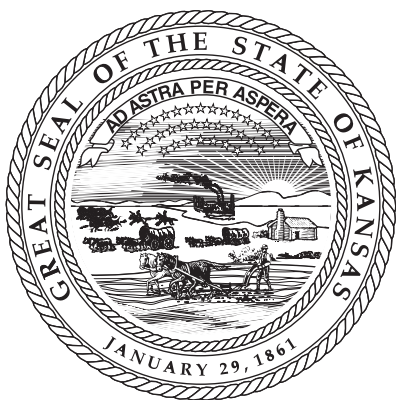


A HANDBOOK for TRIAL JURORS



TWENTY-FIRST JUDICIAL DISTRICT
STATE OF KANSAS

**JUDGES OF THE DISTRICT COURT
TWENTY-FIRST JUDICIAL DISTRICT**

GRANT D. BANNISTER
Chief Judge

JOHN F. BOSCH
District Judge

KENDRA S. LEWISON
District Judge

WILLIAM M. MALCOLM
District Magistrate Judge I

JEREMY M. LARCHICK
District Magistrate Judge II

You have been selected as a prospective juror for this Term of Court. A reading of this handbook should enable you to approach your jury duty with confidence and a better understanding of the duties of a juror.

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PURPOSE OF THIS HANDBOOK

The purpose of this handbook is to generally acquaint the prospective juror with some of the duties and responsibilities surrounding jury service. Nothing in this handbook is specific to any case. The judge will instruct the jury as to the law in each case.

TERMINOLOGY

Our legal system had its beginning hundreds of years ago. As with other professions, one encounters words and phrases which are not readily understood. Legal terms may seem confusing and unduly complex to the citizen, but they have been developed and defined by courts over the years. They are retained because of their defined certainty which is very important in the law.

A definition of terms is set forth in the back of this handbook.

SELECTION OF THE JURY PANEL

The jury panel, of which you are a member, was selected at random by the use of a computer from voter registration lists or from driver's license lists. If you are at least 18 years of age, a citizen, and a resident of the county, you are eligible to serve as a juror.

EXCUSES

The judges are well aware that calling you for jury duty will result in an inconvenience to you. Personal inconvenience is not a justifiable excuse. If you have good reason because of health, occupation, business, or personal affairs to request an excuse from serving,

make it known to the jury clerk or the presiding judge, and it will be given due consideration. However, once you have started a case, you cannot be excused except under compelling and persuasive circumstances.

PAYMENT OF JURY FEES

Jury service is one of the highest duties of citizenship and cannot be measured by compensation any more than the right to vote. You will be paid an amount not less than \$10 nor more than \$50, as determined by the county commission, for each day of attendance. In addition, you will receive an allotted cents per mile fee for your private vehicle coming to and from the courthouse if you live outside the city limits. Make certain after you have completed your jury service that the clerk of the court has a complete record of your attendance and mileage. Details will be explained to you by the jury clerk. Payment will be made to you by county voucher monthly. Consult your employer concerning absence and compensation policies.

JUROR SPECIAL KNOWLEDGE

A juror is not expected to have any special talents or training in the law. The judge presiding in the trial will decide the law. You will decide the facts by applying the law to the facts as you find them to have existed from the evidence presented by the lawyers and reach a verdict. You will be required to exercise your experience and knowledge common to all persons in general.

SCHEDULE

The usual court hours are from 9:00 a.m. to 5:00 p.m., with lunch from 12:00 noon to 1:00 p.m. If there

is any change in the schedule, you will be advised in advance whenever possible. At times it may be necessary to continue a trial a short time after 5:00 p.m., particularly if it is necessary to complete the testimony of a witness from out of town to avoid a return the next day. Occasionally when agreed upon by the parties, counsel, the court and the jury, the case may continue or the jury may deliberate into the evening in order to dispose of the matter.

During lunch time you are permitted to leave the courthouse, and in the evening you will be permitted to return to your homes. You may have read of cases where jurors are “sequestered” or kept together for the night during the trial. You need not worry about this. Traditionally, Kansas courts do not sequester juries, even during their deliberations on their verdict. You will be admonished by the court not to discuss the case among yourselves or others during the trial.

DELAYS

During the course of the trial you may find yourself annoyed by the delays and the waiting in the halls while the judge and the lawyers are conferring or taking up the matter outside of your presence.

Parties are encouraged to settle their differences without a trial and at times, this may be done after the parties and lawyers come to court for trial. You will be informed as soon as it is determined that you are not needed.

As to conferences between the judge and lawyers, these are part of the trial, and when this is done outside of your presence, it concerns questions of law, which ordinarily do not affect your function as jurors. The judge is not unmindful of your inconvenience and will make every effort to keep this to a minimum.

COURTROOM ETIQUETTE

A court session begins when the bailiff calls for

order. Everyone in the courtroom rises. The judge takes the bench and the bailiff announces the opening of court. A similar procedure may be used each time court begins.

Common courtesy and politeness are safe guides as to the way jurors should act. Of course, no juror will carry on a conversation with anyone in the courtroom during the trial.

All electronic devices should be turned off.

JUROR'S OATH

All of the jury panel is sworn to truthfully answer voir dire questions. The final jurors picked to serve are sworn to try the case according to the evidence and testimony given by the witnesses and the instructions that will be given by the court. If a juror wishes, he or she may affirm by simply stating such at the time the other jurors are sworn.

VOIR DIRE EXAMINATION

A sufficient number of jurors will be called from which 12 will be selected to try the case. In some cases the law mandates less than 12 jurors. In others, as directed by the court. The alternate jurors in addition to the selected panel may be chosen to take the place of jurors who may become ill or are otherwise disqualified during the trial.

A questioning process, called the voir dire, is used to determine a fair and unprejudiced jury panel. The judge and counsel may participate in the questioning. A deliberately untruthful answer to any question could result in serious punishment to the person stating it as it may be considered perjury.

The voir dire examination opens with a short statement to inform the jurors about the case and to identify the parties and their lawyers. After the prospective jurors are identified, questions are then asked to find out whether anyone on the panel has any

personal interest in the case or knows of any reason why he or she cannot render an impartial verdict. Other questions will determine whether any panel member has a prejudice or a feeling that might influence him or her.

Parties on either side may ask that a member of the panel be excused. These requests, or demands, are called challenges. A potential juror may be challenged for cause if the lawyer believes a sufficient legal reason exists to have a juror excused. The judge will excuse the juror from the panel if the cause given in the challenge is sufficient. There is no limit to the number of challenges for cause which either party may make.

The parties also have a right to a certain number of challenges for which no cause is necessary. These are called peremptory challenges. The number of peremptory challenges vary based on the nature of the case. The peremptory challenge is a legal right, long recognized by the law as a means of giving both sides some choice in the make-up of a jury. Jurors should clearly understand that being eliminated from the jury panel by either a challenge for cause or by peremptory challenge is no reflection upon their ability or integrity.

In some cases the peremptory challenges are made openly in the hearing of the jury while in others, they are made from the jury list out of the jury's hearing.

CONDUCT OF THE JURY DURING THE TRIAL

Jurors should pay close attention to the testimony and keep an open mind. They should not discuss the case before the testimony is complete and the case is submitted to the jury. Human experience shows that once persons express their views they hesitate to change them. Therefore, it is wise for a juror not to express his or her view until the entire story has been told. If the jury has a question that arises during deliberations, the presiding juror should write the question down on a piece of paper and give it to the bailiff who

will submit it to the judge. Jurors should not take notes unless approved by the court, in which case all jurors will be given the opportunity to take notes. If requested, testimony may be read back to the jury after the case is submitted, as the written transcript is normally not available until some days following the trial.

During the trial, the jury may hear reference to rules of evidence. Some of these rules may appear strange to a person who is not a lawyer, but each rule has a purpose. The rules are the result of hundreds of years of experience in the trial of cases.

Jurors are expected to use knowledge they possess in common with people in general. They are not to rely on any private source of information, thus they should be careful during the trial not to discuss the case at home or elsewhere. If it develops during the trial that a juror learns elsewhere of some fact about the case, he or she should inform the court through the bailiff immediately. A juror should not mention any such fact in the courtroom or in the jury room.

Do not seek information about the case beyond what you see and hear in this courtroom. Do not use any printed or electronic sources to get information about this case or any of the issues involved. These sources include the internet, reference books, dictionaries, newspapers, magazines, television, radio, computers, smartphones, or any other electronic device. You must not do any personal investigation about the issues, including visiting places involved in this case, or use of internet maps or Google Earth to examine the scene. You cannot talk to any possible witnesses, or create your own demonstration or reenactments of the events which are the subject of this case.

Do not communicate with anyone about this case or your service, and do not allow anyone to communicate with you. In particular, you may not talk about the case by using cell phones, emails, text messages, tweets, blogs, chat rooms, comments or other postings on Facebook or any other website. You may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached by anyone, in any way, about your jury service or anything about this case, you

must respond that you have been ordered not discuss the matter. You should then report the contact to the bailiff of the court as soon as possible.

THE CIVIL CASE

Let us suppose you are called to help decide the case of *John White vs. Tom Green*. John White would be the person who begins the case and he is called the plaintiff. The plaintiff, John White, states his claims in a paper filed with the clerk of the court and this paper or pleading is called a *petition*.

Tom Green would be called the defendant and he would reply to the plaintiff's petition in a paper or pleading called an *answer*. These two papers together comprise the main pleadings in the case. The points in the pleadings upon which the parties disagree make up the issues of fact and law.

The judge tells the jury what the law is and the jury determines the true facts. What happens after the verdict is not for the jury, but is the responsibility of the judge.

THE CRIMINAL CASE

The person charged with violating the law is the defendant. The case may arise from an alleged violation of a city ordinance which will constitute a minor criminal offense called a misdemeanor or the case may arise from an alleged violation of the laws of the State of Kansas which may constitute a misdemeanor or may be a major and more serious offense called a felony. Prosecution of both misdemeanors and felonies normally are based upon a *complaint* signed and sworn to by the city or county attorney or sometimes a citizen.

A misdemeanor criminal defendant appears in court directly on the basis of a complaint and enters a plea of "guilty" or "not guilty." This procedure is called an *arraignment*. If the complaint alleges a

felony, the defendant does not plead, but is afforded a preliminary hearing. If the defendant waives or gives up his right to a preliminary hearing, or if the judge who hears the preliminary hearing finds that probable cause exists to believe the defendant committed the crime, the defendant is bound over for arraignment on the felony charge. Following this procedure the county attorney prepares a written accusation called an *information*.

Although rarely invoked in Kansas, in felony cases, a grand jury may be impaneled and after hearing evidence similar to the evidence presented in a preliminary hearing, may return a written accusation which is called an *indictment*.

In felony cases, the defendant appears in court and on the basis of the indictment or information, enters a plea of “guilty” or “not guilty.” This procedure is likewise called an arraignment.

No trial is needed if the defendant pleads “guilty” and thereby admits that he or she committed the crime. But if the defendant pleads “not guilty,” the defendant will be placed on trial.

The jury, in determining the question of guilt, finds the true facts and the judge tells the jury what the law is. What happens after the verdict is not for the jury, but is the responsibility of the judge.

MAIN STAGES OF TRIAL

The trial proceeds when the jury has been sworn to honestly and faithfully hear the case. The main stages of trial are:

- (1) The opening statements of the lawyers by each side. (May be omitted or waived.)
- (2) The plaintiff or the State calls witnesses and produces evidence to prove its case. The defendant may cross examine each witness.
- (3) The defendant may call witnesses and produce evidence to disprove the plaintiff’s case and to prove the defendant’s claims. The plaintiff or the State may cross examine.
- (4) The plaintiff or the State may call witnesses to

disprove what was said by the defendant's witnesses. (This is called rebuttal.)

- (5) The defendant may call witnesses to disprove or clarify the plaintiff's or State's rebuttal evidence. (This is called surrebuttal.)
- (6) The judge instructs the jury as to the law.
- (7) Closing arguments (sometimes called summation) are made by the lawyers on each side.
- (8) The jury deliberations occur in the jury room.

Throughout the trial the judge may be asked in the presence of the jury to decide questions of law. Usually these questions concern objections to testimony that either side wants to present. The law requires that the judge decide such questions.

A ruling by the judge does not indicate that the court is taking sides. The judge is merely saying, in effect, that the law does or does not permit that question to be asked. The jury is to disregard any evidence which is not allowed by the judge.

INSTRUCTIONS TO THE JURY

The instructions of the judge to the jury are a statement of the rules of law. It is the jury's duty to reach its own conclusion upon the evidence. As to the law, the judge's instructions control. You will apply the law, as given, to the facts as you find them to be from the evidence. The judge may include certain questions to which he wishes an answer from the jury. This may be done when specific questions of fact must be answered to support the verdict.

ARGUMENTS OF COUNSEL

After the evidence is completed and the judge instructs the jury, the lawyers discuss the evidence in their closing arguments. This helps the jurors recall testimony that might have slipped their memory.

The chief purpose of the argument or summation is to arrange the evidence in logical order. The lawyers

will endeavor to fit the different parts of the testimony together and connect up the facts.

It must be remembered that each attorney will present the view of the case that is most favorable to his or her own client. Remember, closing arguments are not evidence.

IN THE JURY ROOM

After the jury hears the evidence, the instructions of the court and the arguments of counsel, the jury retires to the jury room and first elects a presiding juror or foreman. Jurors should then enter the discussion with open minds. Jurors should freely exchange views and should not hesitate to change their opinion if shown to be wrong.

Each juror has a duty to give full consideration to the opinion of fellow jurors. Jurors should try to reach a verdict whenever possible. However, no juror is required to give up any opinion which he or she is convinced is correct.

In many cases, all jurors must agree upon the verdict. Should there be instances when less than a unanimous verdict is permissible, you will be specifically so instructed by the judge.

Members of the jury are sworn to pass judgment on the facts in a particular case. Conscientious jurors can almost always agree on a verdict. However, if a jury becomes hopelessly deadlocked, the judge will declare a mistrial and the jury will be excused.

PROCEDURE: QUESTIONS, TESTIMONY READ-BACK AND RETURN OF VERDICT

When the jury needs a question answered, requests a read-back of testimony or if a verdict is reached, the entire jury will normally be returned to the courtroom by the bailiff and the judge will answer questions or the jury may hear a read-back of testimony. In some instances, the judge may answer a question by send-

ing a written note back to the jury in the jury room.

When the court is advised that the jury has reached a verdict, the jury will be returned to the courtroom and the judge will formally ask the presiding juror if a verdict has been reached. If so, the clerk may be requested to conduct a jury roll call on the record. The judge will instruct the presiding juror to hand the verdict to the bailiff who will hand it to the judge. If the verdict is in proper form, the judge will hand the verdict to the clerk who will read the verdict. If the lawyer for either side requests that the jury be polled, each juror will be asked if they agree with the verdict. If all jurors agree with the verdict, the jury will be excused.

AFTER THE TRIAL

The court will give you instructions on proper conduct after the trial.

CONCLUSION

The performance of jury service is the fulfillment of a most important civil obligation. Conscientious service brings its own reward in the satisfaction of a significant task well done. Jury work is one of the most valuable public services that the average citizen has an opportunity to perform.

You should now have a good understanding of how courts do their work and of the privilege you have to participate in the administration of justice.

You should decide the facts and apply the law impartially and treat alike the rich and the poor, men and women, corporations and individuals. You should render justice without regard to race, color, or creed. You should each realize a quiet importance and pride from jury service.

THE CITIZEN AS A JUROR

by Judge John H. Flanigan*

I am a juror.

I am a seeker after truth.

I must listen carefully and with concentration to all the evidence.

I must heed and follow the instructions of the court. I must respectfully and attentively follow the arguments of the lawyers, dispassionately seeking to find and follow the silver thread of truth through their conflicting assertions.

I must lay aside all bias and prejudice.

I must be led by my intelligence and not by my emotions.

I must respect the opinions of my fellow jurors: as they respect mine, and in a spirit of tolerance and understanding must endeavor to bring the deliberations of the whole jury to agreement upon a verdict; — but

I must never assent to a verdict which violates the instructions of the court or which finds as a fact that which, under the evidence and in my conscience, I believe to be untrue.

I must apply the Golden Rule by putting myself impartially in the place of the plaintiff and of the defendant, remembering that although I am a juror today passing upon the right of others, tomorrow I may be a litigant whose rights other jurors shall pass upon.

My verdict must do justice; for what is just is “true and righteous altogether,” and when my term of jury service is ended I must leave it with my citizenship unsullied and my conscience clear.

*As printed in *Juror Handbook of Tile Circuit Court*, 23rd Judicial Circuit, Madison County, Alabama.

DEFINITION OF TERMS

The following definitions of words and phrases commonly used in trials may be helpful:

Action, Case, Lawsuit:

These words mean the same thing. They all refer to a legal dispute brought into court by trial.

Answer:

The paper in which the defendant answers the claims of the plaintiff.

Argument:

After all the evidence on both sides of a lawsuit is in, one of the lawyers on each side is permitted to tell the jury what they think the evidence proves and why they think their side should win. This is usually called the “argument” or “summation.”

Attorney of Record:

Attorney whose name appears in the permanent records or files of a case.

Cause of Action:

The legal grounds on which a party to a lawsuit relies to obtain a verdict against the party on the other side.

Charge or Instructions:

After the evidence is in, the judge will state the law which must guide the jury’s deliberations. This is called either the “charge” to the jury or “instructions.” A judge may, and sometimes does, give an instruction to the jury on some point of law at any stage of the trial.

Civil Case:

A lawsuit is called a civil case when it is between persons in their private capacity or relations.

Complaint:

A charge, preferred before a magistrate, that a person has committed a specified criminal offense.

Counterclaim:

A “counterclaim” results when the defendant, in his or her answer to the petition, claims he or she is entitled to damages or other relief from the plaintiff.

Criminal Case:

A lawsuit is called a criminal case when it is between a City, or the State of Kansas, on one side as plaintiff and a person on the other side as defendant. It involves a question of whether the defendant has violated one of the laws defining crimes, and the verdict is usually “guilty” or “not guilty.”

Cross-Examination:

The questions that a lawyer puts to the litigant or witnesses on the opposing side are called cross-examination.

Defendant:

The person against whom a lawsuit is stated — in a criminal case the person charged with the offense.

Deposition:

The recorded testimony of a person taken, under oath, prior to the trial.

**Examination, Direct Examination,
Examination-in-Chief:**

The questions which the lawyer asks his or her client or witnesses are often referred to as examination, direct examination, or examination-in-chief.

Exhibit:

Articles such as weapons, pictures, books, letters and documents, when admitted by the judge, that become evidence in the case.

Felony:

A crime of a graver nature than those designated as misdemeanors. Generally an offense punishable by a substantial fine and/or imprisonment in a penitentiary.

In Camera:

The judge examines evidence or takes up motions in chambers out of the presence of the jury.

Indictment:

An accusation in writing found and presented by a

grand jury charging a person with the commission of a criminal offense.

Information:

An accusation in writing exhibited against a person for some criminal offense.

Issue:

A disputed question of fact is referred to as an “issue.” It is sometimes spoken of as one of the “questions” which the jury must answer in order to reach a verdict.

Jury Panel:

The whole number of prospective jurors, from which the trial jury of normally 6 or 12 is chosen.

Misdemeanor:

An offense lower than a felony. Generally punishable by fine or imprisonment otherwise than in a penitentiary.

Objection Overruled or Overruled:

This term means that in the judge’s opinion the lawyer’s objection is not well taken under the law. The ruling is not subject to question by jurors.

Objection Sustained or Sustained:

When a lawyer objects to the form of a question or the answer a question calls for, the judge may say “objection sustained” or merely “sustained.” This means that the judge agrees that under the law, the lawyer’s objection was well taken. The ruling is not subject to question by jurors.

Opening Statement:

Before introducing any evidence, lawyers are permitted to tell the jury what the case is about and what evidence is expected to be shown to prove their side of the case.

Parties:

The plaintiff and the defendant in the case are called the “parties” or “litigants.” In some cases the defen-

dants may make claims and counterclaims against each other.

Passed, Passed for Cause:

These are expressions used by lawyers while examining prospective jurors. They indicate that the lawyers do not intend to challenge the prospective jurors for cause.

Peremptory Challenge:

In all cases the law provides that the lawyer on either side may demand that a set number of prospective jurors be excused, without being required to give a reason for the demand. The judge must excuse the jurors designated.

Perjury:

To tell a lie while under oath.

Petition:

The first initiatory written pleading on the part of a plaintiff in a civil action.

Plaintiff:

The person who starts a lawsuit.

Pleadings:

The papers filed by the parties stating their claims and defenses.

Record:

This refers to the word-for-word shorthand record made by the official reporters of all the proceedings at the trial.

Rest:

This is a legal phrase which means that the lawyer has concluded the evidence he or she wants to introduce at that stage of the trial.

Voir Dire:

“To speak the truth.” Examinations of prospective jurors to determine if they are qualified to sit on the jury in the case being tried.