

Conducting a Trial

Hon. Charles Yeargan
Circuit Judge, Murfreesboro

JURY QUALIFICATION AND ORIENTATION

Madam Clerk, please call the roll of the jury. Is there any juror present whose name was not called? Any juror summoned to appear and has failed to do so should be turned over to the Sheriff for follow up on why they did not appear.

All jurors please rise and be sworn to answer questions touching your qualifications to serve as Petit Jurors:

- **"DO YOU SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL MAKE TRUE AND PERFECT ANSWERS TO SUCH QUESTIONS AS MAY BE DEMANDED OF YOUR QUALIFICATIONS TO SERVE AS PETIT JURORS AT THE PRESENT TERM OF THIS COURT?"**

Good morning ladies and gentlemen and welcome to jury duty! I am sure many of you have been looking forward to this day with great anticipation. Please, let me express my appreciation for your attendance here today.

If you have visited any of the websites dedicated to "how to get off jury duty," please know I have visited those sites and have a copy of all the excuses they list there.

Jury duty is one of the important services of being a citizen of this community. There are many ways that you as a citizen can serve your community and this service represents your contribution to the judicial system.

We have found that busy, responsible people generally make the best jurors. In order for you to be a good juror you need to know that in no way will you be embarrassed, asked to give up a vacation or trip you may have already planned, or do anything that might cause you an undue hardship. Defining undue hardship is sometimes difficult. Please know the court will respect your schedules and accommodate you whenever possible.

Every effort will be made to see that your time is not wasted, and every consideration will be given you to avoid any discomfort or inconvenience. All we ask is that if you have a problem; please let us know about it ahead of time so we can make appropriate arrangements. If at any time you need to confer with the court about your personal welfare, please feel free to do so.

A little history.

Our jury system has its roots all the way back to the signing of the Magna Carta on June 15, 1215 by King John at Runnymede, England, and has evolved to the system we have today. A right to a trial by jury is protected by our Federal and State Constitutions

and many people have given their lives in protecting these important documents.

Through the years, many people have sat where you sit today and served this community as jurors. Some of you may have had two or three generations of relatives who have previously served. And hopefully, you will have generations who will survive you to serve as well.

The point I wish to make is: **jury duty may be at times, inconvenient, lengthy, costly, and even at times, boring, but it remains and must always be considered a sacred privilege granted to each of us to assist and protect the rights of individuals and entities as set forth in our Constitutions.**

Many people do not want to serve on a jury. Please be mindful that you might, at some point in your lives, be depending on a jury's decision, or maybe you have already been through this experience. You can expect a decision to be as good or as flawed as the people who make up the jury pool. Most people, maybe even you, don't think it will ever happen to them.

Since this is the first day for the new term of this panel, I will be taking some extra time to go over your qualifications to serve as jurors and then a brief orientation of your expected duties.

PLAY VIDEO IF AVAILABLE AND EQUIPMENT WORKING.

The first question you may have is how did I get selected to be here today? Every registered voter who is a citizen of the United States and a resident of Arkansas and this county is an eligible juror, if not otherwise disqualified. Each county has a computer program that assigns numbers to the voters and then a desired number is picked at random.

Arkansas law provides few disqualifications for jury service but let me quickly go over those that are:

These items are now covered in the new juror questionnaire

- Persons who are unable to read or write the English language (Court may waive);
- Persons who have been convicted of a felony and have not been pardoned;
- Person who are not of good character or approved integrity, are lacking in sound judgment or reasonable information, are intemperate, or are not of good behavior;
- Person who, by reason of a physical or mental disability are unable to render satisfactory jury service, except that no person shall be disqualified solely on the basis of loss of hearing or sight in any degree.
- Is there anyone present who would fall in any of these categories?

Our law does provide that you may be exempted from jury service under the following conditions:

- The state of health requires the person's absence.
- The person has a family member whose state of health requires the attention of that person.
- The interest of the person or public will be materially injured by such service.
- You have served as a grand or Petit juror within the past two years.
- Your length of service can be no longer than 4 months and you may not serve more than 10 days during that 4 month period.

Your term begins and ends: _____.

Pay: you now earn \$15.00 each day for showing up and \$50.00 for each day you serve on a jury.

Let me also point out that Arkansas Code Annotated 16-31-106 provides that employers are prohibited from discharging you or making you use vacation time or sick leave due to your absent because of jury duty.

I hope that these few remarks have served to help you feel at ease and provide you with a general overview of the operation of the court. I further hope I have impressed upon you the importance of your service to the community and the judicial

system. When you have completed your service, I believe most of you will have a better impression of our Judicial System, and will be glad you had the opportunity to serve.

Would you now stand and be sworn on the panel?

(Administer oath by Clerk or Judge):

- **"You and each of you do solemnly swear that you will and truly try each and all of the issues, inquisitions, and other matters submitted you respectfully as jurors during the present term of this court and a true verdict rendered according to the law and the evidence unless discharged by the court or withdrawn by the parties."** You may be seated.

Let me briefly go over some matters that may assist you or help explain your duties as a juror.

I would like to take this opportunity to introduce you to the Court personnel and their duties:

1. Ms. Chren Kesterson—Court Reporter (explain her duties/mask).
2. Circuit Clerk: Donna White, Bobbie Jo Green, Andrea Billingsley or Laurie Green
3. Bailiff: Patsy Dehart, Kim Culp or Sheriffs

ORIENTATION ITEMS:

This may be skipped if video is shown.

Circuit court has two divisions:

1. Criminal
2. Civil

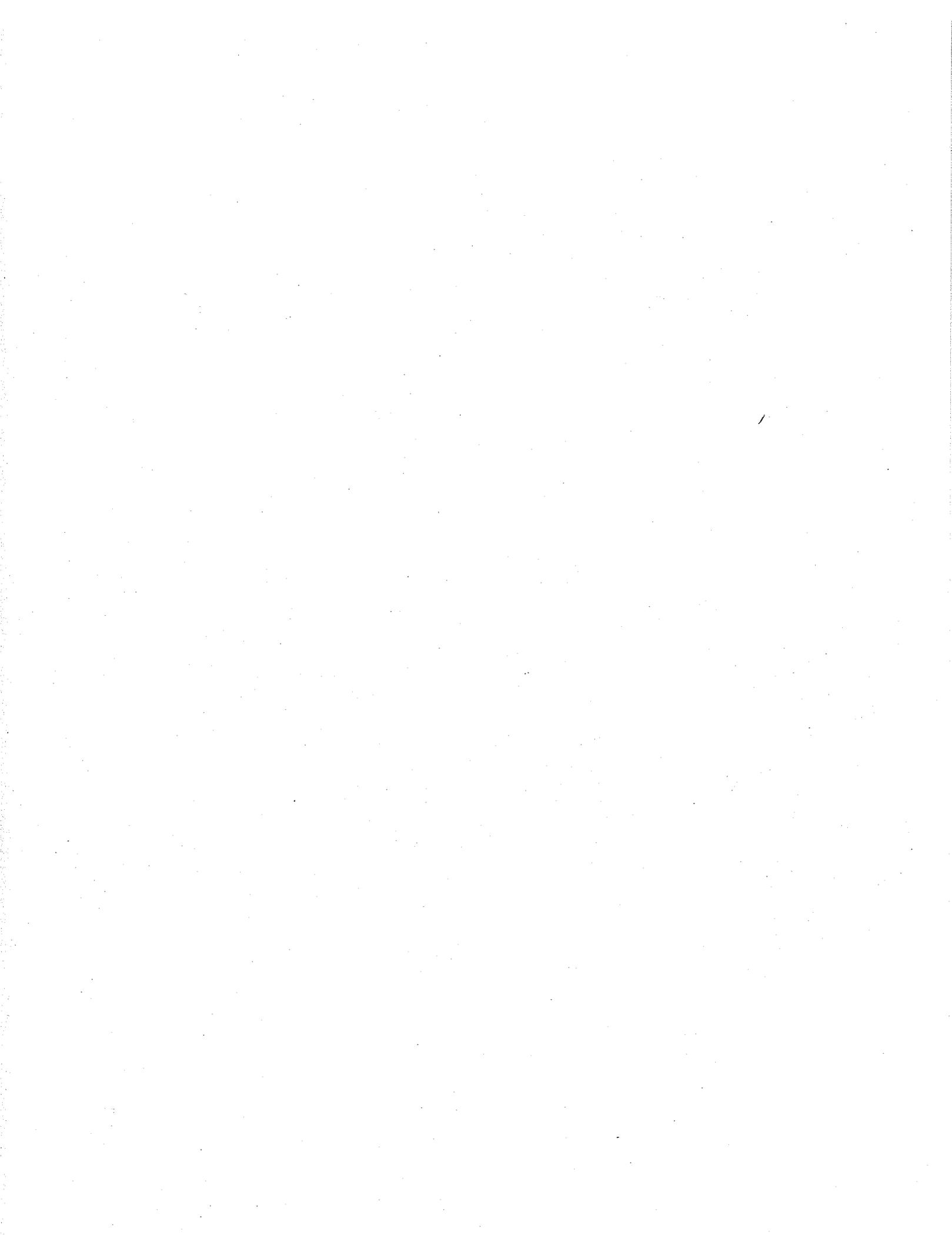
Explain different types of trials—Criminal vs. Civil. In Civil matters you will be asked to determine facts to resolve civil disputes, and award monetary judgments, and in Criminal matters you will determine the guilt or innocence of persons charged with crimes and the punishment of those persons, if found guilty.

- Criminal matters—Prosecutor represents the state, Defendant may have public defender or private counsel.
- Criminal matters—a Defendant has the Presumption of innocence.
- Criminal burden of proof—beyond a reasonable doubt.
- Findings or conclusion of the jury in Criminal matters must be unanimous.
- Findings or conclusion of the jury in Civil matters may be by nine or more of the jurors.
- Civil burden of proof—beyond a preponderance of the evidence.

Explain how juries are selected in Criminal vs. Civil matters.

- **Voir dire** examinations-purpose and nature. Voir dire simply means: "**to speak the truth**". This procedure is not conducted to embarrass anyone, but simply to assure the parties they will have only fair and impartial jurors serving on the jury. It is important that all questions be answered truthfully.
- Civil selection is much faster and normally no one on one questioning.
- Criminal selection, slower and questions may be asked of you.
- What happens when they are not selected to serve.
- How often expected to be called in. Also they serve for Judge Capeheart.

END OF QUALIFYING FOR TERM.



CRIMINAL JURY TRIAL PROCEDURE

THE COURT WILL COME TO ORDER.

MS. CLERK, HAVE YOU CALLED THE ROLL OF JURORS?

HOW MANY JURORS ARE PRESENT? HAVE ALL BEEN PREVIOUSLY QUALIFIED?

IS THE STATE READY FOR TRIAL?

IS THE DEFENDANT READY FOR TRIAL?

BEFORE WE START, CLERK IS TO ADMINISTER BAILIFF'S OATH:

"I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL FAITHFULLY, IMPARTIALLY, AND TO THE BEST OF MY ABILITY, DISCHARGE THE DUTIES OF BAILIFF OF THIS COURT, TO WHICH OFFICE I HAVE BEEN APPOINTED, AND STRICTLY OBEY ALL ORDERS OF THE COURT, AS BAILIFF DURING THE PRESENT SESSION NOW BEING HELD."

WOULD THE PANEL PLEASE RISE TO TAKE THE OATH TO ANSWER QUESTIONS TOUCHING ON YOUR QUALIFICATIONS TO SERVE IN THIS CASE? PANEL SHOULD BE SWORN BY THE CLERK AS FOLLOWS:

"DO YOU AND EACH OF YOUR SOLEMNLY SWEAR THAT YOU WILL MAKE TRUE AND PERFECT ANSWERS TO SUCH QUESTIONS AS MAY BE ASKED OF YOU TOUCHING YOUR QUALIFICATIONS TO SERVE AS JURORS IN THE CASE OF STATE OF ARKANSAS VS. _____."

THIS CASE IS _____ COUNTY CIRCUIT COURT, STATE
OF ARKANSAS VS. _____. CASE NUMBER _____.

THE DEFENDANT IS CHARGED WITH:

(READ INFORMATION).

YOU ARE ADVISED THAT WHAT I HAVE JUST READ IS AN "INFORMATION". AN INFORMATION IS A METHOD BY WHICH AN INDIVIDUAL IS BROUGHT TO TRIAL. IT IS NOT EVIDENCE OF GUILT AND MUST NOT BE TAKEN AS SUCH BY YOU IF YOU ARE SELECTED AS A JUROR. IT IS MERELY A STEP IN THE PROCESS OF GOING TO TRIAL.

THE STATE MUST PROVE BEYOND A REASONABLE DOUBT EACH ELEMENT OF THE OFFENSE CHARGED.

THERE IS A PRESUMPTION OF THE DEFENDANT'S INNOCENCE IN A CRIMINAL PROSECUTION. IN THIS CASE _____ IS/ARE PRESUMED TO BE INNOCENT. THAT PRESUMPTION OF INNOCENCE ATTENDS AND PROTECTS HIM/HER THROUGHOUT THE TRIAL AND SHOULD CONTINUE AND PREVAIL IN YOUR MINDS UNTIL YOU ARE CONVINCED OF HIS/HER GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT IS NOT A MERE POSSIBLE OR IMAGINARY DOUBT. IT IS A DOUBT THAT ARISES FROM YOUR CONSIDERATION OF THE EVIDENCE AND ONE THAT WOULD CAUSE A CAREFUL PERSON TO PAUSE AND HESITATE IN THE GRAVER TRANSACTIONS OF LIFE. A JUROR IS SATISFIED BEYOND A REASONABLE DOUBT IF AFTER AN IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE HE HAS AN ABIDING CONVICTION OF THE TRUTH OF THE CHARGE.

- ARE YOU, AND EACH OF YOU, WILLING AND ABLE TO GIVE TO THE DEFENDANT THE BENEFIT OF A DOUBT THROUGHOUT THE TRIAL UNTIL AND UNLESS IT IS OVERCOME?

LADIES AND GENTLEMEN IN THIS CASE, THE STATE IS REPRESENTED BY MR. TOM COOPER.

HIS ASSOCIATES IN THE PROSECUTING ATTORNEY'S OFFICE ARE:

MS. JANA VAUGHN, MR. JAY METZGER, MR. RALPH KEEN MR. DANNY GRAVES, AND MR. BRYAN CHESHSHIR.

THE DEFENDANT IN THIS CASE IS REPRESENTED BY _____.

HIS/HER ASSOCIATES IN PRIVATE LAW PRACTICE ARE:

THE WITNESSES, WHO WILL BE CALLED TO TESTIFY IN THIS CASE, SO FAR AS KNOWN BY THE COURT, ARE: _____

(OBTAIN THIS INFORMATION FROM BOTH SIDES PRIOR TO TRIAL. AS EACH WITNESSES NAMES ARE CALLED, THEY SHOULD RISE, OR IF OUTSIDE OF THE COURTROOM, COME INTO THE COURTROOM.)

COURT VOIR DIRE OF PANEL

- IT IS ANTICIPATED THAT THE TRIAL OF THIS CASE WILL LAST _____ DAYS.
- ANY PERSON ANSWERING “YES” TO ANY OF THE FOLLOWING QUESTIONS SHOULD STAND SO THAT THE ATTORNEYS MAY NOTICE THE NAME OR CARD NUMBER FOR FUTURE QUESTIONING IF THE PERSON IS CALLED AS A PROSPECTIVE JUROR. ONCE YOU ARE RECOGNIZED BY THE COURT, PLEASE STATE YOUR NAME.
- ARE ANY OF YOU “PERSONALLY” OR ANY IMMEDIATE MEMBER OF YOUR FAMILY RELATED TO OR ACQUAINTED WITH ANY OF THE ATTORNEYS, WITNESSES, OR THE DEFENDANT?
- HAVE ANY OF YOU EVER BEEN REPRESENTED BY ANY ATTORNEY IN THIS CASE, OR HAVE ANY CURRENT BUSINESS WITH ANY OF THE ATTORNEYS OR ASSOCIATES?
- DO ANY OF YOU KNOW ANY OF THESE WITNESSES OR HAVE YOU HAD ANY SOCIAL OR BUSINESS CONTACTS

WITH THEM? IF SO, HAVE JUROR IDENTIFY THEMSELVES FOR THE RECORD AND ASK:

A.) WOULD YOUR PREVIOUS CONTACT WITH THIS WITNESS HAVE ANY BEARING ON YOUR DECISION IN THIS CASE?

B.) DO YOU INTEND TO BELIEVE OR NOT BELIEVE THIS WITNESS ANY MORE OR LESS THAN THE OTHER PERSON WHO MAY TESTIFY IN THIS MATTER?

C.) IF YOU LATER SAW THIS WITNESS WOULD YOU FEEL THAT IT WAS NECESSARY TO EXPLAIN TO THEM ANY DECISIONS YOU MAY MAKE DURING THIS TRIAL?

D.) WOULD YOU FEEL UNCOMFORTABLE SETTING AS A JUROR ON THIS TRIAL WITH THIS PERSON TESTIFYING?

- DO ANY OF YOU KNOW ANYTHING OF YOUR OWN KNOWLEDGE OF THE FACTS OF THIS CASE?
- HAVE ANY OF YOU READ OR HEARD ANYTHING ABOUT THIS CASE?
- HAVE ANY OF YOU FORMED OR EXPRESSED AN OPINION OF THE CASE WHICH MAY INFLUENCE YOUR JUDGMENT?
- DO ANY OF YOU FEEL THAT YOU ARE BIASED OR PREJUDICED FOR OR AGAINST EITHER PARTY?
- HAVE ANY OF YOU OR MEMBERS OF YOUR FAMILY OR FRIENDS EVER BEEN INVOLVED WITH THIS TYPE OF CRIME SO THAT IT WOULD BE DIFFICULT FOR YOU TO SIT OBJECTIVELY AS A JUROR IN THIS CASE?
- DOES THE FILING OF A CHARGE OR AN INDICTMENT OR INFORMATION RAISE ANY INFERENCE OF GUILT IN YOUR MIND?

- DO ANY OF YOU STAND OR HAVE YOU LATELY STOOD IN RELATIONS OF GUARDIAN-WARD, LANDLORD-TENANT, EMPLOYER-EMPLOYEE, OR DO HAVE ANY FORM OF CONTRACTUAL RELATIONSHIP WITH THE ATTORNEYS, THE STATE, THE DEFENDANT OR THE WITNESSES?
- DO ANY OF YOU HAVE ANY DOUBTS OR RESERVATIONS ABOUT FOLLOWING MY INSTRUCTION THAT THE DEFENDANT IS PRESUMED TO BE INNOCENT UNTIL PROVEN GUILTY BEYOND A REASONABLE DOUBT BY EVIDENCE PRESENTED IN THIS COURT?
- DOES ANY JUROR KNOW OF ANY REASON THAT IF CHOSEN AS A JUROR WHY, HE OR SHE, COULD NOT BE ABSOLUTELY FAIR AND IMPARTIAL AND BASE YOUR VERDICT STRICTLY UPON THE LAW AS GIVEN TO YOU BY THE COURT AND THE EVIDENCE THAT IS GAINED FROM THE WITNESS STAND?
- ANY GENERAL QUESTIONS OF THE PANEL BY THE STATE?
- ANY GENERAL QUESTIONS OF THE PANEL BY THE DEFENDANT?

THE CLERK WILL DRAW FROM JURY WHEEL OR PRINT FROM COMPUTER PROGRAM FIRST TWELVE JURORS.
(AFTER TWELVE JURORS ARE SEATED).

- THE STATE MAY INQUIRE.
- THE DEFENSE MAY INQUIRE.

WHAT SAYS THE STATE AS TO JUROR _____? (GOOD OR STRIKE)

WHAT SAYS THE DEFENDANT AS TO JUROR _____? (GOOD OR STRIKE)

(IN FELONY CASES THE STATE HAS 6 CHALLENGES AND THE DEFENSE HAS 8; IN CAPITAL CASES, THE STATE HAS 10 CHALLENGES AND THE DEFENSE HAS 12; IN

MISDEMEANOR CASES, THE STATE HAS 3 CHALLENGES AND THE DEFENSE HAS 3; EACH SIDE HAS ONE STRIKE AGAINST ALTERNATE JURORS.)

ALTERNATE JURORS

AFTER A FULL PANEL IS SEATED, THE COURT SHOULD INQUIRE CONCERNING ALTERNATE JURORS.

IS THERE A NECESSITY FOR ALTERNATE? CAN IT BE STIPULATED BY AND BETWEEN THE PARTIES THAT IF MISFORTUNE SHOULD BEFALL ON ONE OR MORE MEMBERS OF THIS PANEL, WE WILL BE ABLE TO CONCLUDE THIS CASE WITH THOSE ABLE-BODIED INDIVIDUALS WHO ARE ABLE TO FUNCTION AS A JURY?

AFTER THE STATE AND DEFENSE HAVE HAD AN OPPORTUNITY TO INQUIRE OF ALL THE JURORS, ASK:

- **WHAT SAYS THE STATE AS TO THE JURY?**
- **WHAT SAYS THE DEFENSE AS TO THE JURY?**

THE JURY WILL NOW STAND, RAISE THEIR RIGHT HANDS, AND TAKE THE OATH TO SIT AS JURORS IN THIS PARTICULAR CASE.

THE CLERK SHOULD SWEAR THE PANEL.

OATH:"DO YOU AND EACH OF YOU SOLEMNLY SWEAR THAT YOU WILL WELL AND TRULY TRY THE CASE OF STATE VS. _____, AND RENDER A TRUE VERDICT UNLESS DISCHARGED BY THE COURT OR WITHDRAWN BY THE PARTIES? " BE SEATED.

EXCUSE THE BALANCE OF THE JURY PANEL. GIVE DATES OF NEXT TRIAL IF KNOWN.

WITNESSES: SWEARING/IS RULE REQUESTED?

THE WITNESSES, WHO WILL BE CALLED TO TESTIFY IN THIS CASE, SO FAR AS KNOWN BY THE COURT, ARE: _____

(OBTAIN THIS INFORMATION FROM BOTH SIDES PRIOR TO TRIAL. AS EACH WITNESS'S NAMES ARE CALLED, THEY SHOULD RISE, OR IF OUTSIDE OF THE COURTROOM, COME INTO THE COURTROOM.)

EXPLANATION OF THE RULE

ALL WITNESSES SHOULD BE SWORN BY THE CLERK AND THE EXCLUSION OF WITNESS RULE GIVEN, IF APPROPRIATE, AS FOLLOWS:

- EACH OF YOU HAS BEEN SUMMONED AS A WITNESS IN THIS CASE.
- THE COURT HAS INVOKED A RULE OF PROCEDURE WHICH REQUIRES YOUR EXCLUSION FROM THE COURTROOM AT ALL TIMES, EXCEPT DURING THE TRIAL WHEN YOU TESTIFY IN THIS MATTER.
- YOU ARE DIRECTED TO REMAIN OUT OF THE COURTROOM EXCEPT WHEN YOU ARE CALLED TO TESTIFY. WHILE YOU ARE WAITING TO TESTIFY, AND AFTER YOU HAVE DONE SO, YOU ARE NOT TO DISCUSS THIS CASE OR YOUR TESTIMONY AMONG YOURSELVES OR WITH ANYONE ELSE. YOU MAY, HOWEVER, DISCUSS YOUR TESTIMONY WITH COUNSEL FOR EITHER PARTY IN THIS CASE.
- COUNSEL FOR EACH OF THE PARTIES ARE INSTRUCTED TO ADVISE EACH OF THEIR RESPECTIVE WITNESSES THAT ARE NOT PRESENT AT THE TIME OF THE DIRECTION I HAVE JUST GIVEN THAT EACH OF THEM SHALL BE GOVERNED THEREBY.
- ANY VIOLATION OF THIS DIRECTION MAY NOT ONLY SUBJECT YOU TO CONTEMPT OF COURT BY MAY ALSO DISQUALIFY YOU AS A WITNESS IN THIS CASE.

CONSIDER TAKING A BREAK AT THIS POINT IN ORDER FOR THE JURORS TO NOTIFY EMPLOYERS, FAMILY, ETC.

READ THE FOLLOWING ADMONITION

AMI 101a CAUTIONARY INSTRUCTION - COMMENCEMENT OF TRIAL (MODIFIED)

TO ENSURE FAIRNESS, AND THE APPEARANCE OF FAIRNESS, YOU AS JURORS MUST OBEY THE FOLLOWING RULES:

- FIRST, DO NOT TALK AMONG YOURSELVES ABOUT THIS CASE, OR ABOUT ANYONE INVOLVED WITH IT, UNTIL THE END OF THE CASE WHEN YOU GO TO THE JURY ROOM TO DECIDE ON YOUR VERDICT.**
- SECOND, DO NOT TALK WITH ANYONE ELSE ABOUT THIS CASE, OR ABOUT ANYONE INVOLVED WITH IT, UNTIL THE TRIAL HAS ENDED AND YOU HAVE BEEN DISCHARGED AS JURORS.**
- THIRD, WHEN YOU ARE OUTSIDE THE COURTROOM, DO NOT LET ANY ONE TELL YOU ANYTHING ABOUT THE CASE, OR ABOUT ANYONE INVOLVED WITH IT. IF SOMEONE SHOULD TRY TO TALK TO YOU ABOUT THE CASE, PLEASE REPORT IT TO ME.**
- FOURTH, DURING THE TRIAL YOU SHOULD NOT TALK WITH OR SPEAK TO ANY OF THE PARTIES, LAWYERS OR WITNESSES INVOLVED IN THIS CASE - YOU SHOULD NOT EVEN PASS THE TIME OF DAY WITH ANY OF THEM. IT IS IMPORTANT NOT ONLY THAT YOU DO JUSTICE IN THIS CASE, BUT THAT YOU ALSO GIVE THE APPEARANCE OF DOING JUSTICE. IF A PERSON FROM ONE SIDE OF THE PROCEEDINGS SEES YOU TALKING TO A PERSON FROM THE OTHER SIDE - EVEN IF IT IS SIMPLY TO PASS THE TIME OF DAY. AN UNWARRANTED AND UNNECESSARY SUSPICION ABOUT YOUR FAIRNESS MIGHT BE**

AROUSSED. WHEN THE LAWYERS, PARTIES OR WITNESSES DO NOT SPEAK TO YOU WHEN YOU PASS IN THE HALL OR MEET ANYWHERE, REMEMBER IT IS BECAUSE THEY ARE NOT SUPPOSED TO TALK OR VISIT WITH YOU EITHER.

- **FIFTH, DO NOT READ ANY NEWS STORIES OR ARTICLES ABOUT THE CASE, OR ABOUT ANYONE INVOLVED WITH IT, OR LISTEN TO ANY RADIO OR TELEVISION REPORTS ABOUT THE CASE OR ABOUT ANYONE INVOLVED WITH IT. [IN FACT, UNTIL THE TRIAL IS OVER, I SUGGEST THAT YOU AVOID READING ANY NEWSPAPERS OR NEWS JOURNALS AT ALL, AND AVOID LISTENING TO ANY TV OR RADIO NEWS CASTS AT ALL. I DO NOT KNOW WHETHER THERE MIGHT BE ANY NEWS REPORTS OF THIS CASE, BUT IF THERE ARE YOU MIGHT INADVERTENTLY FIND YOURSELF READING OR LISTENING TO SOMETHING BEFORE YOU COULD DO ANYTHING ABOUT IT. IF YOU WANT, YOU CAN HAVE YOUR SPOUSE OR A FRIEND CUT OUT ANY STORIES AND SET THEM ASIDE TO GIVE YOU AFTER THE TRIAL IS OVER. I CAN ASSURE YOU, HOWEVER, THAT BY THE TIME YOU HAVE HEARD THE EVIDENCE IN THE CASE, YOU WILL KNOW MORE ABOUT THE MATTER THAN ANYONE WILL LEARN THROUGH THE NEWS MEDIA.]**
- **SIXTH, DO NOT DO ANY RESEARCH OR MAKE ANY INVESTIGATION ABOUT THE CASE ON YOUR OWN. [SINCE THIS CASE INVOLVED AN INCIDENT THAT OCCURRED AT A PARTICULAR LOCATION, YOU MAY BE TEMPTED TO VISIT THE SCENE YOURSELF. PLEASE DO NOT DO SO. THIS CASE MUST BE TRIED SOLELY UPON THE EVIDENCE PRESENTED TO YOU IN COURT AND NOT UPON ANY INFORMATION OR IMPRESSION, WHETHER CORRECT OR NOT, WHICH YOU MIGHT ACQUIRE FROM VISITING THE SCENE. EVEN IF YOU HAVE PREVIOUS INFORMATION CONCERNING THE SCENE OF THE OCCURRENCE, DUE TO YOUR FAMILIARITY WITH IT, YOU SHOULD KEEP**

THAT INFORMATION TO YOURSELF AND NOT ALLOW IT TO BECOME A PART OF THE DELIBERATION.]

- **SEVENTH, DO NOT MAKE UP YOUR MIND DURING THE TRIAL ABOUT WHAT THE VERDICT SHOULD BE. KEEP AN OPEN MIND UNTIL AFTER YOU HAVE GONE TO THE JURY ROOM TO DECIDE THE CASE AND YOU AND YOUR FELLOW JURORS HAVE DISCUSSED THE EVIDENCE.**

INSTRUCTION TO BE READ BEFORE EACH RECESS:

AMI 101B CAUTIONARY INSTRUCTION - DUTIES OF JURY DURING RECESSES

WE ARE ABOUT TO TAKE [OUR FIRST] [A] RECESS AND I REMIND YOU OF THE INSTRUCTIONS I HAVE GIVEN YOUR EARLIER. DURING THIS RECESS OR ANY OTHER RECESS, YOU MUST NOT DISCUSS THIS CASE WITH ANYONE, INCLUDING YOUR FELLOW JURORS, MEMBERS OF YOUR FAMILY, PEOPLE INVOLVED IN THE TRIAL, OR ANYONE ELSE. IF ANYONE TRIES TO TALK TO YOU ABOUT THE CASE, PLEASE LET ME KNOW ABOUT IT IMMEDIATELY. [DO NOT READ, WATCH OR LISTEN TO ANY NEWS REPORTS OF THE TRIAL] FINALLY, KEEP AN OPEN MIND UNTIL ALL THE EVIDENCE HAS BEEN RECEIVED AND YOU HAVE HEARD THE VIEWS OF YOUR FELLOW JURORS.

COMMENCEMENT OF THE TRIAL

LADIES AND GENTLEMEN OF THE JURY:

YOU HAVE BEEN SELECTED AND SWORN AS THE JURY TO TRY THE CASE OF STATE VS. _____.

THIS IS A CRIMINAL CASE CHARGED BY AN INFORMATION FILED IN THIS COURT BY THE PROSECUTING ATTORNEY

ALLEGING A VIOLATION OF THE LAWS RELATING TO AND STATED AS,_____.

IT IS YOUR SOLEMN RESPONSIBILITY TO DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT AND YOUR VERDICT MUST BE BASED SOLELY ON THE EVIDENCE AS IT IS PRESENTED TO YOU IN THIS TRIAL AND THE LAW ON WHICH THE COURT INSTRUCTS YOU.

THE JURY IS CONCURRED WITH THE FACTS. THE COURT IS CONCERNED WITH THE LAW. THE COURT IS CONCERNED WITH FACTS ONLY TO SEE THEY ARE PROPERLY AND LAWFULLY PRESENTED TO YOU. THE JURY IS CONCERNED WITH THE LAW ONLY AS THE COURT INSTRUCTS IT. THUS THE RESPONSIBILITY OF THE JURY AND THE RESPONSIBILITY OF THE COURT ARE WELL DEFINED, AND THEY DO NOT OVERLAP.

JUROR NOTE-TAKING

DURING THE TRIAL YOU WILL BE PERMITTED TO TAKE NOTES. THE COURT HAS PROVIDED YOU WITH PENCILS AND NOTEPAPER FOR YOUR CONVENIENCE. FOR MANY YEARS THE PRACTICE OF JUROR NOTE-TAKING WAS DISCOURAGED BECAUSE THE TAKING OF NOTES DISTRACTS YOUR MIND FROM THE EVIDENCE THAT IS PRESENTED WHILE YOU ARE BUSY TAKING NOTES. THE OTHER REASON WAS THAT THE BEST NOTE-TAKER MIGHT HAVE MORE INFLUENCE ON THE OTHER JURORS THAN IS WANTED.

IT IS YOUR RESPONSIBILITY TO OBSERVE THE WITNESSES AS THEY TESTIFY AND TO LISTEN ATTENTIVELY TO ALL THE TESTIMONY. AT THE END OF THE CASE, IN DELIBERATIONS, YOUR COLLECTIVE MINDS WILL THEN REACH A VERDICT. THE NOTES ARE ONLY TO BE USED AS A MEMORY AID AND SHOULD NOT BE ALLOWED TO TAKE PRECEDENCE OVER JURORS' INDEPENDENT MEMORY OF FACTS.

PLEASE UNDERSTAND THAT TESTIMONY CANNOT BE REPEATED NOR THE TRIAL DELAYED TO PERMIT THE TAKING OF ACCURATE NOTES.

THERE IS NO REQUIREMENT THAT YOU TAKE NOTES.

PRELIMINARY INSTRUCTIONS

BEFORE WE HEAR THE OPENING STATEMENTS OF COUNSEL AND BEGIN TO TAKE EVIDENCE, IT MAY BE HELPFUL IF YOU HAVE SOME PRELIMINARY INSTRUCTIONS TO FOLLOW IN LISTENING TO AND CONSIDERING THE EVIDENCE WHICH YOU WILL HEAR IN THIS CASE.

YOU HAVE THE EXCLUSIVE DUTY TO DECIDE ALL QUESTIONS OF FACT SUBMITTED TO YOU. IN CONNECTION WITH THIS DUTY YOU MUST DETERMINE THE EFFECT AND VALUE OF THE EVIDENCE. YOU MUST NOT BE INFLUENCED IN YOUR DECISION BY SYMPATHY, PREJUDICE OR PASSION TOWARD ANY PARTY, WITNESS OR ATTORNEY IN THE CASE.

THE ATTORNEYS FOR THE PARTIES WILL, OF COURSE, HAVE ACTIVE ROLES IN THE TRIAL. THEY WILL MAKE OPENING STATEMENT TO YOU, QUESTION WITNESSES AND MAKE OBJECTIONS AND, FINALLY, WILL ARGUE THE CASE AS THE LAST STEP BEFORE YOU COMMENCE YOUR DELIBERATIONS. REMEMBER THAT THE LAWYERS ARE NOT WITNESSES, YOU MUST NOT CONSIDER AS EVIDENCE ANY STATEMENT OF ANY ATTORNEY MADE DURING THE TRIAL.

THERE IS AN EXCEPTION, AND THAT IS IF THE ATTORNEYS AGREE TO ANY FACT. THAT AGREEMENT, STIPULATION OR ADMISSION OF FACT WILL BE BROUGHT TO YOUR ATTENTION, AND **(IT WILL BE YOUR DUTY TO - CIVIL) (YOU MAY THEN - CRIMINAL)** REGARD THAT FACT AS BEING CONCLUSIVELY PROVED WITHOUT THE NECESSITY OF FURTHER EVIDENCE OF THAT FACT.

IF A QUESTION IS ASKED AND AN OBJECTION TO THE QUESTION IS SUSTAINED, YOU WILL NOT HEAR THE ANSWER; YOU MUST NOT SPECULATE AS TO WHAT THE ANSWER MIGHT

HAVE BEEN OR AS TO THE REASON FOR THE OBJECTION. IF AN ANSWER IS GIVEN TO A QUESTION AND THE COURT THEN GRANTS A MOTION TO STRIKE OUT THE ANSWER, YOU ARE TO COMPLETELY DISREGARD THAT QUESTION AND THE ANSWER AND NOT CONSIDER THEM FOR ANY PURPOSE

WHEN AN OBJECTION IS MADE, IT DOES NOT MEAN ANYONE IS TRYING TO CONCEAL EVIDENCE FROM YOU. THERE ARE RULES GOVERNING THE ADMISSIBILITY OF EVIDENCE WHICH MUST BE FOLLOWED AND THE COURT ATTEMPTS TO ACCOMPLISH THIS BY RULING ON THE OBJECTIONS. THE OBJECTION IS MADE TO CALL THE COURT'S ATTENTIONS TO A POSSIBLE TRANSGRESSION OF THE RULES.

OVER THE CENTURIES, THE LAW HAS DETERMINED WHAT EVIDENCE IS RELIABLE AND WHAT IS NOT. IN ORDER TO PRESERVE THE INTEGRITY OF THE TRIAL, EACH SIDE ATTEMPTS TO ENSURE THAT ONLY RELIABLE EVIDENCE IS PRESENTED TO YOU.

THERE WILL BE OCCASIONS WHEN THE ATTORNEYS APPROACH THE BENCH AND SPEAK TO THE COURT OUT OF YOUR HEARING. YOU MUST NOT SPECULATE AS TO THESE DISCUSSIONS, WHICH CONCERN POINTS OF LAW, BECAUSE THEY ARE NOT EVIDENCE AND IT WOULD BE UNFAIR FOR THE JURY TO BE IN ON THOSE DISCUSSIONS.

AS JURORS, YOU HAVE THE SOLE AND EXCLUSIVE DUTY TO DECIDE THE CREDIBILITY OF THE WITNESSES WHO TESTIFY IN THE CASE, WHICH SIMPLY MEANS THAT IT IS YOU WHO MUST DECIDE WHETHER TO BELIEVE OR DISBELIEVE A PARTICULAR WITNESS.

IN MAKING THIS DETERMINATION, YOU WILL APPLY THE TESTS OF TRUTHFULNESS WHICH YOU APPLY IN YOUR DAILY LIVES

APPLYING THESE TESTS, YOU WILL ASSIGN TO THE TESTIMONY OF EACH WITNESS THE WEIGHT YOU DEEM PROPER. YOU ARE NOT REQUIRED TO BELIEVE THE TESTIMONY

OF ANY WITNESS SIMPLY BECAUSE IT WAS GIVEN UNDER OATH. YOU MAY BELIEVE OR DISBELIEVE ALL OR ANY PART OF THE TESTIMONY OF ANY WITNESS.

YOU SHOULD NOT DECIDE ANY ISSUE OF FACT MERELY ON THE BASIS OF THE NUMBER OF WITNESSES WHO TESTIFY ON EACH SIDE OF THAT ISSUE. THE TESTIMONY OF ONE WITNESS, BELIEVED BY YOU, IS SUFFICIENT TO PROVE ANY FACT.

OPENING STATEMENTS OF COUNSEL ARE DESCRIPTIONS OF EACH SIDE'S CLAIMS AND DEFENSES AND THE EVIDENCE COUNSEL EXPECTS TO PRODUCE IN SUPPORT OF THOSE CLAIMS AND DEFENSES.

OPENING STATEMENTS ARE NOT EVIDENCE.

THEY ARE PREVIEWS OF THE RESPECTIVES CASES, DESIGNED TO GIVE YOU SOME PERSPECTIVE ON THE EVIDENCE. THEY ARE TO BE CONSIDERED ONLY AS A GUIDE SO YOU MAY UNDERSTAND AND EVALUATE THE EVIDENCE AS IT COMES TO YOU.

WHEN THE EVIDENCE IS COMPLETED, I WILL INSTRUCT YOU ON THE LAW APPLICABLE TO THIS CASE.

AFTER THE INSTRUCTIONS ARE GIVEN, THE ATTORNEYS WILL THEN ARGUE THE MERITS OF THE CASE. AGAIN, WHAT THE ATTORNEYS SAY IS NOT EVIDENCE. THEIR ARGUMENTS ARE GIVEN FOR THE PURPOSE OF ASSISTING YOU IN EVALUATING THE EVIDENCE AND ARRIVING AT THE CORRECT CONCLUSION. THEIR ARGUMENTS MAY BE ACCEPTED OR REJECTED.

OPENING STATEMENTS

EACH SIDE MAY ADDRESS YOU ONCE DURING OPENING STATEMENTS. IN ACCORDANCE WITH THE RULES WHICH GOVERN THESE PROCEEDINGS, THE STATE WILL SPEAK FIRST.

MR. PROSECUTOR, YOU MAY MAKE YOUR OPENING STATEMENT.

MR./MS. _____, YOU MAY MAKE YOUR OPENING STATEMENT FOR THE DEFENDANT.

MR. PROSECUTOR: CALL YOUR FIRST WITNESS.

STATE'S CASE

WHEN STATE RESTS-

RECESS: (IF MOTIONS ARE TO BE HEARD)

DEFENDANT'S CASE

DEFENDANT: CALL YOUR FIRST WITNESS.

WHEN DEFENDANT'S REST-

MOTIONS?

REBUTTAL?

LADIES AND GENTLEMEN, YOU HAVE HEARD ALL OF THE EVIDENCE IN THIS CASE. IT WILL BE NECESSARY TO SETTLE THE INSTRUCTIONS WITH THE ATTORNEYS. WE WILL RECESS FOR 15 MINUTES.

MEMBERS OF THE JURY, IT NOW BECOMES MY DUTY TO GIVE YOU THE LAW THAT WILL GOVERN YOU IN YOUR DELIBERATION IN THIS CASE. AS I PREVIOUSLY TOLD YOU, THIS LAW WILL BE CONTAINED IN THE FORM OF VARIOUS INSTRUCTIONS

READ THE INSTRUCTIONS

ANY ADDITIONAL INSTRUCTIONS REQUESTED BY THE STATE?

ANY ADDITIONAL INSTRUCTIONS REQUESTED BY THE DEFENDANT?

CLOSING ARGUMENTS

THE ATTORNEYS AT THIS TIME WILL MAKE THEIR FINAL ARGUMENT TO YOU. THE ATTORNEY FOR THE STATE WILL MAKE AN OPENING ARGUMENT. THE ATTORNEY FOR THE DEFENDANT WILL THEN HAVE HIS/HER OPPORTUNITY TO MAKE HIS/HER ARGUMENT. THE ATTORNEY FOR THE STATE WILL THEN REPLY TO THE ARGUMENT OF THE DEFENDANT.

THE ATTORNEYS, IN MAKING THESE ARGUMENTS TO YOU, WILL BE COMMENTING UPON THE TESTIMONY THAT YOU HAVE HEARD AND THE EVIDENCE THAT HAS BEEN PRESENTED. THEY WILL NOT INTENTIONALLY TRY TO MISLEAD YOU. HOWEVER, IF THEIR RECOLLECTION OF THE EVIDENCED DIFFERS FROM WHAT YOUR RECOLLECTION IS, YOU MUST FOLLOW YOUR OWN RECOLLECTION. THESE FINAL ARGUMENTS ARE NOT TO BE CONSTRUED BY YOU AS EVIDENCE IN THIS CASE OR INSTRUCTIONS ON THE LAW. THEY ARE, HOWEVER, INTENDED TO HELP YOU BETTER UNDERSTAND THE CONTENTIONS OF EACH SIDE IN THE ISSUES YOU ARE TO DECIDE.

YOU SHOULD GIVE BOTH SIDES YOUR CLOSEST ATTENTION.

STATE:

MR./MRS. _____, YOU MAY MAKE YOUR FIRST CLOSING.

DEFENDANT:

MR./MRS. _____, YOU MAY MAKE YOUR CLOSING ARGUMENT.

STATE:

MR./MRS. _____, YOU MAY MAKE YOUR FINAL CLOSING.

PRIOR TO JURY RETIRING THE FOLLOWING OATH MUST BE GIVEN:

“I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL KEEP THIS JURY TOGETHER, NOT ALLOWING ANY PERSON TO SPEAK TO THEM OR OVERHEAR THEIR DELIBERATIONS, NOR TO SPEAK TO THEM MYSELF, UNLESS IT IS IN THE PERFORMANCE OF MY OFFICIAL DUTIES AS BAILIFF TO THIS COURT.”

VERDICT FORMS

LADIES AND GENTLEMEN, I GIVE YOU _____ VERDICT FORMS.

READ EACH OF THE VERDICT FORMS

THE ALTERNATE JUROR IS TO REMAIN AT THE COURTHOUSE DURING DELIBERATIONS AND ADMONISHED NOT TO DISCUSS THE CASE WITH ANYONE UNTIL RELEASED BY THE COURT. ARCP 32.3

YOU MAY TAKE THE JURY INSTRUCTIONS AND ANY OF THE EXHIBITS WITH YOU TO THE JURY ROOM. PLEASE UNDERSTAND IF YOU REQUEST ANY OF THE EXHIBITS, THEN ALL MUST BE DELIVERED TO THE JURY ROOM. YOU MAY NOW RETIRE TO DELIBERATE.

MAKE SURE BAILIFF DELIVERS ONLY EXHIBITS THAT WERE PROPERLY INTRODUCED.

RETURN OF JURY:

TAKING VERDICT

AFTER THE COURT HAS BEEN NOTIFIED THAT THE JURY HAS REACHED A VERDICT, ALL PARTIES AND ATTORNEYS SHOULD BE IN PLACE, THE JURY SHOULD BE PUT IN THE BOX.

DETERMINE WHO THE FOREPERSON IS.

ASK: WILL THE FOREPERSON PLEASE STAND?
HAS THE JURY REACHED ITS VERDICT?
PLEASE HAND IT TO THE BAILIFF.

THE FOREPERSON SHOULD FOLD AND DELIVER THE VERDICT FORM TO THE BAILIFF. THE BAILIFF SHOULD DELIVER THE VERDICT FORM TO THE JUDGE.

ALL COUNSEL, PARTIES, WITNESSES, AND SPECTATORS REMAIN SEATED AND QUIET. THERE ARE TO BE NO DEMONSTRATIONS BY ANYONE AFTER THE READING OF THE VERDICT.

ASK THE DEFENDANT TO RISE BEFORE READING THE VERDICT.

JUDGE SHOULD READ THE VERDICT AND POLL THE JURY IF REQUESTED BY EITHER PARTY.

IF GUILTY VERDICT:

READ OPENING INSTRUCTIONS ON PHASE II OF TRIAL.

THE STATE SUBMITS FOR THE RECORD THE CONVICTIONS FROM THIS AND OTHER JURISDICTIONS.

(NOTE: THE STATE AND DEFENSE COUNSEL MAY PREVIOUSLY AGREE ON THESE CONVICTIONS. IF THEY DO NOT, A HEARING IS HELD OUTSIDE THE PRESENCE OF THE JURY FOR THE COURT TO RULE ON THE CONVICTIONS. HEARING CAN BE HELD WHILE JURY DELIBERATES ON GUILT OR INNOCENCE.)

READ SENTENCING PHASE INSTRUCTIONS TO JURY.

CLOSING ARGUMENTS.

READ FINAL INSTRUCTIONS AND VERDICT FORMS TO THE JURORS.

JURY RETIRES TO DELIBERATE ON THE PUNISHMENT.

WHEN JURY RETURNS:

ASK: WILL THE FOREMAN/FOREPERSON PLEASE STAND?
HAS THE JURY REACHED ITS VERDICT?
PLEASE HAND IT TO THE BAILIFF.

ALL COUNSEL, PARTIES, WITNESSES, AND SPECTATORS REMAIN SEATED AND QUIET. THERE ARE TO BE NO DEMONSTRATIONS BY ANYONE AFTER THE READING OF THE VERDICT.

ASK THE DEFENDANT TO RISE BEFORE READING OF VERDICT.

READ VERDICT.

ASK IF DEFENSE COUNSEL WANTS THE JURY POLLED. IF SO, POLL THE JURY.

DOES COUNSEL OR DEFENDANT HAVE ANYTHING TO SAY BEFORE SENTENCING?

ANYTHING FROM THE STATE?

ASK: COUNSEL, DO YOU KNOW OF ANY LEGAL REASON WHY SENTENCE SHOULD NOT BE PASSED AT THIS TIME?

SENTENCING:

MR./MRS. _____, IT IS THE JUDGMENT AND SENTENCE OF THIS COURT THAT YOU BE TAKEN BY THE SHERIFF OF _____ COUNTY AND DELIVERED TO THE DEPARTMENT OF CORRECTION TO SERVE A TERM OF _____ YEARS. A FINE OF \$ _____ IS ALSO IMPOSED.

(IF CONVICTED ON MULTIPLE CRIMES, SENTENCE AS ABOVE ON EACH CRIME AND STATE WHETHER CONCURRENT OR CONSECUTIVELY.)

NOTIFY DEFENDANT OF RIGHT TO APPEAL.

STATE TO DEFENDANT: YOU HAVE 30 DAYS TO APPEAL THIS MATTER TO A HIGHER COURT. YOUR ATTORNEY CAN ADVISE YOU ON HOW TO PERFECT THIS APPEAL.

SET APPEAL BOND.

RELEASE THE JURY AND THANK THEM FOR THEIR TIME, ATTENTION AND SERVICE.

PLEASE UNDERSTAND YOU DO NOT HAVE TO DISCUSS YOUR VERDICT WITH ANYONE IF YOU DO NOT WISH TO DO SO. IF ANYONE SHOULD TRY TO FORCE YOU TO DISCUSS THIS CASE WITH YOU, PLEASE CONTACT THE COURT. THANK YOU ONCE AGAIN.

OBTAIN ALL INSTRUCTIONS AND EXHIBITS FROM THE JURY MEMBERS BEFORE RELEASING.

REMIND JURORS OF NEXT TRIAL DATE, IF KNOWN.

THE JURY IS DISMISSED.

CIVIL JURY TRIAL PROCEDURE

Will the Clerk please call the role of the jurors?

- Is the Plaintiff ready for trial?
- Is the Defendant ready for trial?

Before we start, please administer the Bailiff's oath:

OATH: "Do you solemnly swear (or affirm) that you will faithfully, impartially, and to the best of your ability, discharge the duties of bailiff of this court, to which office you have been appointed, and strictly obey all orders of the court, as bailiff during the present session now being held."

Will all the member of the jury panel please rise:

The Clerk will please swear the Jurors to answer questions touching their qualifications to serve as jurors in this case.

OATH: "You do solemnly swear that you will make true and perfect answers to such questions as may be asked of you touching your qualifications to serve as jurors in the case of _____ vs. _____?"

You may be seated.

If any questions dictates an answer by you, for the benefit of the Attorneys and the Court Reporter, I will ask you to please stand and

state your name before answering.

Ladies and Gentlemen: This is a civil case:

(Read prepared text as to facts of case)

- Would the Plaintiff please stand and face the Jurors.
- Would the Defendant please stand and face the Jurors.

The Plaintiff is represented by:_____.

The Defendant is represented by:_____.

- Is any juror related by blood or marriage to any of the parties in this case? (4th degree)
- Is any juror related by blood or marriage to any of the attorneys?
- Is any juror subpoenaed, or expect to be called as a witness in this case?
- Does any attorney in this case represent any juror on any unfinished legal business at this time?
- Do any of the attorneys or members of their firm regularly represent you?

The following is a list of witnesses that may or may not be called in the trial, they are: (ask each witness to stand and face the jurors)

Read list of witnesses.

- Are any of the witnesses related to you by blood or marriage?
- Do any of you stand or have you lately stood in relationship of Guardian-Ward, Landlord-Tenant, Employer-Employee, or do you have any form of contractual relationship with the attorneys, the Plaintiff(s), the Defendant(s) or the witnesses?
- Do any of you know the facts of this case?
- Has any juror discussed this case with any person purporting to know the facts of the case?
- Have any of you read a newspaper account of the case or heard about the matter on radio?
- Have any of you formed or expressed an opinion about the case?
- Does any juror know of any reason that if chosen to serve as a juror you could not be absolutely fair and impartial and base

your verdict strictly upon the law as given to you by the Court and the evidence gained from the witness stand?

Any questions on behalf of the Plaintiff?

Any questions on behalf of the Defendant?

Will the Clerk please place the remaining juror's chips into the jury wheel?

The attorneys should prepare their own list.

The Court then draws eighteen (18) names.

Ladies and Gentlemen as your names are called, would you please stand so the attorneys can place your name with a face, but remain where you are until all eighteen (18) names are called.

Clerk calls the names as selected by the Judge from the wheel/computer.

Optional: Ladies and Gentlemen, we will have a 10 minute recess while the attorneys prepare their list. (Attorneys will prepare their strikes and those names will be removed from the box.)

Court will come back to order.

Members of the Jury, as your name is called, please take a seat in the jury box.

- **What says the Plaintiff as to the Jury?**
- **What says the Defendant as to the Jury?**

Is there a necessity for an alternate? Can it be stipulated by and between the parties that if misfortune should befall one or more members of this panel, we will conclude this case with those able-bodied individuals who are able to function as a jury?

Would the members of the Jury in the box please stand and raise your right hand.

The Clerk will swear the jury to try the case:

Oath: **“Do you and each of you solemnly swear that you will well and truly try the case of _____ vs. _____ and render a true verdict unless discharged by the Court or withdrawn by the parties?”**

Be seated.

Remaining Jurors will be excused at this time. (Give date of next trial if known.)

Is the rule requested?

Call all witnesses forward.

Clerk will swear the witnesses.

Explanation of The Rule: Do not discuss the case among yourselves or permit anyone to discuss the case with you other than the attorneys, and they will only talk with one of you at a time. Do not relate what has transpired in the courtroom when you have come in and testified and return to the witness room. You may now go with the Bailiff.

Consider recess at this time. *Before first recess, read AMI 101A.*

Read AMI 101B before each recess thereafter.

AMI 101a CAUTIONARY INSTRUCTION - COMMENCEMENT OF TRIAL (MODIFIED)

TO ENSURE FAIRNESS, AND THE APPEARANCE OF FAIRNESS, YOU AS JURORS MUST OBEY THE FOLLOWING RULES:

- **FIRST, DO NOT TALK AMONG YOURSELVES ABOUT THIS CASE, OR ABOUT ANYONE INVOLVED WITH IT, UNTIL THE END OF THE CASE WHEN YOU GO TO THE JURY ROOM TO DECIDE ON YOUR VERDICT.**
- **SECOND, DO NOT TALK WITH ANYONE ELSE ABOUT THIS CASE, OR ABOUT ANYONE INVOLVED WITH IT, UNTIL THE TRIAL HAS ENDED AND YOU HAVE BEEN DISCHARGED AS JURORS.**

- **THIRD, WHEN YOU ARE OUTSIDE THE COURTROOM, DO NOT LET ANY ONE TELL YOU ANYTHING ABOUT THE CASE, OR ABOUT ANYONE INVOLVED WITH IT. IF SOMEONE SHOULD TRY TO TALK TO YOU ABOUT THE CASE, PLEASE REPORT IT TO ME.**
- **FOURTH, DURING THE TRIAL YOU SHOULD NOT TALK WITH OR SPEAK TO ANY OF THE PARTIES, LAWYERS OR WITNESSES INVOLVED IN THIS CASE - YOU SHOULD NOT EVEN PASS THE TIME OF DAY WITH ANY OF THEM. IT IS IMPORTANT NOT ONLY THAT YOU DO JUSTICE IN THIS CASE, BUT THAT YOU ALSO GIVE THE APPEARANCE OF DOING JUSTICE. IF A PERSON FROM ONE SIDE OF THE PROCEEDINGS SEES YOU TALKING TO A PERSON FROM THE OTHER SIDE - EVEN IF IT IS SIMPLY TO PASS THE TIME OF DAY - AN UNWARRANTED AND UNNECESSARY SUSPICION ABOUT YOUR FAIRNESS MIGHT BE AROUSED. WHEN THE LAWYERS, PARTIES OR WITNESSES DO NOT SPEAK TO YOU WHEN YOU PASS IN THE HALL OR MEET ANYWHERE, REMEMBER IT IS BECAUSE THEY ARE NOT SUPPOSED TO TALK OR VISIT WITH YOU EITHER.**
- **FIFTH, DO NOT READ ANY NEWS STORIES OR ARTICLES ABOUT THE CASE, OR ABOUT ANYONE INVOLVED WITH IT, OR LISTEN TO ANY RADIO OR TELEVISION REPORTS ABOUT THE CASE OR ABOUT ANYONE INVOLVED WITH IT. [IN FACT, UNTIL THE TRIAL IS OVER, I SUGGEST THAT YOU AVOID READING ANY NEWSPAPERS OR NEWS JOURNALS AT ALL, AND AVOID LISTENING TO ANY TV OR RADIO NEWS CASTS AT ALL. I DO NOT KNOW WHETHER THERE MIGHT BE ANY NEWS REPORTS OF THIS CASE, BUT IF THERE ARE YOU MIGHT INADVERTENTLY FIND YOURSELF READING OR LISTENING TO SOMETHING BEFORE YOU COULD DO ANYTHING ABOUT IT. IF YOU WANT, YOU CAN HAVE YOUR SPOUSE OR A FRIEND CUT OUT ANY STORIES AND SET THEM ASIDE TO GIVE YOU AFTER THE TRIAL IS OVER. I CAN ASSURE YOUR, HOWEVER, THAT BY THE TIME YOU HAVE HEARD THE EVIDENCE IN THE CASE, YOU WILL KNOW MORE ABOUT**

THE MATTER THAN ANYONE WILL LEARN THROUGH THE NEWS MEDIA.]

- **SIXTH, DO NOT DO ANY RESEARCH OR MAKE ANY INVESTIGATION ABOUT THE CASE ON YOUR OWN. [SINCE THIS CASE INVOLVED AN INCIDENT THAT OCCURRED AT A PARTICULAR LOCATION, YOU MAY BE TEMPTED TO VISIT THE SCENE YOURSELF. PLEASE DO NOT DO SO. THIS CASE MUST BE TRIED SOLELY UPON THE EVIDENCE PRESENTED TO YOU IN COURT AND NOT UPON ANY INFORMATION OR IMPRESSION, WHETHER CORRECT OR NOT, WHICH YOU MIGHT ACQUIRE FROM VISITING THE SCENE. EVEN IF YOU HAVE PREVIOUS INFORMATION CONCERNING THE SCENE OF THE OCCURRENCE, DUE TO YOUR FAMILIARITY WITH IT, YOU SHOULD KEEP THAT INFORMATION TO YOURSELF AND NOT ALLOW IT TO BECOME A PART OF THE DELIBERATION.]**
- **SEVENTH, DO NOT MAKE UP YOUR MIND DURING THE TRIAL ABOUT WHAT THE VERDICT SHOULD BE. KEEP AN OPEN MIND UNTIL AFTER YOU HAVE GONE TO THE JURY ROOM TO DECIDE THE CASE AND YOU AND YOUR FELLOW JURORS HAVE DISCUSSED THE EVIDENCE.**

INSTRUCTION TO BE READ BEFORE EACH RECESS:

AMI 101B CAUTIONARY INSTRUCTION - DUTIES OF JURY DURING RECESSES

WE ARE ABOUT TO TAKE [OUR FIRST] [A] RECESS AND I REMIND YOU OF THE INSTRUCTIONS I HAVE GIVEN YOU EARLIER. DURING THIS RECESS OR ANY OTHER RECESS, YOU MUST NOT DISCUSS THIS CASE WITH ANYONE, INCLUDING YOUR FELLOW JURORS, MEMBERS OF YOUR FAMILY, PEOPLE INVOLVED IN THE TRIAL, OR ANYONE ELSE. IF ANYONE TRIES TO TALK TO YOU ABOUT THE CASE, PLEASE LET ME KNOW ABOUT IT IMMEDIATELY. [DO NOT READ, WATCH OR LISTEN TO ANY NEWS REPORTS OF THE TRIAL] FINALLY, KEEP AN OPEN MIND UNTIL ALL THE

EVIDENCE HAS BEEN RECEIVED AND YOU HAVE HEARD THE VIEWS OF YOUR FELLOW JURORS.

COMMENCEMENT OF THE TRIAL

Ladies and Gentlemen of the jury:

You have been selected and sworn as the jury to try the case of _____ vs. _____.

It is your solemn responsibility to determine the facts of this case, and your verdict must be based solely on the evidence as it is presented to you in this trial and the law on which the court instructs you during and at the close of the trial.

JUROR NOTE-TAKING

During the trial you will be permitted to take notes. The Court has provided you with pencils and notepaper for your convenience. For many years the practice of note taking was discouraged because the taking of notes distracts your mind from the evidence that is presented while you are busy taking notes. The other reason was that the best note-taker might have more influence on the other jurors than is wanted. Remember, each of you must individually determine the issues in this

case. It is your responsibility to observe the witnesses as they testify and to listen attentively to all the testimony. At the end of the case, in deliberations, your collective minds will then reach a verdict. The notes are only to be used as a memory aid and should not be allowed to take precedence over jurors' independent memory of facts. Please understand that testimony cannot be repeated nor the trial delayed to permit the taking of accurate notes.

THERE IS NO REQUIREMENT THAT YOU TAKE NOTES.

PRELIMINARY INSTRUCTIONS

Before we hear opening statements and begin to take evidence, it may be helpful if you have some preliminary instructions to assist you in listening to and considering the evidence in this case.

You have the exclusive duty to decide all questions of fact submitted to you. In connection with this duty you must determine the effect and value of the evidence. You must not be influenced in your decision by sympathy, prejudice or passion toward any party, witness or attorney in the case.

The attorneys for the parties will, of course have active roles in the trial. Remember the lawyers are not witnesses, and since it is your duty to decide the case solely on the evidence that you see or hear in the case, you must not consider as evidence any statement of any attorney made during the trial. There is an exception, and that is if the attorneys agree to any fact then that agreement, stipulation or admission of fact will be brought to your attention.

If a question is asked and an objection to the question is sustained, you will not hear the answer; you must not speculate as to what the answer might have been or as to the reason for the objection. If an answer is given to a question and the Court then grants a motion to strike answer and not consider them for any purpose.

When an objection is made, it does not mean that anyone is trying to conceal some evidence from you. There are rules governing the admissibility of evidence that must be followed and the Court attempts to accomplish this by ruling on the objections. The objection is made to call the Court's attention to a possible transgression of the rules. Over

the centuries, the law has determined what evidence is reliable and what evidence is not reliable. In order to preserve the integrity of the trial, each side attempts to ensure that only reliable evidence is presented to the jury.

There will be occasions when the attorneys approach the bench and speak to the court out of your hearing. You must not speculate as to these discussions, which concern points of law, because they are not evidence.

As jurors, you will have the sole and exclusive duty to decide the credibility of the witnesses who will testify in the case, which simply means that it is you who must decide whether to believe or disbelieve a particular witness. In making this determination, you will apply the tests of truthfulness that you apply in your daily lives. You are not required to believe the testimony of any witness simply because it was given under oath. You may believe or disbelieve all or any part of the testimony of any witness.

You should not decide any issue of fact merely on the basis of the number of witness who testify on each side of that issue. Rather, the final test in judging evidence should be the force and weight of the evidence, regardless of the number of witnesses on each side of an issue.

Opening statements of counsel are descriptions of each side's claims and defenses and the evidence counsel expects to produce in support of those claims and defenses.

Opening statements are not evidence. They are previews of the respective cases, designed to give you some perspective on the evidence. They are to be considered only as a guide so you may understand and evaluate the evidence as it comes to you.

When the evidence is completed, I will instruct you on the law applicable to this case. After the instructions are given, the attorneys will then argue the merits of the case.

OPENING STATEMENTS

Each side may address you once during opening statements. In accordance with the rules that govern these proceedings, attorney for the Plaintiff will speak first.

_____, you may now make your opening statement for the Plaintiff.

_____, you may now make your opening statement for the Defendant.

Plaintiff, call your first witness.

PLAINTIFF'S CASE

When Plaintiff rest: Recess if motions are to be heard.

Defendant, call your first witness.

DEFENDANT'S CASE

When Defendant rest: Recess if motions are to be heard.

Rebuttal?

Ladies and Gentlemen, you have heard all of the evidence in this case. It will be necessary to settle the instructions with the Attorneys. We will recess for _____ minutes.

CLOSING ARGUMENTS

Member of the Jury, it now becomes my duty to give you the law that will govern you in the trial of this case. As I have previously told you, this law will be contained in the form of various instructions and I trust that you will listen carefully to the reading of them and hope that you can better understand the law. Then it will be your duty to harmonize this law with the true facts as you determine them and render a verdict in compliance with both the law and the evidence.

READ THE INSTRUCTIONS

- Any additional instructions requested by the Plaintiff?
- Any additional instructions requested by the Defendant?

The Attorneys at this time will make their final argument to you. The Attorney for the Plaintiff will have the opening argument. The Attorney for the Defendant will then have his opportunity to make his

argument. The Attorney for the Plaintiff will then reply to the argument of the Defendant.

The attorneys, in making these arguments to you, will be commenting upon the testimony that you have heard and the evidence that has been presented in this case. They, as you, will be recalling the evidence that has been presented. They will not intentionally try to mislead you. However, if their recollection of the evidence differs from what your recollection is, you must follow your own recollection. These final arguments are not to be construed by you as evidence in this case or instructions on the law. They are, however, intended to help you better understand the contentions of each side in the issues you are to decide. You should give both sides your closest attention.

- _____, you may make your first closing. (Plaintiff)
- _____, you may make your closing argument.(Defendant)
- _____, you may make your final closing argument.

Administer Bailiff's oath prior to deliberation.

OATH: “Do you solemnly swear (or affirm) that you will keep this jury together, not allowing any person to speak to them or overhear their deliberations, nor to speak to them yourself, unless it is in the performance of your official duties as bailiff to this court.”

Ladies and Gentlemen, I give you _____ verdict form(s).

(Read each of the verdict forms.)

You may take the Jury instructions and any of the exhibits with you to the Jury room. However, please note if you request one exhibit, then all exhibits must be taken. You may now retire to deliberate. Everyone remain seated until the Jury has left the Courtroom.

The alternate juror(s) is/are released at this time.

When Jury returns: **Ladies and Gentlemen of the Jury, have you reached a verdict?**

(Foreperson should report they have.) Please hand the verdict to the Bailiff who will hand it to the Court.

READ VERDICT

- Does the Plaintiff desire to poll the Jury?

If so, call each juror's name and ask if this is his or her verdict?

Make sure all exhibits/evidence are in the custody of the court reporter.

Thank each member of the Jury for his or her attendance, attention and serving on the Jury. Remind them of any future dates, if known and that they are not required to discuss their verdict with anyone if they do not wish to do so.

The Jury is dismissed. All remain seated until the Jurors have left the Courtroom.

Assign who will prepare the precedent.

Post-trial motions?

Court is adjourned.

CONDUCTING THE TRIAL

Qualification and Orientation

RULE 32. SELECTION OF JURORS

Rule 32.1. List of prospective jurors.

The circuit court shall require members of petit jury panels to complete written questionnaires setting forth the following information:

- (i) age;
- (ii) marital status;
- (iii) extent of education;
- (iv) occupation of juror and spouse; and
- (v) prior jury service.

Upon request, such questionnaires shall be made available by the clerk of the court to the defendant or his counsel and the prosecuting attorney. Upon a showing of good cause, additional information may be furnished regarding jurors by order of the court.

Rule 32.2. Voir dire examination.

(a) Voir dire examination shall be conducted for the purpose of discovering bases for challenge for cause and for the purpose of gaining knowledge to enable the parties to intelligently exercise peremptory challenges. The judge shall initiate the voir dire examination by:

- (i) identifying the parties; and
- (ii) identifying the respective counsel; and
- (iii) revealing the names of those witnesses whose names have been made known to the court by the parties; and
- (iv) briefly outlining the nature of the case.

(b) The judge shall then put to the prospective jurors any question which he thinks necessary touching their qualifications to serve as jurors in the cause

on trial. The judge shall also permit such additional questions by the defendant or his attorney and the prosecuting attorney as the judge deems reasonable and proper.

Rule 32.3. Alternate jurors.

(a) The court may direct that additional jurors be called and impanelled in addition to the regular jury to sit as alternate jurors. The number of alternate jurors shall be at the discretion of the court, taking into consideration the estimated length and cost of the trial, the number of witnesses, and the ages and health of the regular jurors. Alternate jurors in the order in which they are called shall replace jurors who are discharged by the court for good cause upon being found unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular jurors. Each side shall be entitled to one peremptory challenge for each alternate juror to be impanelled. The additional peremptory challenge may be used against an alternate juror only, and all other peremptory challenges allowed by law shall not be used against an alternate juror.

(b) Any alternate juror, who has not replaced a regular juror prior to the time the jury retires to consider its verdict, shall be further instructed by the court in addition to the usual instruction regarding discussion of the case and not permitting any one to discuss the case with him or her, to remain at the courthouse during deliberation. During deliberation, should any regular juror die, or upon good cause shown to the court be found unable or disqualified to perform his or her duties, the court may order the juror to be discharged. The court may in its discretion, as an alternative to mistrial, replace such juror with the next alternate. In such event, the court shall instruct the jury to disregard all previous deliberation, and to commence deliberation anew. The trial court in its discretion may seat additional alternates as jurors in this manner as needed.

(c) In the case of a capital murder trial or any other bifurcated trial in which the court cannot fix punishment pursuant to Ark. Code Ann. § 5-4-103(b), and in which there are alternate jurors remaining after the jury has returned a verdict of guilty, the next alternate jurors, not to exceed two, shall be placed in the jury box along with the regular jurors. Any alternate jurors in addition to these two shall be dismissed. The trial will proceed with the penalty

phase. When the jury retires to deliberate the penalty, the remaining alternate juror or jurors will again remain at the courthouse during deliberation.

(1) If at any time after a verdict of guilty, but before a verdict fixing punishment, a juror who participated in the guilt phase of a capital murder trial or other trial described above dies, becomes ill, or is otherwise found to be unable or disqualified to perform his or her duties, such juror shall be discharged. The court may in its discretion, as an alternative to mistrial or any other option available by statute or these rules, replace such juror with the next alternate. However, in such event, the court may first give the defendant, with the agreement of the prosecution, the option to waive jury sentencing, in which case the court shall impose sentence, or to accept a verdict by the remaining jurors. If the defendant does not waive jury sentencing, or agree to accept a verdict by the remaining jurors, the trial will continue with the alternate participating in the penalty phase. In such event, the court shall instruct the jury to commence deliberation anew as to the sentencing phase only.

(2) Notwithstanding Ark. Code Ann. § 5-4-602(3), which requires that the same jury sit in the sentencing phase of a capital murder trial, the court may in its discretion proceed pursuant to this rule and seat an alternate juror.

(Adopted May 21, 1998.)

RULE 33. MOTIONS FOR DIRECTED VERDICT AND OTHER TRIAL PROCEDURES

Rule 33.1. Motions for directed verdict and motions for dismissal.

(a) In a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. A motion for directed verdict shall state the specific grounds therefor.

(b) In a nonjury trial, if a motion for dismissal is to be made, it shall be made at the close of all of the evidence. The motion for dismissal shall state the specific grounds therefor. If the defendant moved for dismissal at the conclusion of the prosecution's evidence, then the motion must be renewed at the close of all of the evidence.

(c) The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required in subsections (a) and (b) above will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. A motion for directed verdict or for dismissal based on insufficiency of the evidence must specify the respect in which the evidence is deficient. A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense. A renewal at the close of all of the evidence of a previous motion for directed verdict or for dismissal preserves the issue of insufficient evidence for appeal. If for any reason a motion or a renewed motion at the close of all of the evidence for directed verdict or for dismissal is not ruled upon, it is deemed denied for purposes of obtaining appellate review on the question of the sufficiency of the evidence.

(Adopted July 10, 1995; amended January 22, 1998; amended April 8, 1999.)

Rule 33.2. Sentencing and entry of judgment.

Upon the return of a verdict of guilty in a case tried by a jury, or a finding of guilty in a case tried by a circuit court without a jury, sentence may be pronounced and the judgment of the court may be then and there entered, or sentencing and the entry of the judgment may be postponed to a date certain then fixed by the court, not more than thirty (30) days thereafter, at which time probation reports may be submitted, matters of mitigation presented or any other matter heard that the court of the defendant might deem appropriate to consider before the pronouncement of sentence and entry of the formal judgment. The defendant may file a written demand for immediate sentencing, whereupon the trial judge may cause formal sentence and judgment to be made of record. At the time sentence is pronounced and judgment entered, the trial judge must advise the defendant of his right to appeal, the period of time prescribed for perfecting the appeal, and either fix or deny bond.

(Amended May 30, 1989, effective July 1, 1989; amended October 29, 1990, effective January 1, 1991; adopted and amended December 4, 1995.)

Rule 33.2 (Omitted)

Rule 33.4. Custody and restraint of defendants and witnesses.

Defendants and witnesses shall not be subjected to physical restraint while in court unless the trial judge has found such restraint reasonably necessary to maintain order. If the trial judge orders such restraint, he shall enter into the record of the case the reasons therefor. Whenever physical restraint of a defendant or witness occurs in the presence of jurors trying the case, the judge shall upon request of the defendant or his attorney instruct the jury that such restraint is not to be considered in assessing the proof and determining guilt.

Rule 33.5. Note-taking by jurors.

Jurors may take notes regarding the evidence presented to them during the course of a trial and keep the notes when the jury retires for its deliberations. Any notes so taken shall be treated as confidential, disclosure of the notes or their nature being permissible only between the juror making them and his fellow jurors.

Rule 33.6. Instructions to be delivered to jury.

In the trial of all cases in courts of record wherein juries are employed, upon request of counsel for any party, or of a juror, it shall be the duty of the presiding judge to deliver to the jury immediately prior to its retirement for deliberation, a typewritten copy of the oral instructions given to the jury. The instructions shall be returned to the court by the foreman of the jury when the jury is dismissed.

Rule 33.7. Additional instructions.

(a) If, after retiring for deliberation, a jury desires additional instructions it shall be conducted to a court room designated by the judge.

(b) The court shall give additional instructions in response to a jury's request unless:

(i) the jury may be adequately informed by directing its attention to some portion of the original instructions;

(ii) the request concerns matters not in evidence or questions not pertaining to the law of the case; or

(iii) the request would require the judge to express an opinion as to factual matters that the jury must determine.

(c) In order to avoid giving undue prominence to additional instructions, the court in its discretion may repeat instructions previously given.

(d) The judge may recall the jury after it has retired to deliberate and give it additional instructions in order to:

(i) correct or withdraw an erroneous instruction;

(ii) clarify an ambiguous instruction; or

(iii) inform the jury on a point of law which should have been covered by the original instructions.

(e) Should additional instructions be given, the judge in his discretion may allow additional argument by counsel.

Rule 33.8. Questions by Jurors.

Jurors shall not be permitted to pose questions to witnesses, either directly or through written questions submitted to the judge or to the parties.

(Added effective February 22, 2007.)

Rule 34.1. Juror orientation.

Prospective jurors shall receive an orientation which informs them of the nature of their duties and introduces them to trial procedure and legal terminology, but which does not include anything to be regarded by the jurors as instructions of law to be applied in any case or anything that may prejudice a party or mislead the jurors. This orientation may be accomplished by the use of juror handbooks and by supplementary oral instruction if and to the extent deemed necessary by the court.

Rule 35.1. Judicial comment on verdict.

While it is appropriate for the court to thank the jurors at the conclusion of a trial for their public service, such comments shall not include praise or criticism of their verdict.

Civil Procedure Rule 47. Jurors.

(a) Examination of Jurors. The Court shall either permit the parties or their attorneys to conduct the examination of prospective jurors or itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper.

(b) Alternate Jurors. The court may direct that not more than two jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the qualifications, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled. The additional peremptory challenge may be used against an alternate juror only and the other peremptory challenges allowed by law shall not be used against an alternate juror.

Rule 48. Number of jurors - Verdict.

Where as many as nine out of twelve jurors in a civil case agree upon a verdict, the verdict shall be returned as the verdict of such jury. The parties may, however, stipulate that a jury shall consist of any number less than twelve and that a verdict or finding of a stated majority thereof shall be taken as the verdict or finding of the jury. In any case where a verdict is less than unanimous, all jurors consenting to such verdict shall sign the same. If the verdict is unanimous, then the foreman only shall sign.

Rule 49. Verdicts and interrogatories.

(a) General Verdicts and General Verdicts with Interrogatories. The court may require a jury to return only a general verdict which pronounces generally upon all the issues, or the court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(b) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event, the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(Amended May 16, 1983; amended November 8, 1993, effective January 1, 1994.)

16-24-101. Oaths for court bailiffs.

(a) The following oath, in substance, shall be administered to a court bailiff at the **start** of a jury trial:

"I do solemnly swear (or affirm) that I will faithfully, impartially, and to the best of my ability, discharge the duties of bailiff of this court, to which office I have been appointed, and strictly obey all orders of the court, as bailiff during the present session now being held."

(b) The following oath, in substance, shall be administered to a court bailiff **prior to the deliberation** of a jury:

"I do solemnly swear (or affirm) that I will keep this jury together, not allowing any person to speak to them or overhear their deliberations, nor to speak to them myself, unless it is in the performance of my official duties as bailiff to this court."

16-30-102. Alternate jurors.

(a) When in the discretion of the court it shall be deemed advisable in the interests of the furtherance of justice, the court may direct that not more than three (3) jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties.

(b) Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examinations and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.

(c) Each opposing side shall be entitled to one (1) peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules by this section may not be used against an alternate juror.

Why qualification?

Chapter 31. Juror Qualifications and Exemptions.

16-31-101. Qualifications.

Every registered voter or, in counties where an enhanced prospective jury list is utilized, every registered voter, licensed driver, or person issued an identification card under § 27-16-805 who is a citizen of the United States and a resident of the State of Arkansas and of the county in which he or she may be summoned for jury service is legally qualified to act as a grand or petit juror if not otherwise disqualified under the express provisions of this act.

16-31-102. Disqualifications.

(a) The following persons are disqualified to act as grand or petit jurors:

(1) Persons who do not meet the qualifications of § 16-31-101;

(2) Persons who are unable to speak or understand the English language;

(3) Persons who are unable to read or write the English language, except that the circuit judge, in the exercise of his discretion, may waive these requirements when the persons are otherwise found to be capable of performing the duties of jurors;

(4) Persons who have been convicted of a felony and have not been pardoned;

(5) Persons who are:

(A) Not of good character or approved integrity;

(B) Lacking in sound judgment or reasonable information;

(C) Intemperate; or

(D) Not of good behavior;

(6) Persons who, by reason of a physical or mental disability, are unable to render satisfactory jury service, except that no person shall be disqualified solely on the basis of loss of hearing or sight in any degree; and

(7) Persons who are less than eighteen (18) years of age at the time they are required to appear.

(b) Except by the consent of all the parties, no person shall serve as a petit juror in any case who:

(1) Is related to any party or attorney in the cause within the fourth degree of consanguinity or affinity;

(2) Is expected to appear as a witness or has been summoned to appear as a witness in the cause;

(3) Has formed or expressed an opinion concerning the matter in controversy which may influence his judgment;

(4) May have a material interest in the outcome of the case;

(5) Is biased or prejudiced for or against any party to the cause or is prevented by any relationship or circumstance from acting impartially; or

(6) Was a petit juror in a former trial of the cause or of another case involving any of the same questions of fact.

(c) Nothing in this section shall limit a court's discretion and obligation to strike jurors for cause for any reason other than solely because of sight or hearing impairment.

16-31-103. Exemptions from service.

Any person may be excused from serving as a grand or petit juror or a jury commissioner for such period as the court deems necessary or may have his service deferred to another specified term of court when the state of his health or that of his family reasonably requires his absence, or when, for any

reason, his own interests or those of the public will, in the opinion of the court, be materially injured by his attendance.

16-31-104. Limitations on frequency and period of service.

(a) Any person who is sworn as a member of a grand or petit jury shall be ineligible to serve on another grand or petit jury in the same county for a period of two (2) years from the date the person is excused from further jury service by the court or by operation of law.

(b) No petit juror shall be required to report for jury duty on more than ten (10) days or for more than a four-month period during the calendar year for which he or she is selected, except that any juror actually engaged in the trial of a case at the time of the expiration of the period of permitted service shall serve until the trial of the case is concluded.

(c) A summons to serve on jury duty shall include a description of the maximum periods of service under this section.

16-31-105. Exemption from overtime parking penalties.

(a) No person shall be subject to a fine or other penalty for the offense of overtime parking incurred while the person is engaged in actual service as a grand or petit juror in any court, federal or state, in this state.

(b) The person may evidence the fact of jury service by exhibiting to the appropriate official of the city or town offended by the violation a certificate of the clerk of the court similar to the form now in use to the effect that the person was engaged in jury service on the date of the violation and the hours of actual service.

(c) Any person attempting to enforce any fine or other penalty notwithstanding the provisions of this section shall be subject to contempt proceedings before the judge of the court being served by the person so charged.

(d) Nothing contained in this section shall be construed to give immunity from fine or penalty other than for the offense of overtime parking.

16-31-106. Penalty for employees' service prohibited.

(a)(1) Any person who is summoned to serve on jury duty shall not be subject to discharge from employment, loss of sick leave, loss of vacation time, or any other form of penalty as a result of his or her absence from employment due to jury duty, upon giving reasonable notice to his or her employer of the summons.

(2) No employer shall subject an employee to discharge, loss of sick leave, loss of vacation time, or any other form of penalty on account of his or her absence from employment by reason of jury duty.

(b) Any person violating the provisions of this section shall be guilty of a Class A misdemeanor.

16-31-107. Effect of unqualified juror upon verdict or indictment.

No verdict or indictment shall be void or voidable because any juror shall fail to possess any of the qualifications required in this act unless a juror shall knowingly answer falsely any question on voir dire relating to his qualifications propounded by the court or counsel in any cause. A juror who shall knowingly fail to respond audibly or otherwise as is required by the circumstances to make his position known to the court or counsel in response to any question propounded by the court or counsel, the answer to which would reveal a disqualification on the part of the juror, shall be deemed to have answered falsely.

16-31-108. Interpreters for visually or hearing impaired jurors.

(a)(1)(A) The state, through the Administrative Office of the Courts, shall provide and pay the cost of reasonable accommodations for the hearing and visually impaired when necessary to enable a person with those disabilities to act as a venireperson or juror.

(B) Such accommodations may include a qualified sign language interpreter, real-time captioning, or other reasonable auxiliary aid for the hearing impaired or a reader for the visually impaired.

(C) In the event the juror indicates that he or she can be accommodated by several means, the Administrative Office of the Courts may consider the cost and availability of each accommodation when deciding which to provide.

(2) The interpreter, the person writing real-time captioning, and the reader, when necessary, shall be present throughout jury service, the trial, and when the jury assembles for deliberation.

(b)(1) Whenever a sign language interpreter, real-time captioning, or a reader is utilized in judicial proceedings or in jury deliberations, the court will administer an oath to the interpreter, the person writing the real-time captioning, and the reader, to ensure objective and unbiased translation and complete confidentiality of the proceedings.

(2) The court shall also instruct the interpreter, the person writing the real-time captioning, and the reader to make a true and complete translation of all testimony and other relevant colloquy to the best of his ability.

(3) The court shall further instruct the interpreter, the person writing the real-time captioning, and the reader to refrain from participating in any manner in the deliberations of the jury, except for the complete translations of jurors' remarks made during deliberations.

(c) The verdict of the jury shall be valid notwithstanding the presence of the interpreter during deliberations.

16-89-109. Oath of jury members.

When a jury of twelve (12) qualified jurors shall have been duly impaneled, they shall be sworn substantially as follows:

"You, and each of you, do solemnly swear, that you will well and truly try the case of the State of Arkansas against A. B., and a true verdict render, unless discharged by the court or withdrawn by the parties."

16-89-128. Polling of jury members.

Upon a verdict's being rendered, the jury may be polled at the instance of either party, which consists of the clerk or judge asking each juror if it is his

or her verdict. If one (1) answers in the negative, the verdict cannot be received.