

TRYING TIMES

A Publication and Guide from The Vermont Judiciary
Trying Times is intended to answer frequently asked questions about jury service and to provide general information about Vermont courts.

WHO'S WHO INSIDE THE BAR

MOST OF US HAVE HEARD ATTORNEYS REFERRED TO AS "THE BAR", BUT DO YOU KNOW WHY?

The bar is an architectural feature of most courtrooms. It is the railing which runs across the room to separate the general public from the space occupied by the judge, the jury, the lawyers and others involved in the trial of a cause. Thus, the "Bar" are those permitted to enter the barred off portion of a courtroom, or the attorneys.

INSIDE THE BAR, YOU WILL SEE...

- The presiding judge, seated on the bench (a raised platform) at one end of the courtroom. Tradition, and respect for the profession, dictates that the court officer (also called the bailiff in some states), will ask that everyone in the courtroom stand when the judge enters or leaves the courtroom. In many Vermont courts there is also a tradition for everyone, including the judge, to stand when the jury enters the courtroom, as a sign of the respect.
- The recording equipment operator (recorder) is usually seated in the front of the bench. It is the job of the recorder to be sure that every word spoken in the courtroom during the trial is available for review in the future. As a juror you will be asked to speak so that your voice can be heard both by the parties and the recorder.
- The attorneys representing each side in a trial are seated at tables directly inside the bar. Their clients sit with them. In criminal trials, the prosecutor's table has an empty chair representing the prosecutor's client, the People of Vermont.
- The jurors, who sit in the jury box consisting of two rows of chairs, usually slightly above ground level, on one side of the courtroom.

SELECTION OF THE JURY PANEL

The jury is one of the most important parts of our American legal system. The right to a trial by jury is written in the United States and Vermont Constitutions. It is a fundamental right guaranteed to every citizen.

In order for everyone to have the right to a trial by jury, it follows that citizens must be willing to accept the responsibility of jury service. Our system of justice depends on the willingness of private citizens to serve on juries and to make important decisions in the trial of cases. While being a juror is considered a duty of citizenship, it is really a service you are being asked to perform for your fellow citizens. It is your opportunity to participate directly in our legal system and to have an essential voice in the administration of justice.

SELECTION OF THE TRIAL JURY

Jury selection begins when all jurors, the judge and the parties are once again in the courtroom. A member of the staff will call the names of the jurors present in a random order. When your name is called you will be directed to take a seat in the jury box. After the jurors have been seated, the judge will tell you about the particular case for which you have been selected. The judge and the attorneys will then begin a process called "voir dire", which is simply an effort to get to know a little more about you and your beliefs.

There are no right or wrong answers. Answer as honestly and fully as you can. If you are asked a question that makes you uncomfortable, or that you do not want to answer in public, let the judge know. Your answer can be made in the privacy of the judge's office and will be treated confidentially. During this questioning, the attorneys may ask that certain panel members not serve on the jury in that particular case. This may be for a stated reason called a "challenge for cause," or for no stated reason, called a "peremptory challenge." There is no limit on the number of challenges for cause; there can be no more than six peremptory challenges by each party.

There are usually 14 jurors chosen for each trial, two of whom are alternates. Alternates hear all the evidence presented during the trial but do not take part in reaching the verdict.

Jurors excused from serving in a particular trial should not be offended. Those excused from one trial may be asked to serve on the next.

Court officers will be assigned to assist jurors during the trial and jury selection to protect the jury from outside influences. Any questions that may arise during the trial should be addressed to a court officer who will take it to the judge.

The jurors will be given an oath in which they swear to impartially hear and try the case on the evidence that will be presented. This oath should be taken very seriously. (To view Jury Oaths go to Jury FAQ's.)

THE TRIAL

When the jury selection is complete the trial can proceed. Sometimes the trial begins the date the jury is drawn; often it begins a day or two after jury drawing and it might begin even later.

All trials follow an established order of events and the role of the jury is essentially the same in all of them.

It is the responsibility of the jury to hear the evidence, to decide what the facts are and then to make a final decision based upon those facts and upon the law which the judge explains.

The party which initiated the action - the plaintiff in a civil case or the prosecution in a criminal case - will present its side first. The defense may then present its evidence. Then, sometimes the plaintiff or prosecution will give additional evidence as a rebuttal. The defense may then do the same. This order of presentation is one reason the jurors are told to form no opinions until all of the evidence is in.

The trial will begin with opening statements by the attorneys. These statements are not evidence; they are what the attorneys intend to prove during the trial. In some instances the defense may choose to make no opening statement or it may delay opening remarks until after the plaintiff or prosecution has presented its case.

The evidence is the sworn testimony of witnesses or physical exhibits such as documents, records, weapons or various other articles.

Most of the testimony will be given by witnesses answering the attorney's questions. The attorney calling a witness will question the witness first in what is called direct examination. The opposing attorney may then question the witness in what is called cross examination.

There are many complex rules about presenting or admitting evidence. These rules are applied in each case by the judge. It is the judge's responsibility to make all decisions about what testimony, documents or other matters the jury can legally consider as evidence. The jury must never consider any matter which has been ruled inadmissible by the judge.

Occasionally one attorney may "object" to an action or question by the opposing attorney, or to a statement by a witness. The judge will rule on the objection and the jurors must abide by the ruling. If the judge sustains the objection, the jury may be told to disregard the statement of the witness. In that case the statement must not be considered as evidence and jurors must not use it in reaching their decision in the case.

Sometimes the judge will rule on the objection without comment by the attorneys. Sometimes the attorneys and the judge will discuss it in front of the jury. On other occasions the discussion will be at the judge's bench out of the hearing of the jury. In some instances the jury will be asked to go temporarily to the jury room to allow full discussion in the courtroom on questions of law or procedure which must be decided by the judge.

Understandably, jurors can get upset by frequent or long waiting periods in the jury room. All that can be asked of jurors is that they be patient, for important issues of law or procedure are being resolved that are necessary to the proper presentation of evidence to the jury.

When all parties have finished presenting their evidence, the attorneys will make their final arguments to the jury.

The plaintiff or prosecution will make its argument first. Then the defense will present its argument. The plaintiff or prosecution has the right to have the last word and may make a final closing argument. These arguments are not evidence; they are merely the attorneys' comments on the case.

After all of the evidence has been presented and the attorneys have given their final arguments, there remains one very important matter before the jury can begin its deliberations. This is the giving of the instructions by the judge, called "the jury charge."

This giving of the instructions by the judge is an explanation of the law as it applies to that particular case. It is an explanation to the jury of how to consider the evidence given during the trial. The jury must fully accept the judge's explanation of the law. The jurors may disagree about the facts of the case but not about the law.

The judge, at this point, will also appoint one of the jurors as a foreperson. It is up to the foreperson to keep order during the deliberations and to give all jurors a fair chance to express their views.

The case is now in the hands of the jury. All that has gone on before has been directed to this moment.

The jury must now try to reach a verdict for one or the other of the parties.

Even at this point jurors should keep an open mind and respectfully consider the opinions of others. The free exchange of all ideas among the jurors is essential.

If at first the jury is not unanimous, it must continue to discuss the case and try to reach a verdict. A juror should never be afraid to change his/her mind when it seems reasonable to do so. A juror should not change his/her mind, however, unless convinced that he/she should.

To reach a verdict the jurors must weigh and consider, according to the judge's instructions on the applicable law, the evidence that was presented. No other matters should be considered. Jurors must not be swayed by prejudice or sympathy.

If a question is raised about the instructions, or if further instructions seem necessary, the jury can ask the court officer to tell the judge that clarification is needed. If there is an important disagreement among the jurors over a particular part of the testimony they can ask that the court reporter read back that part. The judge decides whether such requests should be granted.

The jury must reach the final verdict by reason and careful deliberation. In all cases, the verdict must be unanimous - that is, all jurors must agree with the verdict. When a verdict has been reached, the court officer will tell the judge and court will be called back into session. The verdict will be delivered according to the judge's instruction. At this point the jurors may be asked individually whether they agree with the verdict.

After the verdict is reached, the jury will be discharged with the thanks of the court. The jurors may now return to their homes and personal affairs until they are next needed in court.

WHAT THE COURT EXPECTS OF YOU

Jury service may be the most serious obligation of citizenship. Because being a juror is such an important responsibility, jurors are expected to act in ways which promote fair decisions. The following comments may assist and guide jurors:

- Jurors must be in court on time; a trial cannot go forward until all jurors are present.
- When the court is in session and the jurors are in the courtroom, a juror should not talk with fellow members of the jury or with anyone else.
- A juror should pay close attention to what the judge, attorneys and witnesses say. If a juror cannot hear, the juror should raise a hand and, when called on, tell the judge the problem.
- Jurors may not take notes without the permission of the judge. This is true even if the trial is long or involved and some jurors might feel it would be helpful.

- A juror must keep an open mind throughout the trial. Jurors must not form any final opinion about the case being tried or talk to fellow jurors about the case until all the evidence has been presented and the judge has given the instruction on the law. At that point, the jury goes to the jury room to discuss the evidence and decide the case.
- Jurors must not discuss the trial with anyone. Generally, juries in Vermont are not sequestered--that is, separated from friends and family--and jurors may return to their homes and workplaces when the trial is not in session. While this is more convenient for jurors, it places a responsibility on them to avoid outside influences. Friends and family may naturally inquire about the trial, but jurors must not discuss the case with anyone until after the trial is over.
- Jurors must not read newspaper articles or listen to radio or television accounts of the trial. Even if they are accurate, these stories are only brief summaries which may stress some items and underplay others. More seriously, they may refer to matters which were not or cannot be admitted in the case as evidence.
- Jurors should ask the court officer to tell the judge if anyone tries to contact them about the trial.
- Any juror who discovers during the trial that they have personal knowledge or a connection with the case should ask the court officer to tell the judge immediately. The judge will decide if the juror should be excused.
- The judge or the court officer should be told immediately of any emergency that could affect a juror's ability to carry out the juror's duty.
- Jurors should not try to learn from any source outside of the courtroom anything about the case being tried. Jurors should not, on their own, visit any place being discussed at the trial or undertake any investigation of the case. If the judge believes a visit to the site is appropriate, arrangements will be made for the whole jury to visit.

WHAT YOU CAN EXPECT OF THE COURT

When you first arrive at many Vermont courthouses, you will have to pass through a metal detector or undergo security screening. This is a routine procedure; no one is permitted to bring a weapon of any sort into a courthouse. Weapons are defined to include firearms, knives of any sort and personal protection sprays.

A court officer or staff person will direct you to the proper place within the courthouse. You will be asked to check in by signing a jury roster or having the barcode on your summons scanned. Be sure to bring your summons to court with you.

Although the court will make every effort to avoid delays, you will, at times, be kept waiting. Jurors are encouraged to bring reading materials or other items with them to the courthouse for these periods.

On your first day, the presiding judge and the court clerk will explain your duties as a juror and give

you additional information concerning the jury service experience, what you'll need to know about local policies and procedures and what will be expected of you. This is the time for you to ask questions about jury service or the operation of the court.

Jury selection process for individual trials may then begin immediately or the jurors may be asked to wait once again. While the jurors wait, the judge is usually reviewing cases with attorneys to determine which will go to trial. Very often, cases settle only at the last minute. Some cases do not settle until the jurors are in the courthouse; thus, the jurors are helping to resolve disputes simply by being there. The judges and court personnel understand the inconvenience and annoyance caused by long waiting periods. They try to keep this to a minimum.

Court officers will be assigned to assist jurors during the trial and jury selection to protect the jury from outside influences. Any questions that may arise during the trial should be addressed to a court officer who will take it to the judge.

The normal day for the jury begins at 9:00 AM and ends by 5:00 PM.