

Judge Jeffrey C. Wilcox

QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

JUDGE: Jeffrey C. Wilcox - Fifth District Court

Civil Jury Trial and Pretrial Order

Civil Bench Trial and Pretrial Order

1. OPEN COURT

Call the case.

Parties and attorneys present (or state reason not present)

Are the parties ready to proceed?

2. WELCOME JURY

Thank you for appearing today.

[A few of you may have had other plans?]

Jury duty is a solemn duty of American citizens.

Jurors function as officers of the Court; honor, privilege of citizenship.

Jury duty is a grave responsibility; requires a mind free of prejudices.

The jury is an essential part of American government.

This process may take a few hours.

Please don't talk to each other about the case or about jury selection.

The parties are entitled to a fair and impartial jury.

We all want to be fair and impartial, and we all would try to act that

way. BUT sometimes that just is not realistic. [give Lakers example]

Please listen carefully to my questions, and answer only what I ask

for. It may cause problems if you volunteer too much information (example). It may also cause problems if you speak to another prospective juror about what you know.

While we are in the courtroom, most of my questions will require only

that you raise your hand or not raise your hand --- don't speak up with an answer unless I speak directly to you.

Otherwise, the attorneys and I will take notes here and, if necessary,

meet with you in my office to ask for your answer.

If any question calls for information that is too private for the courtroom, let me know and the attorneys and I will talk to you privately.

2A. Thank you for filling out and returning the jury questionnaires --- this greatly helps the attorneys and should greatly speed up the selection of a jury today.

2.5. So you will understand the procedure that we will be following this morning, let me explain what we will be doing.

(A) We will be placing all of you under oath and ask you questions to determine if you are qualified jurors.

(B) We will then call ____ (number of jurors) of you to the jury box and ask you questions about your background, knowledge of the case or the parties, prior jury service, and other questions specific to this case. (See Pg. 6)

(C) From those questions the attorneys will ultimately pick ____ of you to serve as the jury for this case.

(D) If you are not one of the ____ people originally called, please listen closely to the questions. Often a juror that has been called may be excused and we will call one of you to take their place and you will then also have to answer each of the questions.

2.6. I hope you have a good experience here today and throughout the trial if you are selected as a juror.

3. ROLL CALL OF JURORS SUMMONED.

Clerk calls names; jurors answer. Please say "yes" or "here" loud enough so that I can hear you.

If no answer:

Clerk please make a note of this person's non-appearance and the

Court will follow up to see why they failed to appear and, if necessary, they will be brought before this Court to show cause why they shouldn't be held in contempt for their failure to appear today.

4. CLERK ADMINISTERS VOIR DIRE OATH AND CONSTITUTIONAL OATH.

5. COMPETENCE TO SERVE AS JUROR.

Now we begin to determine your qualifications to serve as jurors in this case.

A person is legally competent to serve as a Washington County juror if:

a. Citizen of the United States,

- b. Over age 18,
- c. Resident of Washington County,
- d. Able to read, speak and understand the English language, and
- e. Has not been convicted of a felony or, if convicted, conviction has been expunged. [§78B-1-105]

No legally competent person is exempt from jury service.

*Anyone here today who is not legally competent to serve as a juror?

GROUND FOR EXCUSE [§78b-1-109]: A person who is legally

competent to serve as a juror may still be excused at the court's discretion upon a showing of undue hardship, extreme inconvenience or public necessity, but not for hardship or inconvenience to business. Please keep that in mind if your name is called.

LIMITATIONS [§78B-1-110]: You are entitled to be excused if, during

the last two years, you have either (a) served on a grand jury or (b) attended court for jury service for at least one court day.

*If any of you have served on a grand jury in the last two years, please raise your hand.

*If any of you have attended court for jury service for at least one day, please raise your hand.

6. CLERK DRAWS AND CALLS NAMES OF _____ PROSPECTIVE

JURORS. (78B-1-104)

Damages less than \$20,000:10 (4 jurors + 3 peremptories each)

Damages \$20,000 or more: 14 (8 jurors + 3 peremptories each)

*[For each alternate juror, 3 more jurors and 1 peremptory each)

If your name is called, come forward and take a seat in the jury box.

7. JUROR IDENTIFICATION.

Will you each stand in turn and identify yourselves according to the information sheet the bailiff has for you.

8. TRIAL PARTICIPANTS.

I will now introduce you to those who will be participating in this trial.

? Plaintiff's Attorney: Please introduce fellow attorneys, staff and witnesses.

? Defense Attorney: Please introduce fellow attorneys, staff and witnesses.

? If you know or have any acquaintance with any of these people, please raise your hand.

? Without telling me what you know, tell me who you know.

8A. For participants whom you know or are acquainted with:

? How do you know that person?

? Could you judge this case fairly and impartially on the
Sole basis of the evidence presented here in court?

? Could you evaluate and weigh the person's testimony the
same as you would that of a stranger?

How would you feel if the evidence made you decide against
that person/testimony?

8B. Explain why it would be difficult for you to serve as a juror if
these persons perform these tasks.

8C. Could you exercise independent judgment as a juror?

? Do you know the clerk or the bailiff?

? Do you know anyone else who is in the jury box?

? Can you exercise independent judgment?

9. BRIEF STATEMENT OF THE CASE.

It is important that the jurors are not already familiar with the
case. I will give you some information about the allegations in the case. Please understand that these
are only allegations, and are not evidence.

It is alleged in this case _____

? Are any of you familiar with the facts or circumstances of this
case?

? Do you recall any press or media reports about this case?

? Don't tell me what you have heard, but how did you become
familiar with this case?

? Can you set aside and ignore any prior information and try this case fairly, impartially and solely on the basis of the evidence presented at trial?

10. PRIOR EXPERIENCES IN CIVIL LITIGATION.

Have you or a member of your family or a close personal friend ever been a plaintiff or defendant in any case in any court?

1. PRIOR JURY SERVICE.

Have you ever served as a juror in a trial?

If so, when and where did you serve?

12. PERSONAL

This trial is expected to last for _____ days. A personal excuse

from jury service must be in the nature of an emergency. No one wants to be insensitive to your personal problems, however.

Please raise your hand if you have any mental or physical problem

or disability that would make it difficult for you to serve on this jury or if there is any other personal or private reason why you should not serve and I can speak to you privately.

If you are unreasonably troubled by the prospect of sitting in judgment upon another person, please raise your hand.

13. ATTITUDE

Is there any reason best known to you why you could not try this

case fairly and impartially upon the evidence and without any bias or prejudice for or against either party?

14. ROLE OF JURY.

Your role as jurors is to determine the facts in this case based on the

evidence you will receive in this courtroom. As a jury, you are the sole judge of the facts.

If chosen as a juror, will you try this case solely upon the evidence provided by the witnesses who appear before you and the papers or physical items admitted as evidence?

15. INSTRUCTIONS ON THE LAW.

My duty is to preside over the trial and see that laws and procedures

are followed. That includes the duty to determine the applicable law and to instruct you on that law so that you can apply it to the facts and arrive at a just verdict. I don't choose what the law is, and neither do you as jurors.

Are you willing to accept and follow my instructions on the law, even if you think the law is different or should be different?

16A. ADDITIONAL VOIR DIRE QUESTIONS FROM ATTORNEYS?

16B. QUESTIONING IN CHAMBERS, IF NECESSARY.

17. PASS JURY PANEL FOR CAUSE?

Plaintiff? Defendant?

18. PEREMPTORY CHALLENGES. (Plaintiff goes first.)

During exercise of challenges, explain to jurors:

a. Peremptory challenges allow attorneys to make final selection

of jurors. There may be no particular reasons for excluding those who are excluded; you should not be offended or take it personally if you are not left on the jury.

b. Introduce court personnel and explain roles.

c. Audio record system and need for written record.

d. Bench conferences.

e. Members of the jury will be allowed to take notes during trial.

f. Jurors' questions to witnesses.

g. Discuss value of jury system and citizen participation.

h. Nobody gets a pass from jury service. Since the end of military conscription, U.S. citizens have only two unavoidable duties: Paying taxes and serving as jurors.

i. Thank all panel members for participation.

j. Explain about alternate juror(s).

19. CHECK LIST OF JURORS.

Clerk reads names of jurors from jury list (have them stand).

To Attorneys: Does this constitute the jury as selected?

20. EXCUSE ALL OTHER PROSPECTIVE JURORS WITH THANKS.

Arrange seating of jurors selected.

21. TRIAL OATH.

Clerk administers oath to try the case.

22. ADMONITION AND RECESS.

It is absolutely necessary that you remain fair and impartial during this trial and maintain an open mind until the evidence and arguments are completed.

You are admonished that during this recess and every future break in this trial:

? You are not to discuss this case with anyone or among yourselves,

nor to form or express any opinion about the case until the matter has been submitted to you for decision. You should not allow anyone to discuss the case in your presence.

? You are not to show your notes to anyone.

? You are not to attempt to learn anything about this case outside the courtroom or to visit any location mentioned in the trial.

? You are to avoid and disregard all radio, television and other news reports and other information about the trial that is not presented in this courtroom.

? You are not to have any conversation or communication whatsoever with me or with any attorney, party, witness, court employee or other participant in this trial.

? The only exception is the bailiff, and you may ask him/her for general directions, but you may not discuss this case with him/her or seek his/her help in your decision.

? If you were to discuss the case contrary to this admonition, it may be a violation of the law, it would require me to declare a mistrial, and we would have to start over again by picking a new jury.

23. RECESS TO PHONE HOME/WORK ABOUT YOUR SELECTION

TO SERVE ON THIS JURY TODAY. ["ALL RISE FOR THE JURY"]

24. EXCLUDE WITNESSES?

If so, admonish them not to discuss this case or facts of the case while excluded from the courtroom.

25. PRELIMINARY JURY INSTRUCTIONS

Explain that jury will receive copy of all instructions.

Any objections to Instructions 1 -

[Read Instructions 1 through ____]

26. OPENING STATEMENTS

Plaintiff first. Defendant next, unless reserved.

27. PLAINTIFF'S EVIDENCE

PLAINTIFF RESTS

28. DEFENSE MOTIONS OUTSIDE PRESENCE OF THE JURY

29. DEFENSE OPENING STATEMENT (if reserved)

DEFENDANT'S EVIDENCE

DEFENSE RESTS

30. PLAINTIFF'S REBUTTAL EVIDENCE

31. EXCUSE ALL WITNESSES

32. RECESS WITH ADMONITION.

Discuss with attorneys:

? Motions outside presence of jury.

? Final jury instructions and any exceptions to instructions.

? Time needed for closing arguments.

? Condition of exhibits.

? Verdict form.

33. FINAL JURY INSTRUCTIONS.

At this stage of this trial, all of the evidence and testimony is before you. I will now give you the final instructions about the law which will govern your deliberations.

Any objections to instructions?

[Read remaining jury instructions]

34. CLOSING ARGUMENTS

The plaintiff has burden of proof and persuasion, and will argue first;

the defendant will argue second; and the plaintiff may also argue last in rebuttal. [STATE TIME LIMITS!]

35. SELECT AND EXCUSE ALTERNATE JUROR

36. CLERK SWEARS BAILIFF.

Explain role of bailiff: Communicate with judge, protect integrity of jury room.

37. JURY DELIBERATIONS

You may now retire to the jury room for your deliberations.

You may take with you only:

? the written jury instructions

? your personal notes

? the verdict form

? all exhibits received in evidence

? no other materials

“All rise for the jury.”]

[Recess court until jury returns.]

38. VERDICT.

When jury returns:

- a. Indicate that parties and counsel are present.
- b. Identify the Jury Foreperson.
- c. Ask if jury has reached a verdict and if it is agreed upon by at least 6 jurors; if so, the foreperson will hand the verdict form to the bailiff.
- d. Receive verdict form and inspect.
- e. Ask defendant to stand while verdict is read.
- f. Ask clerk to read the verdict, and spectators to remain silent.
- g. After reading, defendant may be seated.
- h. Ask whether losing party wants to have jury polled.

[Ask each juror by name, “was this and is this your verdict?”]

39. DISCHARGE JURY

Ask attorneys: Is anything else necessary before I discharge the Jury?

Have Jury Instructions returned.

Release jury from admonition.

? You now have the right to speak about this case.

? You also have the right not to speak about it. If you decline to discuss this case or your experience here, and some person persists in trying to get you to talk about it, please contact me by telephone or in writing and I will deal with that person.

? "Thank you for your participation, your effort and your service as a juror."

? Invite jurors to meet me in jury room for very brief discussion of any questions about their experience and suggestions for improvement.

? Discharge and excuse jury. [All rise for the jury.]"

40. DIRECT CLERK TO ENTER VERDICT.

ASSIGN PREVAILING PARTY TO PREPARE AND SUBMIT

JUDGMENT

41. RECESS OR ADJOURN.