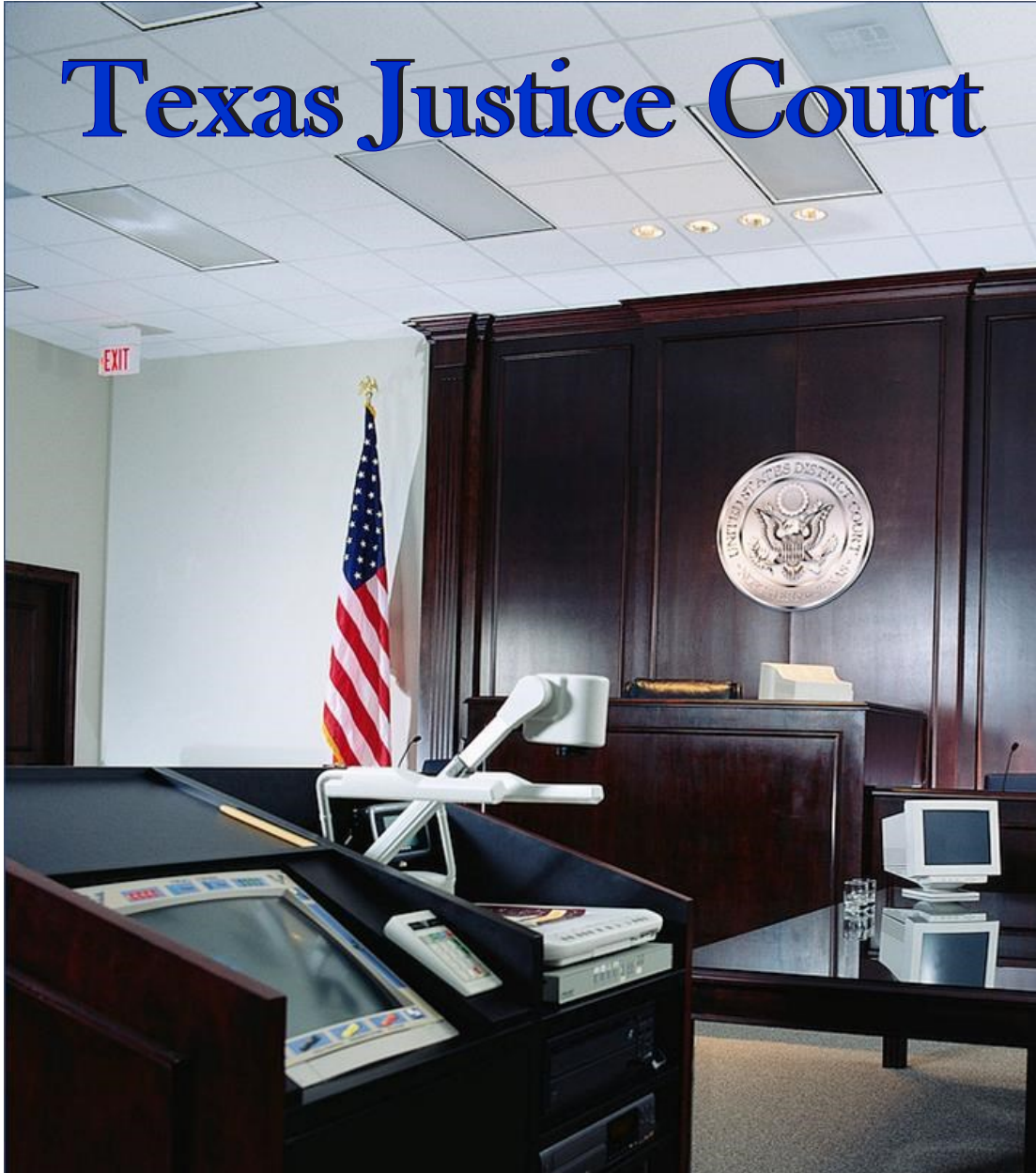


# Texas Justice Court



## Quick Reference Trial Handbook

10th Edition

2013

Published by  
Texas Justice Court Training Center  
Texas State University-San Marcos  
An Educational Endeavor of the  
Justices of the Peace & Constables Assoc. of Texas, Inc.  
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# FORWORD

The *Justice Court Quick Reference Trial Handbook, 9th Edition*, represents the Texas Justice Court Training Center's on-going commitment to providing timely technical assistance, and emphasizes a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc.

A handwritten signature in black ink, appearing to read "Roger Rountree". The signature is written in a cursive style with a large initial "R".

Roger Rountree  
Executive Director

# USER NOTES

The *Quick Reference Trial Handbook* is a practical guide to conducting a civil or criminal trial, whether jury or bench trial. There are two sections - civil and criminal - with each section containing instructions for jury trials and bench trials. The source statutes or rules for each are cited under the section heading or in footnotes.

References to “counsel” appear throughout the Handbook even though a party is not required to have an attorney. If a party is appearing without counsel (*pro se*), the instruction or action described still applies.

This Handbook is not designed to replace original sources of authority, such as the Texas Code of Criminal Procedure, the Texas Rules of Civil Procedure, the Rules of Evidence, or Civil Practice & Remedies Code. We strongly suggest that you review applicable provisions of the Codes and the Rules before conducting a trial. If your court does not have a copy of the Civil or Criminal *Deskbook*, it is available online at TJCTC.org by logging in.

Some suggestions for what the court should say (scripts) have been included. *Scripts* are clearly indicated by *italics*. **NOTE: Oaths and jury questions are statutory. Jury instructions are prescribed by the Supreme Court in the Texas Rules of Court.** Please read them **verbatim**; otherwise, the scripts are merely suggestions. You may use your own words if you desire.

# CIVIL TRIALS

## JURY TRIALS

### 1. OPENING CEREMONY

Opening announcement given by judge, bailiff or court clerk as follows:

*“All rise! The Justice Court of \_\_\_ County, Precinct \_\_\_, is now in session. The Honorable Judge\_\_\_, presiding.”* (If judge announces, simply state the name of the court and introduce yourself.)

### 2. JUDGE’S OPENING REMARKS

Explain court procedures and identify participants (judge, clerk, and bailiff).

### 3. CALLING CASES FOR TRIAL\*

TEX.R.CIV.P. 503.6 (a); 503.3(b); §§ 23.002, 30.003 and .005, CPRC

Open the proceedings by stating:

*“I call the Case of (plaintiff’s name) versus (defendant’s name).”*

Both sides announce ready for trial or present motions for continuance. If a motion for continuance is offered, you should grant or deny based on any applicable statute.

\*You may prefer to read or have the clerk read (call) the list of all cases on the day’s docket so the parties to each case can state an estimate of the time they will need to try their case (this method is very useful if one or both of the parties are represented by counsel). After a jury is seated, you will call each case individually in its docket

order.

#### **4. CALLING THE ROLL OF THE JURY PANEL**

Gov't Code § 23.203

Before calling the jury roll, you announce to all present:

*“This is a jury trial and the next order of business is to select a jury.”*

If there is to be a jury in the case, you will need to “call the roll” to ascertain whether all persons who were summoned have actually appeared for jury duty. After roll call, you should ask if each member of the jury panel has received a copy of the State Bar of Texas’ *Uniform Jury Handbook*. If necessary, distribute copies to any members of the panel who did not receive one.

A juror lawfully notified shall be fined not less than \$100 nor more than \$500 if the juror fails to attend court without reasonable excuse or files a false claim of exemption.<sup>1</sup> (Gov't Code § 62.111)

#### **5. DRAWING THE JURY**

TEX.R.CIV.P. 504.2 (A)

If no method of electronic draw has been implemented, the judge must write the names of all prospective jurors present on separate slips of paper as nearly alike as may be, place them in a box,

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<sup>1</sup>Civil cases **only**. The fine is different in a criminal case.



mix them well, and then draw the names one by one from the box. The judge must list the names drawn and deliver a copy to each of the parties or their attorneys.

## **6. OATH**

Gov't Code § 62.412 and Tex. R.Civ.P. 504.2

After the draw, the judge must swear the panel as follows:

*"You solemnly swear or affirm that you will give true and correct answers to all questions asked of you concerning your qualifications as a juror."*

## **7. INSTRUCTIONS TO JURY PANEL**

There are currently no required instructions for Justice Courts to provide in a civil case to a jury panel prior to jury selection. However, the below is the content for TRCP 226a, which formerly applied to your Court under the old rules. You may use this language, you may modify it to suit your needs or you may use other language that you see fit. Best practice would be to give the jury panel some sort of guidance as to what to expect during this next phase of the trial.

*"Ladies and Gentlemen of the Jury Panel:*

*"Thank you for being here. We are here to select a jury. Six of you will be chosen for the jury. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.*

*Before we begin: Turn off all phones and other electronic devices. While you are in the courtroom, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, or Twitter.] [I will give you a number where others may contact you in case of an emergency.] Do not record or photograph any part of these court proceedings, because it is prohibited by law.*

*If you are chosen for the jury, your role as jurors will be to decide the disputed facts in this case. My role will be to ensure that this case is tried in accordance with the rules of law. Here is some background about this case. This is a civil case. It is a lawsuit that is not a criminal case. The parties are as follows: The plaintiff is \_\_\_\_\_, and the defendant is \_\_\_\_\_. Representing the plaintiff is \_\_\_\_\_, and representing the defendant is \_\_\_\_\_. They will ask you some questions during jury selection. But before their questions begin, I must give you some instructions for jury selection.*

*Every juror must obey these instructions. You may be called into court to testify about any violations of these instructions . If you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time*

*and the parties' money, and would require the taxpayers of this county to pay for another trial. These are the instructions.*

*1. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like "hello" and "good morning." Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.*

*2. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.*

*3. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.*

*4. The parties, through their attorneys, have the right to ask you questions about your background, experiences, and attitudes. They are not trying to*

*meddle in your affairs. They are just being thorough and trying to choose fair jurors who do not have any bias or prejudice in this particular case.*

*5. Remember that you took an oath that you will tell the truth, so be truthful when the lawyers ask you questions, and always give complete answers. If you do not answer a question that applies to you, that violates your oath. Sometimes a lawyer will ask a question of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.*

*"Do you understand these instructions? If not, please let me know now.*

*"Whether you are selected as a juror for this case or not, you are performing a significant service which only free people can perform. We shall try the case as fast as possible consistent with justice, which requires a careful and correct trial. If selected on the jury, unless I instruct you differently, you will be permitted to separate at recesses and for meals, and at night.*

*"The lawyers will now begin to ask their questions after I have addressed jury qualification and exemptions."*

## **8. DETERMINING QUALIFICATIONS OF JURORS**

**Gov't. Code, § 62.102**

Ask the following questions of the jury panel as a whole:

*“Are any of you younger than 18 years of age?”*

*“Are you a citizen of this state and of this county?”*

*“Can you read and write?”<sup>2</sup>*

*“Are you now, or are you eligible to become, a qualified voter\* in this county or state under the Constitution and laws of this state? This does not mean you must be registered to vote, but only means your privilege to vote has not been lost.*

*\*See voter qualifications on page 39.*

*“Have you ever been convicted of a misdemeanor theft or a felony?”*

*“Are you under indictment or legal accusation for a misdemeanor theft or any felony?”*

If any member of the panel answers “yes” to any of the questions, you should call the juror to the bench and conduct further questioning outside of the hearing of the other jury panel members. Any jurors failing to qualify should be excused.<sup>3</sup>

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<sup>2</sup>If it appears to the court that the requisite member of jurors able to read and write cannot be found in the county, you may suspend this qualification. Likewise, you may suspend the qualification regarding prior service, if it appears that the county’s sparse population makes enforcement seriously inconvenient. **(Gov’t Code, § 62.103)**

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<sup>3</sup>A person who is blind, or deaf or hard of hearing, is not disqualified to serve as a juror solely because of that disability, except as provided by law. **(Gov’t Code, §§ 62.104-.1041)**

## 9. EXEMPTIONS FROM JURY SERVICE

Gov't Code §§ 62.106 - 62.109

Explain that the following persons may claim an exemption from jury service:

- Persons over 70 years of age;<sup>4</sup>
- Has legal custody of a child younger than 12 years of age and the person's service on the jury requires leaving the child without adequate supervision;
- Students of public or private secondary schools;
- Persons enrolled and in actual attendance at an institution of higher education;
- Officers or employees of the Texas senate, house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- Persons who are primary caretakers of an invalid unable to care for himself/herself;
- Persons who can show a physical or mental impairment or an inability to comprehend or to communicate in English;<sup>5</sup>

<sup>4</sup>Persons over 70 years of age are entitled to establish a permanent exemption on that basis by filing with the county tax assessor-collector. **(Gov't Code, § 62.108)**

- Persons who are summoned for service in a county with a population of at least 250,000 and who have served on a petit jury in the county during the preceding three years.
- Persons who are members of the United States military forces serving on active duty and deployed to a location away from the home station and out of the county of residence.

*Ask the members of the panel if any of them qualify for an exemption that they want to claim at this time.*

## **10. JUDICIAL EXCUSE OF JUROR**

**Gov't Code § 62.110**

After testing the members of the panel on their legal qualifications and deciding exemptions, you should hear any excuses offered for not serving and determine whether or not to excuse a prospective juror. If you decide that an excuse is sufficient, you may excuse the person. The court may not excuse a prospective juror for an economic reason, unless each party is present and approves release of the juror for that reason. If either the defense or the prosecution objects, you must hear their argument before excusing a prospective juror.

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<sup>5</sup>The judge of a district court by order may permanently, or for a specified period, exempt a person from service as a juror in all the county and district courts in the county, if the person is over 70 years of age or has a physical or mental impairment or an inability to comprehend or communicate in the English language that makes it impossible or very difficult for the person to serve

## **11. SEATING A PANEL**

There is no current governing rule for Justice Court for seating a panel. You may choose to refer to TRCP 225 for guidance. Best practice would include formally seating the jury and ensuring the panel has at least 12 people to allow for both parties to exercise their three strikes (peremptory challenges) and still have at least six available to serve on the jury.

Now announce:

*“The attorneys (parties) will now proceed with their examination of the jury panel.”*

## **12. QUESTIONING THE JURORS (VOIR DIRE)**

**TEX.R.CIV.P. 504.2 (c)**

The judge, the parties, or their attorneys will be allowed to question jurors as to their ability to serve impartially in the trial but may not ask the jurors how they will rule in the case. The judge will have discretion to allow or disallow specific questions and determine the amount of time each side will have for this process.

## **13. CHALLENGES FOR CAUSE**

**TEX.R.CIV.P. 504.2(d)**

A party may challenge any juror for cause. A challenge for cause is an objection made to a juror alleging some fact, such as a bias or prejudice, that disqualifies the juror from serving in the case



or that renders the juror unfit to sit on the jury. The challenge must be made during jury questioning. The party must explain to the judge why the juror should be excluded from the jury. The judge must evaluate the questions and answers given and either grant or deny the challenge. When a challenge for cause has been sustained, the juror must be excused.

#### **14. CHALLENGES NOT FOR CAUSE**

TEX.R.CIV.P. 504.2 (e)

After the judge determines any challenges for cause, each party may select up to 3 jurors to excuse for any reason or no reason at all. But no prospective juror may be excused for membership in a constitutionally protected class.<sup>6</sup>

#### **15. IF JURY IS INCOMPLETE**

Tex.R.Civ.P. 504.2 (g)

If challenges reduce the number of prospective jurors below 6, the judge may direct the sheriff or constable to summon others and allow them to be questioned and challenged by the parties as before, until at least 6 remain.

#### **16. JURY SWORN**

TEX.R.CIV.P. 504.2(h)

When the jury has been selected, the judge must require them to take substantially the following oath:

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<sup>6</sup>*Batson v. Kentucky*, 476 U.S. 79 (9186) (holding that the Equal Protection Clause forbids prosecutor from challenging potential jurors solely on account of their race); *and see, Powers vs. Palacios*, 813 S.W. 2d 490 (Tex. 1991) (holding that exclusion of a juror on account of race is a denial of equal protection in a civil case).

*"You solemnly swear or affirm that you will render a true verdict according to the law and the evidence presented."*

## **17. ADDITIONAL INSTRUCTIONS TO THE JURY**

There are currently no required instructions for Justice Courts to provide in a civil case to a seated jury after selection. However, the below is the content for TRCP 226a II. You may use this language, you may modify it to suit your needs or you may use other language that you see fit. The former rules called for written instructions, which you may continue to use if you choose. Best practice would be to give the jury panel some sort of guidance as to what to expect during this next phase of the trial.

### **Oral Instructions**

*"Ladies and Gentlemen:*

*"You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system. [Hand out the written instructions.] You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.*

### **Written Instructions**

1. *Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook or Twitter.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.*

2. *To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.*

3. *Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.*

4. *Do not discuss this case with anyone, even your spouse or a friend, either in person or by any*

*other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook or Twitter]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.*

*5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.*

*After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.*

*6. Do not investigate this case on your own. For example, do not:*

*a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;*

*b. go to places mentioned in the case to inspect the places;*

*c. inspect items mentioned in this case unless*

*they are presented as evidence in court;*

*d. look anything up in a law book, dictionary, or public record to try to learn more about the case;*

*e. look anything up on the Internet to try to learn more about the case; or*

*f. let anyone else do any of these things for you.*

*This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.*

*7. Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know*

*what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.*

*8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.*

*9. Do not consider or guess whether any party is covered by insurance unless I tell you to.*

*10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors. You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.*

*[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be*

*influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.] When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.*

*11. I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.*

*Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.*

*Do you understand these instructions? If you do not, please tell me now.*

*Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.*

## 18. EXCLUSION OF WITNESSES “The Rule”

TEX.R.CIV.P. 500.7

To place witnesses under “the Rule”, on motion of either party, or on your own motion, you should ask all possible witnesses to stand (or come forward) by announcing:

*“All those of you who may be witnesses in this case who are now in the courtroom, please stand (come forward); I will swear you in at this time. Please raise your right hand.”*

Administer the following oath:

*“You, and each of you, do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”*

Then explain “the Rule”:

*“Ladies and gentlemen, the Rule has been invoked. This means that the witnesses who are not parties to this case must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed. Do not discuss this case with each other or anyone else, except with the permission of the court. Do not read, listen to, or watch any report of or comment about the testimony in the case while you are under the Rule. Failure to observe this is*



*punishable by contempt. Please remain outside until called.”*

If either side asks you to make an exception for a particular witness, you may grant the exception. However, you must determine that the witness' testimony will not be tainted or influenced by remaining in the courtroom during the trial and by hearing the testimony of other witnesses in the case.

*After all pre-trial matters have been addressed, you should announce: “Counsel, (or \_\_\_\_\_) you may proceed.”*

## **19. ORDER OF THE TRIAL**

There are currently no required rules for Justice Courts that specifically outline the presentation of the trial. However, the below is a basic outline of a trial. You have wide discretion in presentation of evidence and witnesses. Any language is only a suggestion and be may modified or ignored as you see fit. Best practice would be to give the parties an understanding of what is being asked of them and also providing enough information that the jury understands what is occurring.

### **OPENING STATEMENTS**

Plaintiff makes opening statement.

- Defendant may make opening statement at this time, or may reserve the opening statement until after presentation of plaintiff's case in chief.

You may ask each side: *“[Plaintiff/Defendant] do you wish to give an opening statement?”*

### **PRESENTATION OF EVIDENCE**

After opening statements, the trial will proceed with presentation of witnesses and evidence. All evidence must be presented under oath. You should make certain that all potential witnesses have been sworn and have heard the instruction about “the Rule” as each is called.

Administer the oath to witnesses who have not been removed already from the courtroom:

*“You do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”*

If there are new witnesses present who need to be excluded from the courtroom, restate “the Rule” (see previous pages).

### **ORDER OF PROCEEDING (EXAMINING WITNESSES)**

The Examination of the witnesses called by each usually proceeds as follows:

#### Plaintiff’s Case

(NOTE: as each phase of the questioning is completed, you may call upon the opposing side, for

<sup>8</sup>This applies to civil trials only. **TEX.R.CIV.P. 292, 293.**

example, “*Counsel, you may proceed.*”)

- Direct examination of all witnesses for plaintiff by the plaintiff or plaintiff’s counsel.
- Cross-examination of each of plaintiff’s witnesses by the defendant or defense counsel.
- Redirect examination by the plaintiff (if the plaintiff chooses).
- Recross-examination by the defense (if the defense chooses).
- Plaintiff rests.

#### Defendant’s Case

- Direct examination of all of defendant’s witnesses by the defense.
- Cross-examination of each of defendant’s witnesses by the plaintiff.
- Redirect examination by the defense (if defense chooses).
- Recross-examination by the plaintiff (if plaintiff chooses).
- Defense rests.

You may inquire at this time whether there is any rebuttal evidence, or counsel for the plaintiff or defense may request to put on rebuttal evidence.

At any point that you have questions of the witnesses, you may ask those questions. Remember to remain neutral in your demeanor on tone in doing so.

### ***REBUTTAL EVIDENCE***

- The plaintiff **may, but does not have to**, present rebuttal evidence in the same manner as in the plaintiff's "case in chief."
- Plaintiff closes.
- If the plaintiff presents rebuttal evidence, the defense may also present rebuttal evidence.
- Defense closes.

### ***CLOSING ARGUMENTS***

After all evidence is concluded, the parties may argue the case to the jury. The party having the burden of proof on the whole case (usually the plaintiff) shall be entitled to open and conclude the argument.

- Plaintiff presents closing argument.
- Defense makes its argument (may waive).

- Plaintiff may present rebuttal argument (if the defense argument raises the need for it)

### ***SUBMITTING THE CASE TO THE JURY***

There are currently no required instructions for Justice Courts to provide in a civil case to a jury panel prior to deliberations. However, you may use the suggested language below, you may modify it to suit your needs or you may use other language that you see fit. Best practice would be to give the jury some sort of guidance as to the fact that they are expected to reach a verdict.

*“Ladies and gentlemen of the jury, the evidentiary phase of this trial is completed. Now it is time for you to make your decision, and to find in favor of either the plaintiff or the defendant.”*

You may instruct the jury as shown below:

*“No less than five of you must agree on the verdict. If only five can agree, then all five must sign the verdict. If you all agree, then only the presiding juror must sign the verdict.”<sup>8</sup>*

*“If you find for the plaintiff, you should make an award of damages in the amount asked for or less, or in the amount that you believe was proved by plaintiff.*

**[OPTIONAL, if defendant filed counterclaim:** *“If defendant has proved damages, you should make an award of damages in the amount you believe*

*was proved by defendant, if any.}]*

*“If you have any questions about the evidence, or need further instructions from the court, tell the bailiff. (S)He will advise me, and you will be brought back to the courtroom for further instructions.”*

A JP **does not** charge the jury in a civil case.  
Tex.R.Civ.P. 504.3

## **20. JURY RETURNS THE VERDICT - RENDERING JUDGMENT IN OPEN COURT**

Tex.R.Civ.P. 505.1

You should see that the verdict is in the proper form and **read it in open court.**

Enter the verdict on your docket, and **render the proper judgment in open court.**

## **21. DISCHARGING A DEADLOCKED JURY**

Civ.Prac. & Rem. Code, § 30.009

In the event that the jury cannot agree on a verdict and the parties consent to a discharge, or if the jury is kept together for such a period of time that it is improbable they can agree, you may discharge the jury and reset the case for trial on your docket.

Likewise, if a juror becomes ill or if there is some emergency or calamity, the jury may be discharged when their number falls below that required for justice court juries. If this happens, you may discharge the jury and reset the case for trial as soon as practicable.

## **22. RULING ON A MOTION FOR A NEW TRIAL \***

**TEX.R.CIV.P. 505.3 (c)**

A party may file a motion for a new trial no later than 14 days after the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The judge may grant a new trial upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party.

**\*See DEFAULT JUDGMENTS, at Civil Trials - Page 36 of this Handbook.**

## **23. APPEAL**

**TEX.R.CIV.P. 506.1 (a) and (e) and 506.2**

A party may appeal a judgment by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 21 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied. When an appeal has been perfected from the justice court, the judge must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case. Within 7 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4. If a statement of inability to pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day.

# CIVIL TRIALS

## BENCH TRIALS

### 1. OPENING CEREMONY

Opening announcement given by judge, bailiff or court clerk as follows:

*“All rise! The Justice Court of \_\_\_ County, Precinct \_\_\_, is now in session. The Honorable Judge \_\_\_ presiding.”* (If judge announces, simply state the name of the court and introduce yourself.)

### 2. JUDGE’S OPENING REMARKS

Explain court procedures and identify participants (judge, clerk, and bailiff).

### 3. CALLING CASES FOR TRIAL\*

TEX.R.CIV.P. 503.6 (a); 503.3(b); §§ 23.002, 30.003 and .005, CPRC

Open the proceedings by stating:

*“I call the Case of (plaintiff’s name) versus (defendant’s name).”*

Both sides announce ready for trial or present motions for continuance. If a motion for continuance is offered, you should grant or deny based on any applicable statute.

\*You may prefer to read or have the clerk read (call) the list of all cases on the day’s docket so the parties to each case can state an estimate of the time they will need to try their case (this method is very useful if one or both of the parties are represented by counsel). After a jury is seated, you will call each case individually in its docket order.



#### **4. EXCLUSION OF WITNESSES “The Rule”**

TEX.R.CIV.P. 500.7

To place witnesses under “the Rule”, on the motion of either party, or on your own motion, you should ask all possible witnesses to stand (or come forward) by announcing:

*“All those of you who may be witnesses in this case who are now in the courtroom, please stand (come forward); I will swear you in at this time. Please raise your right hand.”*

Administer the following oath:

*“You, and each of you, do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”*

Then explain “the Rule”:

*“Ladies and gentlemen, the Rule has been invoked. This means that the witnesses who are not parties to this case must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed. Do not discuss this case with each other or anyone else, except with the permission of the*

*court. Do not read, listen to, or watch any report of or comment about the testimony in the case while you are under the Rule. Failure to observe this is punishable by contempt. Please remain outside until called.”*

If either side asks you to make an exception for a particular witness, you may grant the exception. If you determine that the witness' testimony will not be tainted or influenced by remaining in the courtroom during the trial and by hearing the testimony of other witnesses in the case.

*After all pre-trial matters have been addressed, you should announce: “Counsel, (or \_\_\_\_\_) you may proceed.”*

## **5. ORDER OF THE TRIAL**

The Texas Rules of Civil Procedure do not govern the order of trial in Justice Courts. However, the below is a basic outline of a trial. You have wide discretion in presentation of evidence and witnesses. Any language is only a suggestion and may be modified or ignored as you see fit. Best practice would be to give the parties an understanding of what is being asked of them.

### **OPENING STATEMENTS**

- Plaintiff makes an opening statement.
- Defendant may make an opening statement at this time, or may reserve the opening state-

ment until after presentation of plaintiff's case in chief.

You may ask each side: "*[Plaintiff/Defendant] do you wish to give an opening statement?*"

### **PRESENTATION OF EVIDENCE**

After opening statements, the trial will proceed with presentation of witnesses and evidence. All evidence must be presented under oath. You should make certain that all potential witnesses have been sworn and have heard the instruction about "the Rule" as each is called.

Administer the oath to witnesses who have not been removed already from the courtroom:

*"You do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God."*

If there are new witnesses present who need to be excluded from the courtroom, restate "the Rule" (see previous pages).

### **ORDER OF PROCEEDING (EXAMINING WITNESSES)**

The Examination of the witnesses called by each usually proceeds as follows:

### Plaintiff's Case

(NOTE: as each phase of the questioning is completed, you may call upon the opposing side, for example, "*Counsel, you may proceed.*")

- Direct examination of all witnesses for plaintiff by the plaintiff or plaintiff's counsel.
- Cross-examination of each of plaintiff's witnesses by the defendant or defense counsel.
- Redirect examination by the plaintiff (if the plaintiff chooses).
- Recross-examination by the defense (if the defense chooses).
- Plaintiff rests.

### Defendant's Case

- Direct examination of all of defendant's witnesses by the defense.
- Cross-examination of each of defendant's witnesses by the plaintiff.
- Redirect examination by the defense (if defense chooses).
- Recross-examination by the plaintiff (if plaintiff chooses).
- Defense rests.

You may inquire at this time whether there is any rebuttal evidence, or counsel for the plaintiff or defense may request to put on rebuttal evidence.

At any point that you have questions of the witnesses, you may ask those questions. Remember to remain neutral in your demeanor or tone in doing so. It would also be best practice to avoid interrupting so that the parties have an opportunity to present their case and the witnesses have an opportunity to answer fully.

### ***REBUTTAL EVIDENCE***

- The plaintiff presents rebuttal evidence in the same manner as in the plaintiff's "case in chief."
- Plaintiff closes.
- If the plaintiff presents rebuttal evidence, the defense may also present rebuttal evidence.
- Defense closes.

### ***CLOSING ARGUMENTS***

After all evidence is concluded, the parties may argue the case to the jury. The party having the burden of proof on the whole case (usually the plaintiff) shall be entitled to open and conclude the argument.

- Plaintiff presents closing argument.

- Defense makes its argument (may waive).
- Plaintiff may present rebuttal argument (if the defense argument raises the need for it)

## **6. THE RULING OF THE COURT**

Tex.R.Civ.P. 505.1(b)

You must announce the decision in open court, note the decision in the court's docket, and render judgment accordingly.

## **7. RULING ON A MOTION FOR A NEW TRIAL \***

TEX.R.CIV.P. 505.3 (c)

A party may file a motion for a new trial no later than 14 days after the judgment is signed. The party must serve all other parties with a copy of the motion no later than the next business day using a method approved under Rule 501.4. The judge may grant a new trial upon a showing that justice was not done in the trial of the case. Only one new trial may be granted to either party.

**\*See DEFAULT JUDGMENTS, at Civil Trials - Page 36 of this Handbook.**

## **8. APPEAL**

TEX.R.CIV.P. 506.1 (a) and (e) and 506.2

A party may appeal a judgment by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the justice court within 21 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new

trial, if any, is denied. When an appeal has been perfected from the justice court, the judge must immediately send to the clerk of the county court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case. Within 7 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4. If a statement of inability to pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day.

# **CIVIL TRIALS**

## **Oaths**

The following are suggested language for various oaths that are based on the Rules of Evidence and the Rules Civil of Procedure that no longer apply to Justice Courts. It is a suggestion for wording and you may modify as needed.

### INTERPRETER - Deaf Person and Non-English Speaking Person

*“You do solemnly swear (or affirm) that in the case now on trial you will make a true translation to the person accused (or being examined), which person is deaf (or non-English speaking), of all the proceedings of the case in a language that the person understands, and that you will repeat said person’s answer to counsel, court or jury, in the English language with your best skill and judgment, so help you God.”*

### JURY PANEL

*“You, and each of you, do solemnly swear (or affirm) that you make will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God.”*



# **CIVIL TRIALS**

## **Oaths**

### SIX JURORS

(Petit Jury)

*“You, and each of you, do solemnly swear (or affirm) that, in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law and the evidence so help you God.”*

### WITNESSES

*“You do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.” (TEX.R.EVID. 603)*

# **CIVIL TRIALS**

## **Default Judgments**

*Always remember to confirm that you have jurisdiction over a case before rendering a default judgment.*

### **1. SMALL CLAIMS CASE**

(Tex.R.Civ.P. 501.1)

If the defendant fails to file an answer by the answer date the judge must ensure that service was proper, and may hold a hearing for this purpose. If service was proper, the judge **must** render a default judgment as follows:

#### **A) Claim Based on Written Document**

(Tex.R.Civ.P. 501.1(a))

If the plaintiff files a suit and it meets the following, then it is a “Claim Based on Written Document”:

- The claim is based on a written document, signed by the defendant, and a copy of the document has been filed with the court and served on the defendant
- A sworn statement from the plaintiff that this is a true and accurate copy of the document and the relief sought is owed, and all payments, offsets or credits due to the defendant have been accounted for.

You would then render judgment for the plaintiff in the requested amount, **without any necessity for a hearing.**

### **B) Other Cases**

(Tex.R.Civ.P. 501.1(b))

For all other Small Claim cases, the **Plaintiff must request a hearing** either orally or in writing.

A hearing must be held. The plaintiff can appear in person or, with your permission, by phone or electronic mean.

At the hearing, the plaintiff must provide evidence of its damages.

You must render judgment for the plaintiff in the amount proven. However, If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

### **Post-Answer Default**

(Tex.R.Civ.P. 501.1(c))

If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence on liability and damages and render judgment accordingly

## **2. DEBT CLAIM CASES**

(Tex.R.Civ.P. 508.3)

The judge may enter a default judgment without a hearing if the plaintiff submits sufficient written evidence of it its damages. See TRCP 508.3(b) for an extensive list and explanation of the types of potential evidence of damages.

If plaintiff requests a default judgment hearing, they must appear, in person or by telephonic or electronic means, and prove its damages.

Just as with Small Claims Case, if the plaintiff proves its damages, the judge must render judgment for the plaintiff in the amount proven. If the plaintiff is unable to prove its damages, the judge must render judgment in favor of the defendant.

### **3. EVICTION CASES**

**(Tex.R.Civ.P. 510.6, Tex.Prop.Code §§ 24.0051, 24.011)**

When defendant, who has been duly served, totally fails to appear or file answer before the case is called for trial, and the plaintiff appears in person or by authorized agent, you should:

- Verify service of citation;
- Confirm that you have jurisdiction over the cause of action;
- Admit the allegations of the complaint; and
- Render default judgment in open court as provided by plaintiff's evidence.

# **ALL TRIALS**

## **Voter Qualifications**

(Elect. Code § 11.002)

**Qualified voter** means a person who:

- is 18 years of age or older;
- is a United States citizen;
- has not been determined by a final judgment of a court exercising probate jurisdiction to be:
  - a. totally mentally incapacitated; or
  - b. partially mentally incapacitated without the right to vote;
- has not been finally convicted of a felony or, if so convicted, has:
  - a. fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or
  - b. been pardoned or otherwise released from the resulting disability to vote;
- is a resident of this state; and
- is a registered voter.

# CRIMINAL TRIALS

## JURY TRIALS

### 1. OPENING CEREMONY

Opening announcement given by judge, bailiff or court clerk as follows:

*“All rise! The Justice Court of \_\_\_ County, Precinct \_\_\_, is now in session. The Honorable Judge, \_\_\_ presiding.”* (If judge announces, simply state the name of the court and introduce yourself.)

### 2. JUDGE’S OPENING REMARKS

Explain court procedures and identify participants (judge, clerk, and bailiff).

### 3. WAIVERS BY DEFENDANT

You should make inquiry as to the defendant’s understanding of certain guaranteed rights and privileges.

- Explain defendant’s right to demand a speedy, public jury trial, and to waive this right in writing. Take notice that defendant has invoked the right to a jury trial, if applicable. (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05, 1.12, and 45.025)
- Explain defendant’s right to counsel. Inform them of the risk to representing themselves pro se. If they still choose to continue without an attorney, ask the defendant to waive the right to an attorney in writing. (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.051(a) and (f), 1.14, and 45.020)

- Explain defendant's privilege against self-incrimination. For example:

*"You are not required to testify and no one may make you testify. If you decide not to testify, I will instruct the jury not to use the fact that you did not testify as evidence against you. Choosing to remain silent cannot be used against you."* (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05 and 38.08)

Then ask if the defendant understands the rights you just explained. (CODE CRIM. PROC. arts. 1.13, 1.14, 45.025 and 45.020)

#### **4. CALLING CASE FOR TRIAL \***

Open the proceedings by stating:

*"I call the Case of State of Texas (prosecution) versus (defendant's name)."*

Both sides announce ready for trial or present motions for continuance. (CODE CRIM. PROC. CH. 29)

If the defendant objects to venue and seeks to transfer the case, venue facts are subject to the "preponderance of the evidence" standard of proof as in civil cases. (CODE CRIM. PROC. art. 13.17)

\*You may prefer to read or have the clerk read (call) the list of all cases on the day's docket so the parties to each case can state an estimate of the time they will need to try their case (this method may not work unless both sides are represented by counsel).

The correct way to raise the new issues is by “motion for instructed verdict.”<sup>14</sup>

## **5. CALLING THE ROLL OF THE JURY PANEL**

(GOV'T CODE, CH. 62)

Jury panels for the trial of criminal cases shall be selected and summoned (with return on summons) in the same manner as the selection of panels for the trial of Civil cases except as otherwise provided in the Code of Criminal Procedure. (CODE CRIM. PROC. art. 33.09)

Before calling the roll, you should announce to all present:

*“This is a jury trial and the next order of business is to select a jury.”*

If there is to be a jury in a criminal trial, you will need to “call the roll” to ascertain whether all jurors who were summoned have actually appeared for jury duty. After roll call, you should ask if each member of the jury panel has received a copy of the State Bar of Texas’ *Uniform Jury Handbook*. If necessary, distribute copies to any members of the panel who did not receive one.

Those not present nor properly excused may be fined a maximum of \$100 for contempt. (CODE CRIM. PROC. art. 45.027)

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<sup>14</sup>*Thomas v. State*, 699 S.W. 2d 845, (Tex. Crim. App. 1985) (citations omitted).



In addition, you can order a writ of attachment issued on request of either party directing a peace officer to pick up any absent juror who was summoned but did not appear and to bring that person to court. (CODE CRIM. PROC. art. 35.01)

## **6. SWEARING PROSPECTIVE JURORS**

(CODE CRIM. PROC. art. 35.02)

Administer the following oath to the jury panel:

*“You, and each of you, do solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching on your service and qualification as a juror, so help you God.”*

## **7. CHALLENGING THE ARRAY (MEMBERSHIP OF JURY PANEL)**

(CODE CRIM. PROC. arts. 35.07 and 35.08)

The only challenge to the membership of the jury panel that can be made is that the officer who summoned the panel summoned jurors with a view to securing a conviction or an acquittal. All challenges must be made by written motion stating the specific grounds of the challenge. Either side may challenge the mix of people on the panel, and defendant's challenge, if any, must be supported by written affidavit.

Following a challenge to the array, you shall hear evidence and decide whether or not to sustain the challenge. If there is no challenge or if it is overruled, the court should have a list made of the panel members in the order in which they are

seated.

## **8. CHALLENGE IS SUSTAINED**

(CODE CRIM. PROC. art. 35.08)

If the challenge to the array is sustained, the array of jurors shall be discharged, and the court shall order jurors summoned. The court shall direct that the officer who summoned the persons discharged, and on account of whose misconduct the challenge was sustained, shall not summon any other jurors in the case.

## **9. SELECTION OF JURORS (SHUFFLING) AND PREPARATION OF JURY LIST**

(CODE CRIM. PROC. art. 35.11)

The trial judge, on demand of counsel for either side or the defendant, shall cause random selection of a sufficient number of jurors from the general panel to try the case. The clerk shall randomly select (shuffle) the jurors and make a list of their names. The clerk shall then deliver a copy of the list of jurors to State's counsel and to the defendant or defense counsel.

## **10. DETERMINING QUALIFICATIONS OF JURORS**

(CODE CRIM. PROC. arts. 35.10, 35.12, 35.19, and 35.21)

Ask the following questions of the jury panel as a whole:

*“Are any of you younger than 18 years of age?”*

*“Are you a citizen of this state and of this county?”*

*“Can you read and write?”<sup>15</sup>*

*“Are you now or are you eligible to become, a qualified voter\* in this county and state under the Constitution and laws of this state? This does not mean you must be registered to vote but only means your privilege to vote has not been lost.*

*“Have you ever been convicted of a misdemeanor theft or a felony?”*

*“Are you under indictment or legal accusation for a misdemeanor theft or any felony?”*

If any member of the panel answers “yes” to any of the questions, you should call the juror to the bench and conduct further questioning outside of the hearing of the other jury panel members. Any jurors failing to qualify should be excused.<sup>16</sup>

\*See Voter Qualifications on page 79.

<sup>15</sup>If it appears to the court that the requisite numbers of jurors able to read and write cannot be found in the county, you may suspend this qualification. Likewise, you may suspend the qualification regarding prior service, if it appears that the county’s sparse population makes enforcement seriously inconvenient. **(Gov’T CODE. § 62.103)**

<sup>16</sup>A person who is blind, or deaf or hard of hearing, is not disqualified to serve as a juror solely because of that disability, except as provided by law. **(Gov’T CODE. § 62.104 - .1041)**

## 11. EXEMPTIONS FROM JURY SERVICE

(Gov'T CODE §§ 62.106—62.109)

Explain that the following persons may claim an exemption from jury service:

- Persons over 70 years of age;<sup>17</sup>
- Persons with legal custody of a child younger than 12 years of age, if jury service would mean leaving the child inadequately supervised;
- Students of public or private secondary schools;
- Persons enrolled and in actual attendance at an institution of higher education;
- Officers or employees of the Texas Senate, House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- Persons who are primary caretakers of an invalid unable to care for himself/herself.
- Can show a physical or mental impairment or an inability to comprehend or to communicate in English.<sup>18</sup>

<sup>17</sup>Person over 70 years of age are entitled to establish a permanent exemption on that basis by filing with the county tax assessor-collector. (Gov'T CODE. § 62.108)

<sup>18</sup>The judge of a district court by order may permanently, or for a specified period, exempt a person from service as a juror in all the county and district courts in the county, if the person is over 70 years of age or has a physical or mental impairment or an inability to comprehend or communicate in the English language that makes it impossible or very difficult for the person to serve on a jury. (Gov'T CODE. § 62.108 & § 62.109)

- Persons who are summoned for service in a county with a population of at least 250,000 and who have served on a petit jury in the county during the preceding three years;
- Persons who are members of the United States military forces serving on active duty and deployed to a location away from the home station and out of the county of residence.

*Ask the members of the panel if any of them qualify for an exemption that they want to claim at this time.*

## **12. EXCUSES FROM JURY SERVICE**

(Gov'T CODE §§ 62.106—62.109)

After testing the members of the panel on their legal qualifications, and after deciding exemptions, you should hear any excuses offered for not serving and determine whether or not to excuse the person. If you decide that an excuse is sufficient, you may excuse the person. A prospective juror may not be excused for an economic reason unless each party is present and approves the release of the juror for that reason. If either the defense or the prosecution objects, you must consider their argument before excusing a prospective juror.

### **13. SEATING A PANEL**

After qualifications, exemptions, and excuses have been considered and determinations made, the remaining jurors should be seated. The panel at this stage should have at least 12 people to allow for both parties to exercise their three strikes (peremptory challenges) and still have at least six available to serve on the jury after voir dire.

### **14. INSTRUCTIONS TO JURY PANEL**

There are currently no required instructions for Justice Courts to provide in a criminal case to a jury panel prior to jury selection. However, below is the content for TRCP 226a. You may use this language, you may modify it to suit your needs or you may use other language that you see fit. Best practice would be to give the jury panel some sort of guidance as to what to expect during this next phase of the trial.

*“Ladies and Gentlemen of the Jury Panel:*

*"Thank you for being here. We are here to select a jury. Six of you will be chosen for the jury. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.*

*Before we begin: Turn off all phones and other electronic devices. While you are in the courtroom, do not communicate with anyone through witnesses, the parties, or any other person who*

any electronic device. *[For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, or Twitter,] [I will give you a number where others may contact you in case of an emergency.] Do not record or photograph any part of these court proceedings, because it is prohibited by law.*

*If you are chosen for the jury, your role as jurors will be to decide the disputed facts in this case. My role will be to ensure that this case is tried in accordance with the rules of law. Here is some background about this case. This is a criminal case. It is not a lawsuit. The parties are as follows: The State of Texas, and the defendant is \_\_\_\_\_. Representing the State is \_\_\_\_\_, and representing the defendant is \_\_\_\_\_. They will ask you some questions during jury selection. But before their questions begin, I must give you some instructions for jury selection.*

*Every juror must obey these instructions. You may be called into court to testify about any violations of these instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. These are the instructions.*

*1. To avoid looking like you are friendly with one*

*side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be offended when they follow the instructions.*

*2. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.*

*3. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, or Twitter]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.*

*4. The parties, through their attorneys, have the right to ask you questions about your background, experiences, and attitudes. They are not trying to meddle in your affairs. They are just being thorough and trying to choose fair jurors who do not have any bias or prejudice in this particular case.*

*5. Remember that you took an oath that you will*



*tell the truth, so be truthful when the lawyers ask you questions, and always give complete answers. If you do not answer a question that applies to you, that violates your oath. Sometimes a lawyer will ask a question of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.*

*"Do you understand these instructions? If not, please let me know now.*

*"Whether you are selected as a juror for this case or not, you are performing a significant service which only free people can perform. We shall try the case as fast as possible consistent with justice, which requires a careful and correct trial. If selected on the jury, unless I instruct you differently, you will be permitted to separate at recesses and for meals, and at night.*

*"The lawyers (parties) will now begin to ask their questions ."*

## **15. EXAMINING JURORS (VOIR DIRE)**

**(CODE CRIM. PROC. art. 35.17)**

Attorneys for both sides (the prosecutor and defendant or defense counsel) may question the jurors about possible bias or prejudice that would prevent impartial service on this case. A challenge to a particular juror is either for cause or a peremptory challenge, which may be made orally.

The court shall decide any challenge without delay and, if sustained, shall discharge the juror from the particular case.

#### **16. CHALLENGES FOR CAUSE**

(CODE CRIM. PROC. arts. 35.16, 35.18, 35.19, and 45.030)

After or during the questioning, consider motions from the parties to excuse jurors for cause. There is no limit to the number of challenges for cause.

#### **17. PEREMPTORY (WITHOUT CAUSE) CHALLENGES**

(CODE CRIM. PROC. arts. 35.15, 35.25, 45.028—.029)

Both parties may each make no more than three strikes (that is, ask that a potential juror be excused) without having to explain why the strikes were made unless a Batson motion is made.<sup>19</sup>

Each side actually takes the jury list supplied by the court and marks through as many as three names. If the jury is left incomplete following the peremptory strikes, the court shall direct the sheriff or constable to summon others to complete the jury. Those so summoned are subject to the same selection procedures.

The two lists are returned to the judge (or clerk), who reads **the first six names** that have not been marked through. Those six persons then take their

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<sup>19</sup>*Batson v. Kentucky*, 476 U.S. 79 (1986), prohibits peremptory challenges which are made to exclude jurors because of their race. This motion will be made by the defendant on the theory that the State's attorney made challenges for reasons based on race, and the burden of proof is on the defendant.

positions in the jury box. The judge (or clerk) delivers a copy of the list of six jurors to both parties or their attorneys.

#### **18. OATH TO THE JURY**

(CODE CRIM. PROC. arts. 35.22, 45.30)

After the jurors have been selected and have taken their places in the jury box, you should administer the following oath:

*“You and each of you do solemnly swear that in the case of the State of Texas against the defendant you will a true verdict render according to the law and the evidence, so help you God.”*

#### **19. ADDITIONAL INSTRUCTIONS TO THE JURY**

There are currently no required instructions for Justice Courts to provide in a criminal case to a seated jury after selection. However, the below is the content for TRCP 226a II. You may use this language, you may modify it to suit your needs or you may use other language that you see fit. The former rules called for written instructions, which you may continue to use if you choose. Best practice would be to give the jury panel some sort of guidance as to what to expect during this next phase of the trial.

##### **Oral Instructions**

*“Ladies and Gentlemen:*

*“You have been chosen to serve on this jury. Be*

*cause of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system. [Hand out the written instructions.] You have each received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.*

### **Written Instructions**

*1. Turn off all phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook or Twitter.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of the court proceedings, because it is prohibited by law.*

*2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may exchange casual greetings like "hello" and "good morning." Other than that, do not talk with them at all. They have to follow these instructions too, so you should not be*

*offended when they follow the instructions.*

*3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else involved in the case, and do not do any favors for them. This includes favors such as giving rides and food.*

*4. Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook or Twitter]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.*

*5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.*

*After you have heard all the evidence, received all of my instructions, and heard all of the lawyers' arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.*

*6. Do not investigate this case on your own. For*

*example, do not:*

- a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;*
- b. go to places mentioned in the case to inspect the places;*
- c. inspect items mentioned in this case unless they are presented as evidence in court;*
- d. look anything up in a law book, dictionary, or public record to try to learn more about the case;*
- e. look anything up on the Internet to try to learn more about the case; or*
- f. let anyone else do any of these things for you.*

*This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could com-*

*promise the fairness to all parties in this case and jeopardize the results of this trial.*

*7. Do not tell other jurors about your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not admitted in court.*

*8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.*

*9. Do not consider or guess whether any party is covered by insurance unless I tell you to.*

*10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors. You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are*

*kept in a safe, secure location and not disclosed to anyone.*

*[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.] When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.*

*11. I will decide matters of law in this case. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.*

*Every juror must obey my instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.*



*Do you understand these instructions? If you do not, please tell me now.*

*Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.*

## **20. READING THE COMPLAINT**

(CODE CRIM. PROC. art. 36.01)

The prosecutor shall read the complaint to the defendant and the jury, and the defense is allowed to inspect it.

## **21. DEFENDANT ENTERS A PLEA**

(CODE CRIM. PROC. arts. 27.05, 36.01, 45.023—.024)

Ask if the defendant understands the charge and how the defendant pleads. The defendant then enters a plea of:

- Guilty;
- *Nolo contendere* (no contest);
- Not guilty; or
- Special plea (which shall be verified by affidavit).

If the defendant refuses to enter a plea, you must enter a plea of **not guilty** for the defendant.

If the defendant pleads guilty or *nolo contendere*,

the jury is excused and the court determines the punishment.

## **22. PLACING WITNESSES UNDER “THE RULE”**

(CODE CRIM. PROC. art. 36.05; TEX.R.EVID. 613)

To place witnesses under “the Rule” on motion of either party, or on your own motion, you should ask that all possible witnesses stand (or come forward) by announcing:

*“All those of you who may be witnesses in this case who are now in the courtroom, please stand (or come forward) and raise your right hand.”*

Administer the following oath:

*“Each of you do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”*

Then explain “the Rule.”

*“Ladies and gentlemen, the Rule has been invoked. This means that the witnesses who are not parties to this case must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed. Do not discuss this case with each other or anyone else, except with the permission of the court. Do not read, listen to, or watch any report of*

*or comment about the testimony in the case while you are under the rule. Failure to observe this is punishable by contempt. Please remain outside until called.”*

If either side asks you to make an exception for a particular witness, you may grant the exception if you determine that the witness’ testimony will not be tainted or influenced by remaining in the courtroom during the trial and by hearing the testimony of other witnesses in the case.

### **23. OPENING STATEMENTS**

(CODE CRIM.PROC. art. 36.01(b))

- Prosecution makes an opening statement of the nature of the accusation and the facts the prosecution expects to prove.
- Defense may make an opening statement at this time only if the State first makes one.<sup>20</sup>

### **24. PRESENTATION OF EVIDENCE**

(CODE CRIM.PROC. art. 45.011; TEX.R.EVID. 603, 614)

All evidence must be presented under oath. You should confirm that all potential witnesses have been sworn and have heard the instruction about “the Rule” at this time.

Administer the oath to witnesses who have not already been removed from the courtroom:

*“Each of you do solemnly swear (or affirm) that*

<sup>20</sup>*Penry v. State*, 903 S.W. 2d 715, 760 (Tex. Crim. App. 1995).

*the testimony which you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth, so help you God."*

Then, restate "the Rule" (see previous page).

## **25. ORDER OF PROCEEDING (EXAMINING WITNESSES)**

(CODE OF CRIM. PROC. art. 36.01(a))

The examination of each witness called by each party should proceed as follows:

### Prosecution's Case

(NOTE: as each phase of the questioning is completed, you may "call upon" the opposing side, for example, "Counsel, you may proceed.")

- Direct examination by the prosecution.
- Cross-examination by the defendant or the defense counsel.
- Redirect examination by the prosecution.
- Recross-examination by the defendant or defense counsel.
- After the prosecution has called and examined all its witnesses and the defense has had the opportunity to cross-examine each, the prosecution rests.

Directed Verdict <sup>21</sup>  
(CODE CRIM. PROC. arts. 36.11 and 45.032)

At this point, the defense may move for, or the court on its own motion may grant, a directed verdict of acquittal. If you believe that the defense motion is correct, then you should instruct the jury to return a verdict of “not guilty” of the charge.

Granting the motion has the practical effect of ending the trial in an acquittal. Overruling the motion results in a continuation of the trial, and the defense then presents its case (see NOTE below).

Defendant's Case

- Directed examination by the defendant or the defense counsel.
- Cross-examination by the prosecution.
- Redirect examination by the defendant or defense.
- Recross-examination by the prosecution.

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<sup>21</sup>Also known as “motion for instructed verdict” or “motion for judgment of acquittal” in criminal cases. This procedure “is commonly defined as action taken by the judge in a jury trial to decide issues in the case without allowing them to be submitted to the jury because, as a matter of law, the party with the burden of proof has failed to make a *prima facie* case.” *State v. Lewallen*, 927 S.W. 737, 739 (Tex. App. - Ft. Worth 1996, no pet.)

**NOTE: A motion for directed verdict of acquittal may be made after the prosecution rests, after the defense rests, or before the case is submitted**

- After the defense has called and examined all its witnesses and the State has had an opportunity to cross-examine each the defense rests.

## **26. REBUTTAL EVIDENCE**

(CODE CRIM. PROC. art. 36.01)

- The prosecution may present rebuttal evidence in the same manner as the prosecution's "case in chief."
- Prosecution closes.
- If the prosecution presents more evidence, the defense may present more rebuttal evidence.
- Defense closes.

## **27. JUDGE CHARGES THE JURY**

(CODE CRIM. PROC. arts. 36.14 and 45.033)

A charge may be given orally or in writing. The charge should distinctly set forth the law applicable to the case; not express any opinion as to the weight of the evidence; not sum up the testimony or discuss the facts; and not use any argument calculated to arouse the sympathy or excite the passions of the jury. The defendant or defense counsel shall have reasonable time to examine the charge and to object in writing distinctly specifying each ground of objection. Each side may submit written instructions and ask that they be given to the jury. The court shall give or refuse these charges.

## **28. CLOSING ARGUMENTS**

(CODE CRIM. PROC. arts. 36.07 and 36.08)

- Prosecution presents closing argument.
- Defense makes its argument (may waive).
- Prosecution presents rebuttal argument.

## **29. SUBMITTING THE CASE TO THE JURY**

(CODE CRIM. PROC. arts. 36.14 and 45.036)

You should instruct the jury as shown below:

*“You will now retire to the jury room to deliberate on your verdict.*

*“You must appoint a presiding juror.*

*“The verdict must be unanimous.”<sup>22</sup>*

*“If you find the defendant guilty, you should set a fine within the limits prescribed for punishment of this offense.*

*“Or if you find the State did not prove each element of its case and the guilt of the defendant beyond a reasonable doubt, you must return a verdict of not guilty.”*

<sup>22</sup>This applies to **Criminal** trials only.

Also advise the jury:

*“If you cannot reach a verdict within a reasonable time, notify the bailiff of your difficulty or problem. It may be necessary to declare a mistrial if you cannot agree on a verdict. (CODE CRIM. PROC. art. 36.27)*

Explain that the jury may communicate with the court through the presiding juror by notifying the officer in charge in writing:

*“If you have any questions about the evidence or need further instructions from the court, notify the bailiff and the bailiff will advise me. Any communications between the jury and court must be in writing, prepared by the presiding juror, and transmitted to me by the bailiff.” (CODE CRIM. PROC. art 36.27)*

### **30. JURY RETURNS THE VERDICT—RENDERING JUDGMENT IN OPEN COURT**

(CODE CRIM. PROC. arts. 37.10, 37.12, and 45.036)

You should see that the verdict is in the proper form, enter it upon your docket, and read it in **open court**.

In **open court**, you shall:

- **Render the proper judgment and punishment** if defendant is found guilty and enter the verdict,<sup>23</sup> judgment, and punishment on your

<sup>23</sup>On a guilty verdict it is within the court's discretionary power, in certain circumstances, to defer final disposition and to place the defendant on probation for a period not to exceed 180 days. (CODE CRIM. PROC. art. 45.051-.0511).



docket; or

- Discharge defendant from all further liability for the charge, if defendant is acquitted.

### **31. DISCHARGING A DEADLOCKED JURY**

(CODE CRIM. PROC. art. 45.035)

In the event that the jury cannot agree on a verdict, or if the jury is kept together for such a period of time that it is improbable they can agree,<sup>24</sup> you may declare a mistrial, discharge the jury and impanel another jury as soon as practical.

### **32. RULING ON A MOTION FOR A NEW TRIAL**

(CODE CRIM. PROC. art. 45.037-.040)

If the defendant is convicted, the defense has five days after rendition of judgment and sentence in which to move for a new trial. Not later than the 10th day after the date judgment is entered, you may grant the defendant's motion for a new trial. If you grant the motion for a new trial, then you should reset the case for trial as quickly as possible and conduct it as though the first trial never occurred. If the motion is not granted before the 11th day after judgment is entered, it shall be considered denied.\*

<sup>24</sup>One method of breaking a deadlock is known as an *Allen* or "dynamite" charge. It is a "supplemental" charge that the court may use, with care, to encourage **all** members of the jury to examine their viewpoints. *Allen v. U.S.* 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896).

### **33. APPEAL**

(CODE CRIM. PROC. arts. 45.042-.043)

If the defendant is found guilty, you should inform the defendant of the right to appeal. The defendant is not required to give notice of appeal in open court; however, the appeal and appeal bond must be filed within 10 days of rendition of judgment or the overruling of a motion for new trial, with some limited exception.

***\*The State is not entitled to a new trial.***

# CRIMINAL TRIALS

## Bench Trials

### 1. OPENING CEREMONY

Opening announcement given by judge, bailiff or court clerk as follows:

*“All rise! The Justice Court of \_\_\_ County, Precinct \_\_\_, is now in session. The Honorable Judge, \_\_\_\_\_ presiding.”* (If judge announces, simply state the name of the court and introduce yourself.)

### 2. JUDGE’S OPENING REMARKS

Explain court procedures and identify participants.

### 3. WAIVER BY DEFENDANT

You should make inquiry as to defendant’s understanding of certain guaranteed rights and privileges.

- Explain defendant’s right to demand a speedy, public jury trial, and that defendant may waive this right. (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05, 1.12, and 45.025).
- Explain defendant’s right to counsel. Inform them of the risk to representing themselves pro se. If they still choose to continue without an attorney, ask the defendant to waive the right to an attorney in writing. (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05(a) and (f), 1.14, and 45.020).
- Explain defendant’s privilege against self-incrimination. For example: *“You are not re-*

*quired to testify and no one may make you testify. If you decide not to testify, I will not use the fact that you did not testify as evidence against you. Choosing to remain silent cannot be used against you.” (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05 and 38.08).*

Ask if the defendant understands the rights you explained, and ask if defendant is waiving the right to a jury trial. (CODE CRIM. PROC. arts. 1.13, 1.14, 45.020 and 45.025).

#### **4. CALLING CASE FOR TRIAL\***

Open the proceedings by stating:

*“I call the case of State of Texas (prosecution) versus (defendant’s name).”*

Both sides announce ready for trial or present motions for continuance. (CODE CRIM. PROC., CH. 29).

If the defendant objects to venue and seeks to transfer the case, venue facts are subject to the “preponderance of the evidence” standard of proof as in civil cases. (CODE CRIM. PROC. art. 13.17).

\*You may prefer to read (call) the list of all cases on the day’s docket so the parties to each case can state an estimate of the time they will need to try their case (this method may not work - unless one or both of the parties are represented by counsel).

## 5. READING THE COMPLAINT

(CODE CRIM. PROC. art. 36.01)

The prosecutor shall read the complaint to the defendant and allow the defense to inspect it.

## 6. DEFENDANT ENTERS PLEA

(CODE CRIM. PROC. arts. 27.05, 36.01, 45.023-.0224)

Ask if the defendant understands the charge and how defendant pleads. The defendant then enters a plea of:

- Guilty;
- Nolo contendere (no contest);
- Not guilty; or
- Special plea (which shall be verified by affidavit).

If the defendant refuses to enter a plea, you must enter a plea of not **guilty** for the defendant.

## 7. PLACING WITNESSES UNDER “THE RULE”

(CODE CRIM. PROC. art 36.05; TEX.R.EVID. 613)

To place witness under “the Rule” on motion of either party, or on your own motion, you should ask that all possible witnesses stand (or come forward) and be sworn by announcing:

*“All those of you who may be witnesses in this case who are now in the courtroom, please stand (or come forward) and raise your right hand.”*

Administer the following oath:

*“Each of you do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”*

The explain “the Rule”:

*“Ladies and gentlemen, the rule has been invoked. This means that the witnesses who are not parties to this case must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed. Do not discuss this case with each other or anyone else, except with the permission of the court. Do not read, listen to, or watch any report of or comment about the testimony in the case while you are under the rule. Failure to observe this is punishable by contempt. Please remain outside until called.”*

If either side asks you to make an exception for a particular witness, you may grant the exception. However, you must determine that the witness’ testimony will not be tainted or influenced if that person is allowed to remain in the courtroom during the trial and to hear the testimony of the other witnesses in the case.

## **8. OPENING STATEMENTS**

(CODE CRIM. PROC. art. 36.01(b))

- Prosecution makes an opening statement of the nature of the accusation and the facts the prosecution expects to prove.
- Defense may make an opening statement at this time only if the State first makes one.<sup>27</sup>

## **9. PRESENTATION OF EVIDENCE**

(CODE CRIM. PROC. art 45.011; TEX.R.EVID. 603, 614)

All evidence must be presented under oath. You should confirm that all potential witnesses have been sworn and have heard the instruction about “the Rule” at this time.

Administer the oath to witnesses who have not already been removed from the courtroom:

*“Each of you do solemnly swear that the testimony which you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth, so help you God.”*

Then, restate “the Rule” (see previous page).

## **10. ORDER OF PROCEEDING (EXAMINING WITNESS)**

(CODE CRIM. PROC. art. 36.01(a))

The examination of each witness called by each party should proceed as follows:

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<sup>27</sup> *Penry v. State*, 903 S.W. 2d 715, 760 (Tex. Crim. App. 1995).

### Prosecution's Case

(NOTE: as each phase of the questioning is completed, you may "call upon" the opposing side, for example, "Counsel, you may proceed.")

- Direct examination by the prosecution.
- Cross-examination by the defendant or the defense counsel.
- Redirect examination by the prosecution.
- Recross-examination by the defendant or the defense counsel.

After the prosecution has called and examined all of the witnesses and the defense has had the opportunity to cross-examine each, the prosecution rests.

### Motion for Judgment of Acquittal<sup>28</sup> (CODE CRIM. PROC. arts. 36.11 and 45.032)

At this point, the defense may move for, or the court on its own motion may grant a judgment of acquittal. If you believe that the defense motion is correct, then you should render a verdict of not guilty of the charge.

<sup>28</sup>Also known as "motion for instructed verdict" or "motion for directed verdict" in criminal cases. This procedure is commonly defined as an action taken by the judge... because, as a matter of law, the party with the burden of proof has failed to make *prima facie* case. *State v. Lewallen*, 927 S.W. 2d 737, 739 (Tex. App. - Ft. Worth, 1996, no pet.)



Granting the motion has the practical effect of ending the trial in an acquittal. Overruling the motion results in a continuation of the trial, and the defense then presents its case (see NOTE below).

#### Defendant's Case

- Direct examination by the defendant or defense counsel.
- Cross-examination by the prosecution.
- Redirect examination by the defendant or defense counsel.
- Recross-examination by the prosecution.

After the defense has called and examined all of its witnesses and the state has had the opportunity to cross-examine each one, the defense rests.

### **11. REBUTTAL EVIDENCE**

(CODE CRIM. PROC. art. 36.01)

- The prosecution may present rebuttal evidence in the same manner as the prosecution's case in chief.
- Prosecution closes.

**NOTE: A motion for directed verdict of acquittal may be made after prosecution rests or after defense rests.**

- If the prosecution presents rebuttal evidence, the defense may present rebuttal evidence.
- Defense closes.

## **12. CLOSING ARGUMENTS**

(CODE CRIM. PROC. arts. 36.07 and 36.08)

- Prosecution presents closing argument.
- Defense makes its argument (may waive).
- Prosecution presents rebuttal argument.

## **13. RENDERING JUDGMENT IN OPEN COURT**

(CODE CRIM. PROC. art. 45.036)

All persons are presumed to be innocent and no person may be convicted for an offense unless each element of the offense is proven beyond a reasonable doubt.

If you find defendant guilty, render the proper judgment and punishment in open court, and enter the verdict, judgment, and punishment on your docket;<sup>29</sup>

If you find defendant not guilty, discharge defendant from all further liability for the charge.

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<sup>29</sup>On a guilty verdict, it is within the court's discretionary power, in certain circumstances, to defer a final disposition and to place the defendant on probation for a period not to exceed 180 days. (CODE CRIM. PROC. art. 45.051-.0511)

#### **14. RULING ON A MOTION FOR NEW TRIAL**

(CODE CRIM. PROC. arts. 45.037-.040)

If the defendant is convicted, the defense has one day after rendition of judgment and sentence in which to move for a new trial. Not later than the 10th day after the date judgment is entered, you may grant the defendant's motion for a new trial. If you grant the motion for a new trial, then you should reset the case for trial as quickly as possible and conduct it as though the first trial never occurred. If the motion is not granted before the 11th day after judgment is entered, it shall be considered denied.\*

#### **15. APPEAL**

(CODE CRIM. PROC. arts. 45.043-.043)

If the defendant is found guilty, you should inform the defendant of the right to appeal. The defendant is not required to give notice of appeal in open court; however, the appeal and appeal bond must be filed within 10 days of rendition of judgment or the overruling of a motion for new trial, with some limited exceptions.

**\*The State is not entitled to a new trial.**

# CRIMINAL TRIALS

## Oaths

### INTERPRETER - Deaf Person and Non-English Speaking Person

*"You do solemnly swear (or affirm) that in the case now of trial you will make a true translation to the person accused (or being examined), which person is deaf (or non-English speaking), of all the proceedings of the case in a language that the person understands, and that you will repeat said person's answer to counsel, court, or jury, in the English language with your best skill and judgment, so help you God. (TEX.R.EVID. 604)*

### JURY PANEL

*"You, and each of you, solemnly swear (or affirm) that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching on your service and qualifications as a juror, so help you God." (CODE CRIM. PROC. art. 35.02)*

### SIX JURORS

(Petit Jury)

*"You, and each of you, do solemnly swear (or affirm) that in the case of the State of Texas against the defendant, you will a true verdict render, according to the law and the evidence, so help you God." (CODE CRIM. PROC. art.35.22)*

### WITNESSES

*"You do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God." (TEX.R.EVID. 603)*

# **ALL TRIALS**

## **Voter Qualifications**

(Elect. Code § 11.002)

**Qualified voter** means a person who:

- is 18 years of age or older;
- is a United States citizen;
- has not been determined by a final judgment of a court exercising probate jurisdiction to be:
  - a. totally mentally incapacitated; or
  - b. partially mentally incapacitated without the right to vote;
- has not been finally convicted of a felony or, if so convicted, has:
  - a. fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or
  - b. been pardoned or otherwise released from the resulting disability to vote;
- is a resident of this state; and
- is a registered voter.

## **HELPFUL TELEPHONE NUMBERS & WEBSITES**

Attorney General's Office.....(800) 252-8011  
[www.oag.state.tx.us](http://www.oag.state.tx.us)

Office of Court Administration.....(512) 463-1625  
[www.courts.state.tx.us](http://www.courts.state.tx.us)

Secretary of State ..... (800) 252-VOTE (8683)  
(Elections Division)  
[www.sos.state.tx.us](http://www.sos.state.tx.us)

State Bar of Texas (MCLE Section).....(800) 204-2222  
[www.texasbar.com](http://www.texasbar.com) Ext. 1806

State Commission on Judicial Conduct .....(800) 228-5750

Texas Dept. of Assistive & Rehab. Services ..(800) 628-5115  
(Interpreters)  
[www.dars.state.tx.us/dhhs/](http://www.dars.state.tx.us/dhhs/)

Texas Comptroller of Public Accounts.....(800) 531-5441  
(Local Revenue)  
[www.window.state.tx.us](http://www.window.state.tx.us)

Texas Justice Court Training Center .....(512) 347-9927  
Toll Free .....(800) 687-8528  
[www.tjctc.org](http://www.tjctc.org)

Texas Juvenile Justice Department.....(512) 490-7130  
[www.tjpc.state.tx.us](http://www.tjpc.state.tx.us)

## Texas Justice Court Training Center Quick Reference Trial Handbook Order Form

To order additional Handbooks or to provide copies to your county or district attorney, please use this form.

First & Last Name:	
Title & Office:	
Mailing Address:	
City, State, Zip:	
Phone Number:	
Fax Number:	

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
	<b>Trial Handbook</b>	<b>\$50.00</b>	
<b>TOTAL DUE:</b>			

**Make payment in the form of a check or money order payable to Texas State University | San Marcos. Please send payment and order form to:**

**Texas Justice Court Training Center  
701 Brazos Street, Suite 710  
Austin, Texas 78701**





