



ARKANSAS JUDICIARY

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## Trial Procedure

After the jury has been selected and sworn, the trial proceedings advance in stages. You are allowed to take notes during the trial. Each trial, civil or criminal, has distinct parts that usually follow the same order.

- Opening statements (plaintiff or state goes first)
- The plaintiff or state puts on its case first
- The defense puts on its case. In a criminal trial, it is not unusual if the defense does not call any witnesses or that the defendant does not testify.
- The plaintiff or state may rebut the defense's case.
- The judge will read the jury instructions to you. Sometimes they are read after closing arguments.
- Closing arguments. The state or plaintiff will argue first; then the defendant; and then the state or plaintiff may make a final statement.
- The case is submitted to the jury for deliberations.
- In a civil case, you will determine if the defendant is liable. If you decide a wrong was committed and the plaintiff was damaged, you will decide the appropriate amount of money to award the plaintiff. In a criminal case, if you find the defendant guilty, there will be a second phase of the trial where you will decide what the sentence should be. The judge will then decide whether or not to accept the jury's recommended sentence. The sentencing phase is sometimes like another trial, in that witnesses are called and the attorneys make additional arguments

During the opening statement, the lawyers will tell you what the case is about and tell you about the evidence they plan to introduce during the trial. The plaintiff's attorney will go first; then the defendant's attorney makes their statement. These opening statements are not evidence, but are meant to give you a general idea of what the case is about.

Next, the plaintiff will present the evidence. Evidence includes witness testimony, photographs, audio and video recordings, documents, objects, police reports and anything else which might help prove a case. Any evidence that is not verbal testimony must be introduced through a witness. For example, if the prosecutor wants to introduce a police report for you to use in deliberations, she must have the police officer who wrote the report testify about the report. Otherwise, the report is "hearsay." Or, a doctor might have to testify that he wrote the medical report in a car accident case. Sometimes the parties will "stipulate" to certain records, which means that they agree to allow the evidence into the trial without a person having to verify that the records are true and accurate.

During a witness's testimony, the plaintiff's lawyer conducts "direct examination" by asking questions. The defense may then "cross-examine" the witness. The parties may further "re-

direct? and ?re-cross? the witness.

If the witnesses have any documents, photographs or other physical objects that help to prove the facts of the case, they may be introduced into evidence and shown to the jury. In some cases, a witness may be unavailable and may have answered questions in a deposition prior to the trial. These questions and answers may be read to the jury as evidence to be considered. The procedure of direct examination and cross-examination will continue with each witness until the plaintiff finishes presenting his proof and rests his case.

The defendant's lawyer goes through the same process - presenting evidence by questioning witnesses and introducing any physical objects. This time the defense conducts the direct examination and the plaintiff cross-examines. The defendant will also rest his case when he has finished presenting his case.

Keep in mind that the defense may or may not put on a case, and they don't have to. When a plaintiff files a lawsuit or the state files a criminal information, they have the burden of proving their case. There is a higher ?burden of proof? in a criminal case because someone's freedom is at stake. The state must prove each and every element of the crime beyond a reasonable doubt.

For example, this is the definition of residential burglary: (a)(1) A person commits residential burglary if he or she enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing in the residential occupiable structure any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201.

The state must prove that:

1. The defendant entered or stayed unlawfully in someone else's residential and occupiable structure;
2. Intended to commit an offense that is punishable by imprisonment.

If the defendant is a homeless person who was found sleeping in a person's house, you as the juror have to decide whether the defendant entered the structure to commit a criminal offense. What if the house was burned out and condemned by the city? Is it ?occupiable?? If not, one of the elements has not been proved. The defense attorney might not call any witnesses because he or she thinks the state didn't prove one of the required elements so there is no need for a defense.

Remember: The plaintiff and the state have the burden of proving their case to you, the jurors. If they do not, then justice requires a verdict that reflects that. A criminal defendant is never required to prove that he or she is innocent. We are all innocent until the state proves that the defendant committed a crime.

After the defense rests their case, the plaintiff may then present more evidence to disprove any new evidence presented by the defendant and not covered by the plaintiff's witnesses.

When the plaintiff and defendant have both rested, the instruction phase of the trial begins. The judge will read the jury instructions to the jury. The instructions tell you what the law is so that when you decide what the facts are you can apply those facts to the law.

After the judge reads the instructions, the attorneys for each side make their closing arguments. They will talk about the evidence and tell you how the evidence fits their theories of the case. In other words, they want you to look at the evidence from their point of view. Just as with opening statements, the plaintiff's attorney will go first. The defendant's attorney then makes his argument and the plaintiff is allowed a rebuttal argument.

The judge will then send you to the jury room to begin deliberating. The first thing you will do is elect a foreperson. The foreperson will preside over deliberations and will also announce the verdict in court.

The final decision of the jury is called the verdict. The jury's verdict must be based on the evidence as applied to the law explained by the judge. The parties trust you to be fair and impartial in your deliberations. Each juror should start the discussion with an open mind and should freely express his or her opinions. You each have different life experiences, levels of education, and viewpoints. Do not be afraid to say what you think or to change your mind based on the discussion in the jury room..

When a jury has reached its verdict, the foreperson will record the verdict on the form supplied by the court. The bailiff is summoned and the jurors return to the jury box. The trial judge will ask if a verdict has been reached. The foreman will answer "yes" and the verdict will be read out loud. The clerk then records the verdict. Sometimes one of the parties will request that the judge poll the jury. This means that the court clerk asks each juror individually if the verdict is in fact his or her verdict. The judge then enters the verdict in an order and the jury is dismissed.

Important: The information on this website is not intended to take the place of the instructions given by the judge in any case. Should you see a conflict, the trial judge's instructions will prevail.

Note: The pronouns, he, him, his, refer to both the male and female gender.

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