy one to resolve, I will have the attorneys approach the bench to discuss the matter outside of your hearing presence. The other option is to excuse you from the courtroom so that the matter can be addressed in open court. Please understand, we are doing our best to resolve these matters as quickly as possible so that this trial may proceed.

I want to thank you for your service today. I have talked to many jurors in the past and almost all, without exception, have found the experience to be both interesting and rewarding.

I feel confident that you will find it to be the same.