

CIVIL
JURY TRIAL CHECKLIST

- ☐ 1. Bailiff opens Court (after everyone is in place)
- ☐ 2. Call the case: “Will the Clerk please call the case?” “_____ versus _____, the _____ Court of _____ County, Tennessee, Case Number _____.”
- ☐ 3. Introduce self and court personnel, and make a brief statement of the nature of the case:

“Ladies and Gentlemen, you have been summoned here as prospective jurors in a civil case. This is a case involving a _____ (vehicle collision, medical malpractice, etc.) and the events alleged occurred on or about _____ (date) at or near _____ (location).”
- ☐ 4. Introduce the parties and attorneys, or ask the attorneys to do so.
- ☐ 5. The Clerk/Bailiff/Deputy will call individual jurors to the jury box. Seat remaining jurors in front of box and in the court benches. When all potential jurors have been called and seated, ADMINISTER OATH:

“Ladies and Gentlemen, please stand and raise your right hand.

“DO YOU SWEAR OR AFFIRM THAT YOU WILL ANSWER TRUTHFULLY ALL QUESTIONS TOUCHING UPON YOUR COMPETENCY TO SERVE AS A JUROR IN THIS CASE, SO HELP YOU GOD?”
- ☐ 6. “Is the Rule requested?” If so, explain the Rule and ask witnesses to step out.
- ☐ 7. ADMONITIONS: During each recess or break for lunch or break for the day the jurors should be reminded of these admonitions: “Alright we are going to take a break/recess for lunch/adjourn for the day. During this break, do not discuss this case among yourselves or with anyone else, do not conduct your own independent research into the case, and we will see you back here in _____ minutes/at _____ o’clock.”
- ☐ 7. Prepare jury seating chart (Name, occupation, community, etc.). Assign each juror a number.

☐ 8. Instruct the jury before voir dire (TPI Civil 1.01):

“Ladies and Gentlemen you will be asked several questions by the attorneys. Although some of the questions may seem to be personal, they are intended to find out if you have any knowledge of this particular case, if you have an opinion that you cannot put aside or if you have had any experience in life that might cause you to identify yourself with one party or another. Jurors must be as free as humanly possible from bias, prejudice, or sympathy and must not be influenced by preconceived ideas about the facts or the law. The parties are entitled to jurors who approach this case with open minds until a verdict is reached.

“Each party has a right to request that a certain number of prospective jurors be excused. If you are excused you should not consider it a reflection on you in any way, because a lawyer who challenges you today might want you to serve on a different type of case tomorrow. The attorneys are simply engaging in a process of “educated guessing” as to whether or not you will be favorable to his/her side of the case or the other side of the case; so, do not take it personally if you are challenged. If you are challenged and therefore excused, you will need to call the clerk’s office/jury coordinator back on (date) _____.”

☐ 9. BEFORE LAWYERS BEGIN VOIR DIRE, INSTRUCT THE JURY:

“Ladies and Gentlemen, before the attorneys begin asking you questions I am going to give you the law as to the burden of proof in a civil case. A party who has the burden of proof on a claim must prove that claim by a preponderance of the evidence. I will charge you again with this instruction at the end of the trial.

“The term ‘preponderance of the evidence’ means the amount of evidence that causes you to conclude a claim is probably true. To prove a claim by preponderance of the evidence, a party must convince you that the claim is more likely true than not true.

“If the evidence on a particular claim is equally balanced, that claim has not been proven by a preponderance of the evidence and the party having the burden to prove that claim has failed.

“You must consider all of the evidence on each claim.”

☐ 10. Judge’s Questions for Voir Dire:

1. Occupation (Place of work, type of work, for how long). Also, occupation of spouse, if married.
2. Have you served on a jury before? (civil or criminal)

3. Have you (or your family) ever been a party to a lawsuit? (If so, a few details: type of lawsuit, Plaintiff or Defendant, were personal injuries involved, was the case tried or settled before trial, were you satisfied with the outcome)
4. Have you or a family member ever been involved with any incident that resulted in personal injuries (including job injuries)? (If so, give details of personal injury: what part of the body, what medical treatment received, do you or they still suffer from the effects of the injury)
5. Will you apply the law given to you by the judge at the end of the trial, whether you agree with the law or not?
6. Other questions to consider:
 - a. Community in _____ County.
 - b. Do you have any type of major medical, health, work, family, financial, emotional or philosophical difficulty that would cause you to be unable to serve as a juror in a trial expected to last _____ (time frame)
 - c. Does your job bring you in contact with lawsuits or other legal matters?
 - d. Does your job bring you in contact with engineers or technical support staff?
 - e. Have you or has any member of your family ever made a claim for workers compensation benefits?
 - f. Have you or has any member of your family ever made a claim against someone for personal injury, even though no lawsuit was brought?
 - g. Have you or has any member of your family ever worked for a company that has been sued or that you were involved in?
 - h. Have you ever appeared as an expert or a witness in a civil case?
 - i. Have you ever served on a grand jury?
 - j. Do you have any difficulty in reading, hearing or understanding English that might interfere with your serving as a juror?
 - k. Is there anything else about you that you feel may affect your ability to decide this case fairly and impartially and only on the basis of evidence and testimony you hear in this case?

☐ 11. Allow Plaintiff's Attorney to voir dire.

☐ 12. Allow Defendant's Attorney to voir dire.

☐ 13. CHALLENGES SUBMITTED BY THE ATTORNEYS. Keep track of the race and gender of the jurors excused by each side, in case there are any Batson objections by either the state or defense. If there are potential Batson problems, do not allow any of the jurors to leave the courtroom until those problems are resolved.

- a) Clarify with attorneys which jurors are being considered (each round), i.e. "Alright, you may exercise your challenges as to the 12 jurors in the box (or 14 jurors in the top two rows) at this time."

- b) Check each name off the challenge sheet or jury chart, moving other jurors into those seats as you go.
 - c) Keep a running total of the challenges used by each side.
 - d) Advise each excused juror when to call back/when to return/where to go for further instructions, and thank them for their participation.
- 14. AFTER CHALLENGES ARE COMPLETED: Once a round is completed with no challenges exercised, inform the jury they are the ones chosen to try the case. Send them back to the jury room after the alternates, if any, are also chosen. After they have left, thank the rest of the venire and instruct them as to their future duties (i.e. call the clerk/jury coordinator).

PRELIMINARY JURY INSTRUCTIONS

Before we begin the trial, I would like to tell you a little bit about what will happen during the course of the proceedings. I want to describe basically how the trial will be conducted and what the attorneys, jurors, and judge will be doing over the course of the trial. At the end of the trial, I will give you more detailed instructions on how you are to go about reaching your decision, but now I simply want to explain how the trial will proceed.

After I have given you this information the attorneys will give their opening statements. The opening statements will be brief outlines of what the attorneys expect the evidence to be. After the opening statements, you will hear the evidence. The evidence generally consists of testimony from witnesses and trial exhibits. The plaintiff will present evidence first, then the defendant will be allowed to present evidence. Normally a plaintiff will present all of his evidence first before the other party presents any evidence, although we sometimes change this procedure to accommodate witnesses.

The witnesses will testify in response to questions from the attorneys. Witnesses are first asked questions by the attorney who called them to testify, then the other attorney is allowed to cross-examine the witness. The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's questions suggests that it is true. You should consider a question only as it gives weight to a witness' answer.

Evidence may be presented by deposition. A deposition is testimony taken under oath before a trial and preserved in writing or on videotape. You are to consider deposition testimony as if the witness appeared in court.

During the trial each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say that it is overruled. If I overrule an objection, the witness must answer and you may consider the evidence. If I agree with an objection, I will say that it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not guess what the witness might have said or why I sustained the objection. If the witness has already answered, the must ignore the answer.

Any arguments by the lawyers about objections or motions are usually required to be made outside of the jury's hearing. One of my duties as presiding judge is to make sure any information the jury hears is legally admissible under Tennessee law. You cannot consider excluded information in deciding this case. Any rulings I make will be based on the law. You must not infer from any of my rulings, or from anything that I say, that I hold any opinion for or against any party in this lawsuit.

After you have heard all of the evidence and I have instructed you on the law, the attorneys will make their closing arguments. In the closing arguments, the attorneys will point out to you what they believe the evidence has shown, what inferences they suggest you should draw from the evidence, and what decisions they contend you should reach as your verdict. The plaintiff will argue first, then the defendant, then the plaintiff is allowed to close by responding to the defendant's argument.

Unless I instruct you otherwise, statements made by the attorneys are not evidence. Those statements are only made to help you understand the evidence in this case. You should ignore any statement that is not supported by the evidence.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law. Your duty is to decide what the facts are and to apply the law that I give you to those facts. You are the sole and exclusive judges of the facts.

As the sole judges of the facts, you must decide which of the witnesses' testimony you will accept, what weight you attach to it, and what inferences you draw from it. You are not required to accept all of the evidence as true or accurate. In deciding what evidence to accept, you must evaluate each witness' testimony and decide the weight you will give that testimony. You must decide which witnesses you believe and how important you think their testimony is. You are free to believe all, part, or none of a person's testimony. You should use your common sense and your everyday experience in deciding which testimony to believe. There are no written rules to use in deciding whether you believe a witness, but it may you to ask the following questions:

1. Was the witness able to see, hear, or be aware of the things the witness was testifying about?

2. How well was the witness able to recall and describe those things?
3. How long was the witness watching or listening?
4. Was the witness distracted at all during the event?
5. Did the witness have a good memory?
6. How did the witness look and act while testifying?
7. Did the witness make an honest effort to tell the truth, or avoid questions?
8. Did the witness have any interest in the outcome of the case?
9. Did the witness have any motive, bias or prejudice that would influence the witness' testimony?
10. How reasonable was the witness' testimony when you consider all of the other evidence in the case?
11. Was this testimony contradicted by any other evidence, witness or the same witness?

☐ 14. OPENING STATEMENTS:

a) Plaintiff's Opening Statement

a. Begin _____ am/pm

b. End _____ am/pm

b) Defendant's Opening Statement

a. Begin _____ am/pm

b. End _____ am/pm

- ☐ 15. Notepads. Pass out notepads and pencils, give the charge on juror notes (Appendix #2), and give the charge on jurors asking questions. (Appendix #3)
- ☐ 16. TESTIMONY: "Plaintiff, you may call your first witness."

BE SURE EACH WITNESS IS SWORN!

"Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?"

Direct Examination

Cross-Examination

Re-direct Examination

Re-cross Examination

(Depending on time of testimony—"Does anyone need a recess?")

"Call your next witness."

- ☐ 17. When Plaintiff rests his case, ask counsel "Are there any motions at this time?"

If so, tell the jury:

“Members of the jury, we have a matter we need to take up outside your presence. Please take a short break in the jury room. Remember the admonitions the Court gave you earlier.”

- ☐ 18. While the jury is still out, discuss the following:
 - a) Length of defense proof (# of witnesses).
 - b) Determine if any jury instructions can be agreed on now?

Note: If the defense has no witnesses, or very few, agree on jury instructions now to avoid jury-in/jury-out.

- ☐ 19. Jury brought back in.
- ☐ 20. Defense presents case.

Direct Examination (Defense)
Cross-Examination (State)
Re-direct Examination (Defense)
Re-cross Examination (State)

- ☐ 21. Does the State wish to present any rebuttal? If yes, call witness.
- ☐ 22. Defense sur-rebuttal (only if Plaintiff presents rebuttal)
- ☐ 23. AFTER ALL PROOF IS CONCLUDED:

Trial judge should excuse the jury again, stating “Ladies and Gentlemen, you have now heard all the proof in the case. We are now going to take a short break while I go over your instructions with the attorneys and let them have a few minutes to prepare their closing arguments, if any. During this break, even though you have heard all the proof, do not discuss the case among yourselves or with anyone else. We will be back with you in just a few minutes/at _____ o’clock.”

Go over the jury instructions with the attorneys and decide whether the jury will be charged before or after closing argument. You are encouraged to charge the jury prior to argument, and, if time permits, it would be helpful to give the jury and/or the attorneys a copy of the jury instructions to follow along with as the instructions are being read.

- ☐ 24. JURY CHARGE/CLOSING ARGUMENT. After the jury instructions have been read to the jury:

Ladies and Gentlemen of the jury, the Court will now instruct you as follows:

“Does the plaintiff wish to give a closing argument?”

“Does the defendant wish to give a closing argument?”

“Does the plaintiff wish to give a rebuttal argument?”

Trial judge should remember to ask the jurors, attorneys, or other court personnel if anyone needs a break if the charge or arguments are lengthy.

If the judge feels it necessary to set time limitations on closing arguments, the beginning and ending times should be recorded by the court reporter.

- ☐ 25. If there are alternates, ask “Is everyone doing ok?” Excuse the alternates and tell them not to go with the jury into the deliberation room. “Remain here in your seats, [or, “Have a seat in the back of the courtroom/in chambers...”] and I will give you further instructions after the jury leaves to begin deliberations. If you have any possessions in the jury room, the bailiff/court officer/deputy will get them for you once the jury is in place and all the exhibits have been taken to the jury room.”
- ☐ 26. SWEAR COURT OFFICER/BAILIFF. (It is not necessary to swear court officers unless the jury is sequestered. Some judges always do. If the jury is sequestered, the court officer should have been sworn immediately after the jury is sworn. Oath:

“Please state your name for the record... Do you solemnly swear or affirm that you will:

1. Take charge of this jury, and
2. Keep them separate and apart from all others, and
3. Not allow them to communicate with any other people, and
4. Bring them back at the appointed time, so help you God?”

- ☐ 27. INSTRUCTIONS TO COURT OFFICER/BAILIFF:
 - Where doors are to be locked.
 - Sit at the door with only one entrance (jury room)
 - Breaks and provisions for smokers.
 - If jurors have questions, send note by bailiff.
 - Jurors shall not ask bailiff/court officer questions about the case.
 - Bailiff/court officer is not to discuss any part of the trial or proceedings with the jury.

☐ 28. JUROR QUESTIONS.

“Ladies and Gentlemen of the jury, if a question arises during deliberations and you need further instructions, please print your question on a sheet of paper, knock on the door of the jury room (or ring the bell), and hand the question to my court officer. You may not discuss the case with my court officer.

I will read your question and I may call you back into the courtroom to try to help you. Please understand that I may only answer questions about the law and I cannot answer questions about the facts of the case.”

☐ 29. “LADIES AND GENTLEMEN, YOU MAY NOW RETIRE TO DELIBERATE.” Record time-out: _____ am/pm

☐ 30. JURY SENDS WORD THEY ARE READY. Record time back in: ____ am/pm. Round up attorneys, defendant, court reporter and clerk.

☐ 31. GO ON RECORD BEFORE THE JURY COMES IN. “Let the record reflect the plaintiff and defendant are present in the courtroom along with their attorneys.”

☐ 32. COURT RECEIVES THE VERDICT. “I hear the jury has reached a verdict, is this correct?”

First, the judge should examine the verdict. If it is in an incorrect form it is better that the judge ask the jury to retire to correct it before it is read. Sometimes more than one form is filled out. “I’m sorry, but the verdict form is not one/contains more than one of the verdict forms given to you in your jury instructions, and so I am going to have to ask you to continue your deliberations at this time.”

When proper verdict forms are returned, the judge should say the following:

- a) “May I see the verdict form please?”
- b) “Ladies and Gentlemen, would you please identify the foreperson of this jury?”
- c) “(To foreperson) Have you reached a verdict in this case?”
- d) “(To foreperson) What is your verdict?” Or “The verdict reads as follows...”
- e) “(To the jury) Do each of you agree that is your verdict?” (Optional: “If so, please raise your right hand.”)
- f) “Let the record reflect that each member of the jury has raised his or her hand and that there are no dissenting votes” or ask “Does anyone say this is not your verdict?”
- g) If you use verdict forms, verify with the attorneys the content of the forms and mark them as the next numbered exhibit.

- ☐ 33. DISMISS THE JURY: “THANK YOU. THIS SYSTEM WORKS BECAUSE OF CITIZENS LIKE YOU. THANK YOU ON BEHALF OF THE COURT, THE ATTORNEYS, COURT PERSONNEL, AND THE CITIZENS OF THIS COUNTY FOR YOUR SERVICE TO THE COMMUNITY.”

AFTER JURY FILES OUT

- ☐ 34. If this is a comparative fault case, calculate the amount of damages to each party.
- ☐ 35. Ask who will draw the order.
- ☐ 36. ADJOURN COURT.