



# JURY DUTY

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**A HANDBOOK FOR TRIAL  
JURORS**



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## **Welcome**

As a citizen, you enjoy the privileges and protections of your government. Now you are called into service for that same government: You have been summoned as a trial juror for the courts of West Virginia.

Jury service is the fulfillment of a civic obligation and a valuable privilege. There is no more vital work a citizen can perform in the exercise of self-government than honest and conscientious jury service. Service as a juror is as important as that of the judge, and trial jurors should take great personal satisfaction in their service. The effectiveness of our system of justice is measured by the integrity and dedication of the jurors who serve in our courts.

This information is designed to help jurors understand trial procedures and terms you may hear in the courtroom. In each case for which you are selected as a juror, the trial judge will give you instructions as to your schedule,

courtroom procedures, and the law as it relates to the case before you.

**You should disregard anything in this informational guide which is in conflict with the judge's instructions.**

## **Justice Calls**

Courts are necessary so that disputes between people can be settled justly and peacefully. It is critical that the person charged with a crime gets a fair trial and that the trial is conducted in a way that protects public safety and welfare as well as private rights and liberties.

Suppose Ms. Jones sues Mr. Smith. They may be strangers to you, and you may not care who wins. But as a citizen, it is very important that there is a way to settle disputes without conflict and in a rational and just manner.

John Doe may be accused of a crime, and you may never have heard of the offense with which he is charged. Still, it is important to you as a citizen that there is a system of laws to punish wrongdoers and discourage crime so that you may be safe and secure in your person, your property, and your rights. It is equally important that innocent people are not falsely convicted and sent to prison. If that could happen to someone else, it could also happen to you.

## **Before Jury Service Begins**

West Virginia law requires employers to excuse people from work for jury service. Employers are not required to pay employees when they are absent for jury service, but some do. Jurors should check with their employer.

Jurors are responsible for the cost of their own meals, parking, and any other incidental expenses incurred during jury service.

## **Role of the Judge and Jury**

The oaths taken by a judge and jurors require them to accept and apply the law as written. That is a sworn duty. No person is allowed to disregard the law because he or she thinks the law should be different than it is. Laws are made, repealed, or changed by those elected to make laws, not judges and jurors.

During a trial, the judge decides all questions and disputes about the law and the rules for presenting evidence.

At the end of a trial, the judge instructs the jury on the law and the questions the jury must decide. When the judge turns the case over to the jury, the power and responsibility move from the judge's bench to the jury room. The jury must decide what the facts are and what testimony to believe.

### **Jury Selection**

The first step in a civil or criminal jury trial is the selection from the jury panel of jurors who will decide the case. In circuit court, civil case juries are composed of six persons and criminal case juries are composed of twelve persons. In magistrate court, all juries are composed of six persons. In most cases, the judge will impanel one or more extra (alternate) jurors in case one should become ill or must be excused because of an emergency during the course of the trial.

After the judge briefly explains the general nature of the case to be tried and introduces the lawyers and parties, the panel of prospective jurors is questioned in a process

called voir dire (French for "to speak the truth") to determine if any juror has a personal interest in the case or a prejudice or bias that may wrongly influence his or her role as a juror. The attorneys may ask the court to excuse some jurors from the trial. These requests are called "challenges." There are an unlimited number of challenges for cause, where a specific legal reason is given, and a limited number of peremptory challenges, where no reason is given. The system of challenges is designed to allow a lawyer to do his or her best to assure their client will have a fair trial.

For instance, anyone who is related to any of the parties, has unfinished business with one of the lawyers, or knows so much about the case that he or she already has an opinion, may be challenged for cause and excused. On the other hand, a lawyer may learn that a prospective juror has had some experience, such as a similar lawsuit, or a social or business connection with one party which, although not a legal ground for challenge for cause, may still be a good

reason for excusing the juror. This would be a peremptory challenge. A juror should not take offense if excused from serving on a particular jury. The lawyer is not suggesting the juror lacks ability, honesty, or judgment, but is only using a legal right. When all challenges for cause and peremptory challenges are used, the jurors who remain are sworn in to try the case upon the merits.

### **Opening Statements**

When the jury is selected and sworn in, the lawyers on each side of the case may make brief statements to the jury outlining what they intend to prove on behalf of their clients. Jurors should remember that these statements are not evidence but only explanations of what each side claims, and these claims must be proven by evidence. These conflicting claims constitute the issues of the case.

### **Presentation of Evidence**

The next step in the trial is the presentation of the evidence in the form of testimony and exhibits. Testimony

consists of statements made by witnesses under oath. Exhibits are physical objects, such as photographs, weapons, or written documents. Usually, the attorney for the plaintiff in a civil case or the prosecutor in a criminal case proceeds first. The defense will offer its evidence after the plaintiff or prosecutor finishes. When the defense has rested its case, the court may allow the plaintiff or prosecutor to introduce rebuttal evidence and call additional witnesses.

Rules of evidence have been developed over the years to ensure that trials are fair and orderly, and the judge acts as a gatekeeper for the evidence that comes into court. Jurors consider only the evidence that the judge permits. For instance, statements and arguments of the lawyers are not evidence, and neither is testimony that the jury has heard but the judge has ordered stricken from the record. A juror must treat all such testimony as though it had never been given. Similarly, matters that a lawyer offers to prove, but which the judge will not allow to be presented, are not to be

considered as evidence. Jurors should not consider personal knowledge or opinion or any other information about the witnesses, parties, lawyers, or issues connected with the case other than that which is presented in the trial.

### **Examination of Witnesses**

To prove a certain side of the case, lawyers may call witnesses to the stand for examination (questioning). Lawyers ask questions of the witnesses to bring out specific facts. The questions asked should have some bearing on the case, and the witnesses should know about the subject or matter being discussed. If these and other rules are not followed, the lawyers on the other side of the case may object. If the judge believes the question or answer does not comply with the rules of evidence, the objection will be sustained. On the other hand, if the judge does not believe the law requires the exclusion of the evidence, the objection will be overruled, and the witness will be required to answer. The various rulings by the judge during witness examination

do not mean that the judge is taking sides. The judge is merely deciding whether the law does or does not permit a particular question to be asked and answered. Even if the judge decides every objection in favor of one side, it does not mean that side is entitled to win the case.

When the direct examination of a witness is finished, the lawyer for the other side may cross examine the witness, which means he or she may ask questions of the same witness. When cross examination is finished, the first lawyer may ask questions on redirect examination to clear up points developed on cross examination. To keep out improper matters, witnesses are allowed to answer only the questions asked. If the witness makes a statement which is not a proper answer to a question, it may be stricken, which means jurors must disregard it entirely.

Each juror should pay close attention to the witnesses who testify, both to hear what the witnesses say and see their manner and actions. In determining credibility, jurors may

take into account the witness's ability and opportunity to observe, their memory, their manner while testifying, any bias or prejudice exhibited, and the reasonableness of their testimony in light of all the evidence in the case.

### **Conferences and Delays During Trial**

There are occasions during a trial when the lawyers may confer with the judge out of the hearing of the jury, or the judge may excuse the jury from the courtroom while the attorneys argue a point of law. In either case, jurors should not feel slighted or attempt to guess what is being said. These conferences are often held to avoid confusing or misleading the jury on a technical legal matter or to simplify issues. Although such hearings may seem time-consuming, they usually speed up the trial process.

There may be other delays during the trial. For instance, something may have happened to delay someone, the judge may be looking up the law on some point which has suddenly arisen, or the parties may be trying to work out

a settlement. Service as a juror may sometimes require patience.

### **Guessing at the Judge's Opinion**

As the trial proceeds, jurors sometimes try to guess what the judge thinks about the case or the way it should be decided. This is a mistake. Even though the judge's rulings may be mostly or entirely in favor of one party, that does not indicate how the judge thinks the case should be decided. If the judge has an opinion about the facts, and it is one which is legally proper for the jury to know, the judge will make it plain in the instructions of law at the end of the trial.

### **Jury Instructions**

After all evidence has been presented, the judge will give instructions to the jury on which questions it is to decide and what specific law applies to the case. The judge will explain the kind and amount of proof required. The jurors should listen to these instructions very carefully. If, in considering the case in the jury room, there is any

disagreement as to what the judge instructed, or its meaning, the jury may ask for further instructions. Such a request should be made in writing and given to the court bailiff who will pass the request on to the judge.

### **Closing Arguments**

After the judge has given instructions to jurors, the lawyers for each side will make closing arguments to the jury, giving the reasons they believe their side should prevail. If the testimony of witnesses is conflicting, the lawyers will tell the jury why the witnesses on their side are more persuasive than those on the other side.

What the lawyers say in closing arguments is not evidence and should not be considered as such. Jurors should, however, pay careful attention to the arguments because lawyers have experience and training in analyzing and interpreting evidence, and these arguments are permitted so that jurors may have the benefit of that experience and training. Nevertheless, it will be for the jury to determine,

through judgment and common sense, which of the arguments is the most reasonable analysis of the facts.

## **Jury Deliberations**

After closing arguments, the jury will go to the jury room to review the evidence according to the judge's instructions and reach a verdict. The verdict is the final decision of the jury; it resolves the case.

The first duty upon retiring to the jury room is to select someone to preside over deliberations and act as a spokesperson in the courtroom. It is the duty of this juror, usually called the foreperson, to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for decision are fully and fairly addressed, and that every juror has a chance to say what he or she thinks about every question. The foreperson conducts voting and signs any written verdicts required and any written requests made of the judge. While the foreperson should express his or her

opinions during the deliberations, these opinions are entitled to no more or less weight than those of the other jurors.

Differences of opinion often arise between jurors during deliberations. When this happens, each juror should say what he or she thinks and why. By reasoning the matter out, it is usually possible for jurors to agree. Jurors should not hesitate to change their minds if they decide their first opinion was not right, but they should not change their decisions unless their reason and judgment is truly changed. Jurors should vote according to their own honest judgment of the evidence. If a jury cannot agree within a reasonable time, it may result in a new trial, which may be a great expense to the parties and the state. Jurors are expected to be fair, respectful, and courteous to each other, and to try to reach an agreement which is a fair and true verdict.

## **The Verdict**

When a verdict has been reached, the jury will return to the courtroom. The verdict will be read in open court by the clerk and accepted by the judge. Sometimes one of the parties will ask that the jury be polled. This means the clerk will ask each juror individually in open court if the verdict is his or her own verdict. After the verdict is delivered, the jury's service will be complete, and the judge will discharge the jury.

## **After the Trial**

Often when a jury trial is completed, reporters and other members of the media or the attorneys and parties involved in the case wish to ask jurors about their deliberations and what factors influenced the final verdict. Jurors are under no obligation to answer any questions about a case or comment in any way. A simple refusal or response of "no comment" should suffice.

If jurors do wish to speak with the media or attorneys about the trial, they must check with the judge on when the

appropriate time for that is. However, it is never appropriate for any juror to reveal the votes of any other member of the jury.

After jury service is complete, jurors will receive a check reimbursing them an amount set by the Supreme Court for each day of required attendance, plus round-trip mileage from their residences to the courthouse.

### **Do's and Don'ts**

There are certain rules jurors should follow throughout the trial to be fair to all sides:

- **Inspecting the Scene:** The case on trial may involve a certain place or thing, such as the scene of an accident, a particular business place, the operation of a traffic light, or the like. If it is necessary and proper for the jury to make an inspection of the place or thing, the judge will order that the entire jury do so, with the judge and the lawyers present. It is improper for any juror to make an inspection unless ordered by

the court. An unauthorized inspection by a juror might lead to a retrial of the case.

- **Discussing the Case:** During or before the trial, jurors should not talk about the case with each other, with other persons, or allow other people to talk about it in their presence. If anyone insists upon talking about the case after repeated attempts to silence them, the juror should report the matter to the bailiff at the first opportunity.
- **News Accounts:** To ensure that jurors keep an open mind until all the evidence, arguments, and the instructions of the court are heard, jurors should not watch television accounts, listen to radio broadcasts, or read newspaper articles during the trial. Such sources may give a biased or unbalanced version of the case.
- **Social media:** Jurors must not read anything or post anything about the case on the Internet or on any

electronic device, including cell phones. This includes any social media site, including but not limited to Twitter, Facebook, Instagram, and all blogs.

- **Talking with Parties or Lawyers:** Jurors should not talk with any of the parties, witnesses, or lawyers during the trial. It may give the appearance that something unfair is happening.
- **Jury Research Organizations:** There are organizations which conduct research on the composition of juries and its potential impact on the verdict and awards in different types of cases. Since the names of prospective jurors are a matter of public record, there is a small chance that jurors may receive phone calls prior to or during their term of jury service by one of these research groups. Jurors are under no obligation to provide personal or other information to these organizations and may simply

refuse to participate if they wish. These and any other attempts by people other than court officials to contact and question jurors should be reported to the circuit clerk who will inform the judge.

- **Proper Attire:** Those serving as jurors should maintain a respectable appearance and dress like they are going to a business meeting. Clothing should be business casual and comfortable, including polos, blouses, button-down shirts, dress slacks or dark jeans, and closed-toe shoes. Jurors should not wear anything with logos, symbols or words that might be distracting to others in the courtroom. In case of temperature changes throughout the day, jurors may also bring a sweater or jacket.
- **Promptness:** It is most important that jurors report for duty on time. One juror who is late wastes the time of all the other jurors, the judge, the lawyers, the witnesses, and the parties. A lawyer, witness or juror

may be fined for contempt of court for being tardy without good cause. The circuit clerk's office should be notified of unavoidable delays.

- **Personal Problems or Emergencies:** Jurors should notify the judge of any problem or personal emergency which occurs during service and may affect the trial. In these situations, a juror may send word to the judge through court personnel or may ask to see the judge in private.

# Legal Terms

## **Bailiff**

a court official who maintains courtroom order and security and assists the judge and jury as necessary.

## **Challenge for Cause**

an attorney's request that a potential juror be dismissed for a reason such as bias, prejudice, or prior knowledge that would prevent impartial evaluation of the evidence provided in court.

## **Charge to the Jury**

a judge's instructions to the jury regarding the laws pertaining to the case.

## **Civil Case**

an action brought by a person, company, or other entity – the plaintiff – to protect some right or to help recover money or property from another person or company – the defendant.

## **Closing Argument**

a summary of the evidence presented to the jury by an attorney at the end of the trial.

## **Criminal Case**

an action brought in the name of the State of West Virginia to try a person – the defendant – who is charged with a crime.

## **Cross-Examination**

the questioning of a witness by the opposing side.

**Defendant**

the person against whom a civil lawsuit is brought, or in a criminal case, the person who is charged with committing a crime.

**Deliberations**

jury discussions and consideration of the facts presented during the trial in order to reach a verdict.

**Direct Examination**

the first questioning of a witness by the party on whose behalf the witness is called.

**Evidence**

any legally presented proof which may be established by witnesses, records, documents, or physical objects.

**Exhibit**

any paper, document, or other object received by the court and offered as evidence during a trial or hearing.

**Foreperson**

the presiding member of a jury who speaks or answers for the jury.

**Impartiality**

a requirement of a jury to hear a case without prejudice and to give a fair verdict.

**Instruction**

a direction given by a judge to the jury regarding the law in a case.

### **Oath**

a written or oral pledge to speak the truth.

### **Objection**

a statement by an attorney opposing the admission of specific testimony or evidence during trial.

### **Opening Statement**

an outline presented to the jury by an attorney at the beginning of a trial.

### **Overrule**

the court's denial of a motion or objection raised to the court. When a court overrules an objection to evidence (for example, testimony), the jury may properly consider it.

### **Parties**

persons, corporations, or associations which have brought a lawsuit or are defendants in a trial.

### **Plaintiff**

in a civil case, the person or other entity who files a claim against another person or, in a criminal case, the State of West Virginia.

### **Peremptory challenge**

a right of the attorneys in jury selection to reject a certain number of potential jurors without stating a reason.

## **Polling the Jury**

after the verdict is returned but before the jury is discharged, each juror may be asked to render his or her verdict verbally in open court.

## **Prosecutor**

the public official who performs the function of trial lawyer for the state in criminal cases.

## **Redirect Examination**

the examination of witnesses which follows cross-examination and is exercised by the party who first examined the witness.

## **Stricken Testimony**

during a jury trial, if a motion to strike (remove) witness testimony is granted, the jury is instructed to disregard the stricken statements.

## **Striking a Jury**

process of selecting a trial jury where attorneys "strike" or excuse jurors until the number of jurors required for a trial remains.

## **Sustain**

court's acceptance of any motion or objection. When a court sustains an objection to evidence (for example, testimony), the jury may not consider it.

## **Swearing in a Juror**

before being questioned during jury selection, each juror must pledge an oath or affirm that they will answer all questions truthfully.

**Testimony**

a formal written or spoken statement given in a court of law.

**Trial**

examination of issues regarding fact and law before a court.

**Verdict**

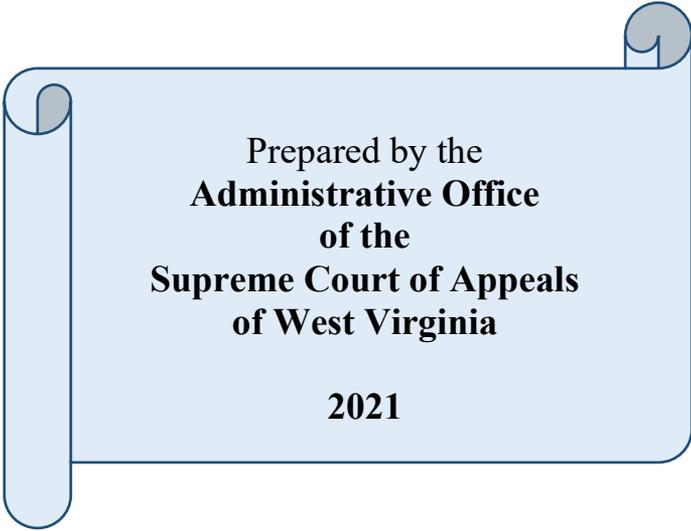
the final formal trial decision made by a jury, read before the court, and accepted by the judge.

**Voir Dire Examination**

the preliminary questioning of jurors by the attorneys and/or the judge to establish their qualifications to sit on a particular jury.

**Witness**

a person who testifies under oath during a trial.



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