

## Step 1: Selection of the Jury

"Jury service honorably performed is as important in defense of our country, its Constitution and laws, and the ideals and standards for which they stand, as the service rendered by the soldier on the field of battle in time of war."

George H. Boldt, U.S. Federal Judge, 1959

A group of citizens qualified to serve as jurors is summoned. This entire group is called the jury panel.

The first step in a trial is to select from the panel the number of jurors required to try the case.

A short statement may be given describing the case and the parties in the case. Then prospective jurors will be questioned by the lawyers or the judge to see if the jurors are qualified to act as fair and impartial jurors in the particular case. All jurors, before being questioned, take an oath (or affirm) that they will answer truthfully.

The lawyers or the judge may ask prospective jurors questions about their personal life and beliefs as the topics relate to the case and the jurors' ability to serve fairly and impartially and to follow the law. These questions should be answered fairly, openly, candidly and without embarrassment. If there is any reason why a prospective juror feels he or she should not serve, he or she should make it known at this time.

There are certain legal grounds for which a juror may be challenged for cause and excused. Some of these grounds are established by state statute, such as for relatives by blood or marriage to the parties in the lawsuit. In addition, each side will excuse a certain number of jurors without giving any reason. These are called peremptory challenges. These do not require cause. If a juror is excused, this does not imply something bad and does not mean the juror is incompetent in any way. It frequently happens that a prospective juror will be excused in a certain case and be selected in another. The number of peremptory challenges is limited.

When all the challenges have been used, a sufficient number from those jurors who have been called and who have not been excused are sworn to try the case on its merits or serve as alternates.

Any persons excused from jury service as a result of the qualification process or by having their name stricken by the attorneys for the parties should not consider the challenge or retirement from the jury panel a reflection on their integrity or intelligence. None was intended by the judge, the lawyers or the parties in the lawsuit.

**Note:** If you have a hearing or sight problem, you should advise the judge of this problem at the beginning of jury selection. If you are selected as a juror, reasonable accommodations, such as an assistive listening device, may be made available.

**Oath:** After the jurors are selected, they are required to take a solemn oath (or to affirm) that they will "well and truly try the matters in issue and a true verdict render according to the evidence and the law." When jurors take this oath, they become a judge of all questions of fact and are duty bound to act fairly and impartially in considering them.

## Step 2: The Trial

### Civil and Criminal Cases

Cases fall into two broad categories, civil and criminal. For ease of reference, the following information deals generally with civil cases. Civil and criminal cases are basically tried under the

same rules and in the same manner. However, some principal differences do exist, and they are listed below.

1. More proof is required to find a person guilty of a crime in a criminal case than is required to return a verdict for a plaintiff in a civil case. The crime must be proven "beyond a reasonable doubt." In order for a plaintiff to win a civil case, it is typically only necessary to prove the case by a "preponderance of the evidence." Sometimes in a civil case, a defendant will make a claim or claims, called a counter-claim against the original plaintiff, which like the plaintiff's claim, requires a lower burden of proof than the criminal case.

2. In a civil case, three-fourths or more jurors may return a verdict, whereas in a criminal case the verdict must be unanimous.

You may be called to serve on either a civil or a criminal case.

### **The Parties and Pleadings**

In a civil case, the party filing a lawsuit is called a plaintiff. The party against whom the lawsuit is filed is called a defendant. Notice of a suit is given to the defendant by service of a summons. The plaintiff's claim and demand are stated in a petition. The defendant's response is stated in an answer. If the defendant makes a claim against the plaintiff, such a claim is called a counterclaim. If a counterclaim is made, the plaintiff's answer is called a reply. These papers, called pleadings, will have been exchanged between the parties some time before the actual trial begins. If one party has more than one claim against the other party, each claim may be stated as a cause of action.

In a criminal case, the person charged with a crime is the defendant. The state is the prosecutor, and all crimes are prosecuted in the name of the State of Missouri. This is because when a crime is committed, it is the laws of the state that are broken, and the offense is against the people of the state. The lawyer who represents the state is called the prosecuting attorney or the circuit attorney. The charge or complaint in a criminal case is made in writing. If made by a grand jury, the charge or complaint is called an indictment. If made by the prosecuting attorney, it is called an information. If more than one offense is charged, the charges may be combined, but they are separately stated and each charge is called a count. For instance, an information may charge that the defendant (count 1) robbed the prosecuting witness, and (count 2) that the defendant assaulted and beat the prosecuting witness. Usually, some time before the case is called, the defendant is arraigned. This means that the defendant is brought before a judge and the charge is read to him or her. For each offense, the defendant is asked "How do you plead?" and he or she pleads "guilty" or "not guilty," for example. If the defendant pleads not guilty, the case may be set for trial.

In a criminal case, the "plaintiff" is the state, and the "plaintiff's lawyer" is the prosecuting attorney.

### **Opening Statements**

The plaintiff's lawyer must make an opening statement, which explains the plaintiff's claims and outlines the evidence by which the plaintiff expects to prove the claims. The defendant's lawyer is not required to make an opening statement but may do so. The defense may make this statement either following the plaintiff's statement or reserve it until after the plaintiff has presented his or her case. These statements are not evidence but only explanations of what each side claims and expects to prove. The claims must be proved by evidence. The conflicting claims constitute the issues.

### **Evidence Presentation**

Following opening statements, evidence regarding the case is presented. Anything that tends to prove or disprove a claim about the facts is called evidence. Evidence may be something in

writing, or it may be an article such as a document, an object, a photo or the like, in which case it is called an exhibit. (Conversely, not all exhibits are evidence.) Evidence may also be the statement of a person, in which case it is called testimony. If a witness is absent, written testimony from that witness may have been taken before trial. This written testimony, called a deposition, is taken under oath and after both sides have been given a chance to be present.

If a witness has already testified in court under oath, this testimony has been taken down and typed. This testimony is called a transcript.

There may be additional evidence, such as facts that the parties have stipulated are true or facts that they have admitted in sworn documents before trial.

### **Examination of Witnesses**

Unless the case can be proved by writings, the plaintiff will call witnesses to testify. The witnesses swear (or affirm) to tell the truth, the whole truth, and nothing but the truth. The lawyer who has called a witness proceeds with direct examination. In so doing, the lawyer asks questions to bring out the facts of the case. In any important matter, the lawyer is not allowed to "lead" the witness by asking questions in a form that would suggest the answer. The question asked must appear to have some bearing on the case, and the witness must be shown to personally know what he or she is talking about.

If these and other rules are not followed, the other lawyer may properly object and, if the question is improper, the judge will sustain the objection, which means that the question cannot be answered. If the question is proper, the judge will overrule the objection, and the answer is given.

When the direct examination is concluded, the lawyer for the other side may cross-examine, or ask questions of, the witness. The cross-examining lawyer may ask "leading" questions. At the conclusion of the cross-examination, the first lawyer may ask questions on redirect examination to clear up points developed on cross-examination.

To keep out improper information, witnesses are allowed to answer only the questions asked. Both sides may ask questions to find out all a witness knows that is relevant to the case. If the witness makes a statement that is not an answer to a question, it may be stricken. The judge may instruct the jury to disregard that answer entirely.

### **Hearing and Seeing Witnesses**

Each juror should pay close attention to the witness who is testifying, both to hear what the witness says and to watch his or her manner and actions. If a juror cannot hear or see clearly, he or she should not hesitate to interrupt the proceedings and advise the judge of that fact.

As noted earlier, if you have a hearing or sight problem, that problem should be called to the judge's attention so that you can be accommodated.

### **Resting the Case**

When all evidence for the plaintiff has been submitted, the plaintiff's lawyer indicates this by "resting" the case. When the defendant's case has been completed, the defendant's lawyer rests the defendant's case.

### **Defense and Rebuttal**

The defendant's lawyer calls witnesses for the defendant and offers evidence after the plaintiff's case is first rested. Then the plaintiff may offer evidence in rebuttal to explain or deny the defendant's evidence.

## **Motions to Strike; Directed Verdict**

When a lawyer requests a court to take action, this is usually done by making a motion. Thus, the lawyer may make a motion to strike out certain testimony because it was not properly received. If the judge orders that the testimony be stricken out, the judge will instruct the jury to disregard the stricken testimony.

At the close of the plaintiff's case, at the close of the defendant's case, or after all the evidence in the case has been presented, one or both sides may ask the court for a directed verdict. If the undisputed facts show that either one of the parties is entitled to judgment as a matter of law, the judge directs the verdict, because there is nothing for the jury to decide. In such a case, the judge alone is responsible, and the jury must do as the judge directs. In most cases, the judge refuses to grant the motion. That does not mean that the judge thinks the other side is entitled to a verdict in its favor. It only means that the jury ought to consider the matter.

## **Closing Arguments**

After all the evidence has been presented, each side may make its arguments to the jury, giving the reasons why that side should win. If the testimony has been contradictory, each side will tell the jury why its witnesses should be believed rather than those for the other side.

You should listen to these arguments carefully, always remembering that the lawyers are each giving only their side of the case and that what the lawyers say is not evidence. You should not make up your mind until you have heard all sides of the case and the instructions of the judge.

## **Instructions**

At the start of the case, the judge will read general instructions on the way the case will proceed and on the proper conduct of jurors.

Toward the close of the case, the judge will read instructions indicating what you must decide to reach a verdict.

You should listen to all instructions very carefully and try to remember them. These instructions will be given to jurors in writing to take with them when they retire to the jury room to deliberate.

## **Delays during Trial**

During the trial, there may be delays for many reasons. For example, the lawyers may present a point of law to the judge that ought not to be argued in front of the jury. Very often a delay actually saves time and brings the case to a quicker conclusion.

## **Conference out of Hearing of the Jury**

When lawyers approach the bench, matters of law or procedure are being discussed. Because the jury decides a case on factual issues alone, discussions on law and procedure take place out of the jury's hearing to avoid any chance of confusion or prejudice to the jurors. Do not draw any conclusions as to what is being said out of your hearing.

## **Step 3: Juror Conduct during the Trial**

There are certain rules that you, as a juror, should follow throughout the trial to be fair to all sides. These are:

### **Discussing the Case**

During the trial, until you retire to consider your verdict, you must not discuss any subject connected with the trial among yourselves, or form or express any opinion about it, and, until you

are discharged as jurors, you must not talk with others about the case, or permit them to discuss it with you or in your hearing (or read, view, or listen to any newspaper, radio, or television report of the trial).

A person who insists on talking about the case to you should be told that you, as a member of the jury, cannot discuss the case. If the person persists, you should attempt to learn that person's name and report the matter to the bailiff or judge at the first opportunity.

### **Radio, Television and Newspaper Accounts**

You must not read, view, or listen to any newspaper, radio, or television report of the trial. Each juror is to decide the case only on the evidence offered at trial and instructions of the court.

### **Talking with Parties or Lawyers or Others**

The bailiff and other officers of the court are not permitted to talk to you about any subject in the trial, and you are not permitted to talk to them about it.

The attorneys are under a duty not to do anything that may seem improper. Therefore, at recesses and adjournments they will avoid saying anything to the jury except, perhaps, something like "Good morning" or "Good afternoon." In doing that, they do not mean to be unfriendly but are simply doing their best to avoid even an appearance, which might be misunderstood, that they or you are doing anything improper.

The same applies to parties and witnesses. They are to avoid all contacts with the jury, even to talk about matters wholly unrelated to the case.

### **Promptness**

It is important that you are not late reporting for duty. One juror who is late wastes the time of all the other jurors, the judge, the lawyers, the witnesses, the parties, and other court employees. A lawyer, witness or juror may be fined for contempt of court for being tardy.

## **Step 4: Jury Deliberations**

Our judicial system is based upon ordinary citizens, serving as a jury, invested with the power to declare a verdict based upon testimony and evidence placed before them. This process has a direct impact on the community of these individuals and on every citizen in the state of Missouri.

William Ray Price, Jr.  
Supreme Court of Missouri

### **Law of the Case**

The judge will instruct you as to what you must find to render a verdict. The kind and amount of proof required will be pointed out to you.

### **Foreperson**

Upon retiring at the conclusion of the case, your first duty is to select a foreperson. The foreperson acts as the chair. It is the foreperson's duty to see that discussion is carried on in a sensible and orderly fashion, to see that the issues submitted for the jury's decision are fully and fairly discussed, and to guarantee that every juror has a chance to say what he or she thinks upon every question. Where ballots should be taken, the foreperson will see that this is done. The foreperson is also responsible for presenting the verdict to the court.

## **Secrecy**

Discussion in the jury room should never be so loud that it can be heard outside the room. Until a verdict is announced, no outsider should ever know what goes on in the jury room.

## **Exhibits**

If any papers or other objects marked as "exhibits" are sent in for your examination, care should be taken not to injure or change them in any way. No marking should be put on exhibits.

## **Views of Others**

You should make every reasonable effort to reach a verdict, as it is desirable that there be a verdict in every case. Each of you should respect the opinions of your fellow jurors as you would have them respect yours, and in a spirit of tolerance and understanding endeavor to bring the deliberations of the whole jury to an agreement upon a verdict. Do not be afraid to change your opinion if the discussion persuades you that you should. But a juror should not agree to a verdict that violates the instructions of the court. Nor in a criminal case should a juror agree to a verdict of guilty unless the juror is convinced of the defendant's guilt beyond a reasonable doubt.

## **The Verdict**

The jury's decision is "the verdict." To return a verdict in a civil case, three-fourths of jurors must agree on the verdict. In a criminal case, the verdict must be unanimous. When the jury reaches a verdict, the foreperson should notify the court and provide the signed verdict form.

If the jury is unable to reach an agreement after open and honest discussion of all issues, and if the jury is convinced that an agreement will not be reached, the foreperson must notify the court. When this happens, the judge decides whether to send the jury back into deliberations, dismiss the jury, or take other appropriate actions. If the judge decides to dismiss the jury, the case is declared a mistrial. Cases that result in a mistrial may be tried again with a different jury.

## **Step 5: After the Verdict**

Someone may ask you about the verdict after it is delivered. Because the lawyer's presentation of the case results in very little feedback, the lawyer may seek your comments in an earnest attempt to improve his or her skills as an advocate. The general public and the lawyers and parties may be interested in what evidence the jury considered significant.

You have no legal obligation to discuss the verdict or your deliberations.

For information following a long or stressful trial, the National Center for State Courts (NCSC) publishes a manual *Through the Eyes of the Juror: A Manual for Addressing Juror Stress*. NCSC can be contacted toll-free at 1-800-877-1233.