

JUROR'S MANUAL

(Prepared by the State Bar of Michigan)

Your Role as a Juror

You've heard the term "jury of one's peers." In our country the job of determining the facts and reaching a just decision rests, not with "the government" or any other "higher authority," but with a jury, which is a small cross-section of the people in the community – fellow citizens of the parties to the lawsuit.

Your part as a juror is vital. You and your fellow jurors will decide all disputed questions of fact. The judge who presides over the trial will decide the technical questions of law, but you, the jury, will have to consider all the evidence and, from what you see and hear during the trial, determine what the facts of the case really are.

Then you will apply the law (as explained by the judge at the end of the trial) to the facts that you have determined, and decide the case.

In other words, you, the jury – not the judge, not "the system" – will decide the case. Justice depends upon you.

Civil and Criminal Cases

You know that some lawsuits are *civil* matters, and some are *criminal* matters. In a civil case the court is asked to decide a dispute between private individuals or groups. In a criminal case, the court must determine whether someone has committed a crime.

The party who starts a civil suit is called the *plaintiff*. The party against whom suit is brought is called the *defendant*. The lawsuit is started by delivery to the defendant (called service) of two documents: The summons and the complaint.

The summons does just that: It calls the defendant before the court.

The complaint also does what its name suggests: It lists the plaintiff's complaints against the defendant. It will claim that the defendant has committed some wrong against the plaintiff, such as causing bodily injury or property damage or depriving the plaintiff of something.

The complaint will also ask the court for *relief* (a remedy for the wrong), such as an award of *damages* (money) to repay the plaintiff for his or her loss, or an order to the defendant to do something or stop doing something.

The defendant responds to the complaint with a document called an answer, which responds to the plaintiff's claims, and explains why the defendant believes that the claim is untrue.

All of these documents, called *pleadings*, were exchanged between the parties before the trial begins.

We've described a very simple civil case. It can be more complicated. There may be more than one plaintiff or defendant. The defendant may also be asking for damages from the plaintiff (*a counterclaim*), or from another defendant (*cross-claim*) or from someone else not originally involved but later added to the case (*a third-party defendant*).

The plaintiff or defendant may not be individuals; they may instead be partnerships or corporations. A government – city, state, federal – may be a plaintiff or defendant. Whoever the parties are, the purpose of a civil trial is to decide disputes between them.

The purpose of a criminal trial is to determine whether or not the defendant has committed a crime.

A criminal case is brought by the government in the name of *The People*, because a crime is a violation of a law – a rule of conduct – established by the people as a whole to keep order in the community.

A criminal case is usually prosecuted by the court prosecuting attorney, representing the people of the state (or by the city attorney, if the law involved is a city ordinance).

The charges against the defendant are listed in a document that is filed before the trial called an *information* – if the charges are filed by the prosecuting attorney – or an indictment – if the charges are filed by a grand jury. Most criminal cases are filed by the prosecuting attorney.

An information or indictment may include several counts (charges or accusations), but each count must be stated separately. For example, one count may charge that the defendant robbed someone (the complainant), while a second count may charge that the defendant also assaulted him.

After the information is filed, but before the trial, the defendant is *arraigned* – brought before the judge to be informed of the charges – at which time the defendant is asked to plead *guilty or not guilty* to each count separately.

There are other differences between civil and criminal cases – too many to be discussed in this booklet. The judge will explain the specific rules governing the trial in which you will participate as a juror. If you do not understand something,

or if you have any questions about any of the judge's instructions, you are free to ask the judge for further explanation. In fact, it's your duty to ask.

Jury Selection

You and the others on the *jury panel* were selected at random to be called for jury duty. The first step in a trial is to select from among you the number needed to try the case.

Names are drawn at random from the jury panel, and those who are called take seats in the jury box. The judge will make a short statement telling what the case is about. Then the judge or attorneys will question each of you to see whether there is any reason why you cannot be a fair and impartial juror in that case. This is called the *voir dire* examination.

The questions may be based on your answers to the Juror Personal History Questionnaire you have already filled out. They may deal with your personal life and your beliefs, because these could affect your attitude toward one side or the other.

You should answer these questions fully and frankly, and if for any reason you feel that you should not serve as a juror in the case, you should say so and tell why.

A juror who is related to or friends with any of the parties, or who has unfinished business with any of the lawyers, or who knows or has heard so much about the case that he or she has already formed a fixed opinion about it, will probably be *challenged for cause* and be excused.

In addition, each side can excuse a certain number of jurors without giving a reason. These are called *peremptory challenges*.

If you are challenged and excused, with or without a reason, you should understand that it's nothing personal and is no reflection on your worth as a person. You may in fact be selected later to sit on another trial.

When both sides are finished with their challenges, the jurors who have been seated are sworn to try the case.

Conduct of the Trial

Civil and criminal trials are conducted in much the same way. The attorney for the plaintiff (in a civil case) or the prosecuting attorney (in a criminal case) will generally begin with a short *opening statement*. The defendant's lawyer may then make a similar opening statement, or may wait until after the plaintiff's case has been fully presented, or not make one at all.

The opening statements tell you what the opposing parties claim the facts are, and they outline the evidence by which the parties expect to prove what they say are the facts. Remember: The opening statements are not themselves *evidence*; they are only the parties' perspective versions of the facts as they claim them to be, which must be proved by evidence.

Evidence is testimony or things (*exhibits*) which relate to a fact in dispute. *Testimony* is statements made by a witness under oath at the trial. An exhibit is a physical article, such as a document, a weapon, or a photograph, introduced at the trial to be considered by the jury in determining the facts of the case.

Sometimes the testimony of a witness will have been given outside the courtroom and is read to the jury.

The record of that testimony is called a *deposition*. Or the testimony may have been given at a different trial, in which case the written record is called a *transcript*. Sometimes videotaped depositions are allowed in certain circumstances.

Witnesses

Parties to a lawsuit are entitled to call witnesses to testify. Witnesses are sworn to tell the truth.

The attorney who calls a witness will ask questions designed to bring out answers which support the facts his or her side is trying to prove. This is called *direct examination*.

Sometimes the attorney may call the opposing party, or someone connected with the other side. Such a witness is called an *adverse* witness or *hostile* witness. The attorney is permitted to cross-examine an adverse witness, just as if that witness had been called by the other side.

Cross-examination is questioning of a witness by the attorney for the other side, after direct examination is completed. Its purpose is to bring out additional information about the witness' testimony, or reliability, which may affect the juror's impressions or understanding of, or reliance on, what the witness testified to on direct examination.

When cross-examination is completed, the attorney who called the witness may ask further questions to clarify points raised in cross-examination. This is called *redirect examination*.

Questioning of witnesses is conducted under rules designed to insure fairness to the parties. For instance, a witness generally may testify about things he or she

knows firsthand. This is called personal knowledge. The witness is generally not permitted to say what someone else said happened, (the "hearsay" rule), because the witness doesn't know firsthand what happened, only what he or she was told.

During the examination of a witness, an attorney may object if the attorney for the other side asks a question that he or she thinks is improper under the rules. If the judge agrees that the question was improper, the judge will sustain the objection, and the witness is not permitted to answer. If the judge considers the question a proper one, he or she will overrule the objection and permit the witness to answer.

A witness must answer a proper question, and is permitted to answer that question only. If the witness goes beyond a direct answer to the question, the attorney asking the question may object. The judge may direct the jury to disregard an improper statement by a witness. When this happens, you must exclude that particular testimony from your consideration in the case.

You should pay close attention to each witness. Remember, you will be deciding the case on the basis of what you hear and see in the courtroom. If there is conflict between the testimony of different witnesses, you may have to decide which to believe.

If at any time you do not hear a question or an answer clearly, do not hesitate to interrupt and tell the judge that you did hear.

Order of Presentation

When the plaintiff's attorney (in a civil case) or the prosecuting attorney (in a criminal case) has finished presenting evidence, that side will rest. Then the defendant's attorney may present witnesses and evidence, but is not required to do so. If the defense has produced evidence, the plaintiff's attorney (or prosecuting attorney) may – but is not required to – offer witnesses and evidence in rebuttal to explain or deny the evidence produced by the defendant.

Jury Deliberations

After hearing the jury instructions, the jury moves to the jury room to consider the case and reach its verdict. All the jury's discussion of testimony and evidence takes place only when all the jurors are present, in the jury room – NOWHERE ELSE.

Once inside the jury room, the first order of business is to select a foreperson. The foreperson sees that discussions are carried out in an orderly fashion, that issues before the jury are fully and fairly discussed, and that every juror has

chance to speak out.

To assist in its deliberation, the jury may, in writing, request the exhibits that were introduced into evidence during the trial, ask to be reinstructed on any issue, or even ask that some testimony re read (played) back.

Any exhibit brought into the jury room should be handled with care to avoid damage or changing it in any way.

The verdict in a criminal case must be unanimous. A civil case is tried by six jurors, and a verdict requires the agreement of five of them, unless the parties have agreed to something else.

Discussions in the jury room should be open and frank. Each juror should feel free to say what he or she thinks – and why. Each juror should respect the rights of others to their opinions and be willing to listen to them.

You should not hesitate to change your mind if you are persuaded that your first opinion was mistaken, but you should not change your mind unless you are convinced of that.

The goal of jury deliberations is agreement on a verdict, but no juror should try to force another to adopt his or her position. Courteous and reasonable discussion will usually make it possible to reach an agreement.

In the instance where a jury cannot reach an agreement, the foreperson may report to the judge that the jury is deadlocked. The judge may ask whether the jury need any points clarified. Unless persuaded that it would be useless to do so, the judge will almost certainly ask the jury to return to the jury room for further deliberations.

It is natural that difference of opinions will arise. When they do, each juror should not only express his or her opinion but also the reasons upon which it is based. By reasoning the matter out, it is often possible for all the jurors to agree.

In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if you are convinced that it is wrong. However, none of you should surrender your honest conviction regarding the weight and effect of the evidence or lack of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

The Verdict

The foreperson will report to the judge when the jury has arrived at a verdict, which will then be read in open court. Any party may ask for a poll of the jury,

meaning that the clerk will ask each juror individually whether that is his or her verdict.

The losing party may later appeal to a higher court on technical questions of law or procedure, but the jury's findings of fact are almost always regarded as final; they are rarely set aside by the judge or a higher court. You can understand, then, how important it is for each juror to do the very best to deliver a fair and impartial verdict.

During the Trial

There are some common-sense rules jurors must follow to assure fairness to all parties. The judge will review them with you before testimony begins.

Discussing the Case

Your decision as a juror must be based only on the evidence admitted during the trial. Evidence is the testimony of witnesses, the exhibits, and any stipulations.

Accordingly, you should not talk about the case during the trial with anyone – family members, friends, strangers, attorneys, witnesses, and even other jurors – nor should you remain in the presence of others who are discussing it.

If anyone tries to talk to you about the case, say that you are a juror and cannot discuss it. If the person persists, report it to the judge at the first opportunity. When the trial is over, you may, if you wish, discuss the case with anyone.