



## OFFICE OF THE STAFF JUDGE ADVOCATE

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## JURY DUTY IN A CIVILIAN COURT

This pamphlet is prepared for jurors serving in the circuit courts of the state of South Dakota to explain courtroom procedure and the duties of a juror in the administration of justice. THIS INFORMATION IS NOT INTENDED TO TAKE THE PLACE OF THE JUDGE'S INSTRUCTIONS. For each jury case, the judge will give specific instructions concerning what law applies. Although some difference between the trial of a criminal and a civil case will be mentioned here, for the most part no distinction is made because both are tried under much the same rules and in the same manner.

### **Receiving a summons & Acceptance of service**

A person receiving a jury summons should keep in mind that he may be called upon to sit in the trial of a lawsuit and settle a dispute. It is important to remain as impartial as possible, for without an unbiased jury, our legal system cannot function properly.

Along with the summons, each prospective juror receives an acceptance of service which must be signed and mailed back to the clerk of courts. By doing this, each person is simply indicating he has received the summons-signing and returning the acceptance of service does not require a person to serve if he has been excused by the court. If an acceptance is not signed and returned, the sheriff must deliver the summons at county expense.

### **The jury list & the jury panel**

The state of South Dakota is divided into jury districts (which are the same as election precincts). In each district, public officials named in the statutes draw the names of jurors by lot from lists of qualified persons in their county. A new jury list is made each year for the following calendar year.

The courts are required to hold a term (be open for the trial of cases) at specified times each year. The presiding judge of the court orders that names be selected by lot from the jury list of each county. Each person selected receives notice that his name has been drawn for a specific term of court. Jurors are summoned to appear in court on the day and hour specified in the summons for jury duty and may not be excused without permission of the court. (Penalties for failure to attend, and fees and mileage payments for jurors are provided by law.)

### **Excuse from service**

A person wishing to be excused from jury service must receive permission from the presiding judge of the court. Prospective jurors should remember that the system of jury trial is a right granted to all persons in the state by the constitution. Jury service is both a duty and a privilege.

### **Parties and issues**

Juries may be used in criminal and civil cases. Criminal cases are those which involve violations of law for which the defendant may be punished by fine or imprisonment. Civil cases are disputes between parties involving personal or property rights.

In a civil case, the parties are called the PLAINTIFF (the one who began the lawsuit) places a claim against the plaintiff against DEFENDANT. If, for example, the case is called John Jones vs. the Zero Company, or John Jones vs. Susan Smith-then John Jones is the plaintiff and the Zero Company, or Susan Smith, is the defendant. It can also involve the claim of the defendant against the plaintiff and this is called the COUNTERCLAIM or CROSS CLAIMS against third parties

Parties in a criminal case: The parties in a criminal case are the PROSECUTION and the accused or defendant. If the case is called the State of South Dakota vs. John Jones, or the City of Aberdeen vs. John Jones-the state or city is the prosecution and John Jones is the ACCUSED or DEFENDANT. Generally the jury is charged only with deciding if the accused is guilty or not guilty.

### **Pleadings**

The law requires that pleadings to be in writing. Everything the jury needs to know in connection with the pleadings will be presented in court.

In civil cases, a lawsuit is started with a SUMMONS AND COMPLAINT served upon the defendant. They may be "served" by delivering personally to the defendant, leaving them at the dwelling of the defendant, or publishing in a newspaper. The defendant then serves a written ANSWER to the claim made by the plaintiff. The defendant presents a written counter claim against the plaintiff, and is permitted in trial at the same time the plaintiff's case is tried. When one party serves a CERTIFICATE OF READINESS FOR TRIAL the lawsuit is placed on the calendar of cases to be tried to the court or to a jury.

In criminal proceedings, the complaint of the state of South Dakota or of a city is in writing. The answer of the defendant is made orally in court and is generally a simple statement of "guilty" or "not guilty." A counterclaim does not exist in a criminal action.

### **Jury selection**

A specific number of prospective jurors names are drawn from a box of all prospective jurors (and in some cases, alternate jurors) has been selected. Jurors take an oath to answer questions concerning their qualifications to serve as jurors. This is called the VOIR DIRE (pronounced "vwar deer"). The lawyers representing each of the parties to the lawsuit make a general statement concerning what the suit is about and then begin questioning the prospective jurors to determine if they know anything about the case and if they are qualified to serve as members of the jury. Prospective jurors may be dismissed through a PEREMPTORY CHALLENGE (law which allows either side to remove a specific number of prospective jurors without stating reasons). In addition, if any prospective juror has shown disability, interest or bias, he may be CHALLENGED FOR CAUSE. If the judge finds the cause sufficient, the juror will be excused from service on the case. Eventually twelve (or in some cases, six) jurors are seated. They take an oath to try the case fairly. At this point the actual trial to the jury begins.

### **Stages of the trial**

**OPENING STATEMENT:** of the lawyers: In a civil case, the lawyer or lawyers for the plaintiff begins by giving the jury a preview of what he expects to prove and to recover. In a criminal case, the state's attorney will make the opening statement, explaining the charge and the case against the defendant. The lawyer for the defendant (or accused) may either give his opening statement or reserve it until the state rests its case against the accused.

**PLAINTIFF'S EVIDENCE:** The plaintiff's lawyer (or in a criminal case, the state or city attorney) will call witnesses, each of whom will take an oath and give testimony. During the examination (questioning of witnesses), exhibits (such as writings, photographs, plans, etc.) may be offered as evidence in the case. If the judge rules the exhibits are to be received into evidence, jurors may examine them and those exhibits will be taken into the jury room during deliberation on the case. Under certain circumstances, jurors may, under court supervision, leave the courtroom to look at a particular site or object.

When examining the witnesses, the plaintiff's lawyer asks the questions first and this is called **DIRECT EXAMINATION:** The defendant's lawyer then **CROSS EXAMINES** the witness concerning matters brought up in direct examination. After the cross examination, the plaintiff's lawyer may again question the witness (this is called **REDIRECT**), and this may be followed by recross examination.

This process of examining and cross examining witnesses and receiving exhibits continues until the plaintiff has put his evidence before the jury. At this time, the plaintiff's lawyer will state to the court, "Plaintiff rests." In a criminal case, the state's (or city) attorney says, "The state (or city) rests."

**DEFENDANT'S EVIDENCE:** After the plaintiff has rested, the defendant calls witnesses to defend against the claim of the plaintiff. If there is a counterclaim, witnesses proving the counterclaim may also be called. The defendant's lawyer examines the witnesses first on direct examination, then the plaintiff's lawyer cross examines. The defendant's case continues in essentially the same manner as the plaintiff's until the defendant's lawyer states to the court, "Defendant rests."

According to federal and state constitutions, the defendant in a criminal case is not required to testify or offer any evidence in defense of the charge against him.

**PLAINTIFF'S REBUTTAL EVIDENCE:** The plaintiff may call witnesses to respond to testimony given in the defendant's case. This is called REBUTTAL.

**PREPARATION OF INSTRUCTIONS:** After both parties have rested, there is usually a recess while the judge, with the assistance of the lawyers involved, prepares instructions for the jury.

**CHARGE TO THE JURY:** After the instructions have been prepared, the judge, jurors, lawyers and parties reassemble in the courtroom for the charge to the jury, in which the judge reads the instructions to the jury. ***THE JURY IS RESPONSIBLE FOR DETERMINING THE FACTS OF THE CASE. THE COURT AT ALL TIMES DETERMINES THE LAW.***

**ARGUMENT:** The case is then argued by lawyers for the parties. In this argument, the lawyers review the testimony and usually state their respective theories of the case to the jury. The plaintiff's lawyer begins the argument and is followed by the lawyer for the defendant. Each side is entitled to the same amount of time ( set by the judge) to argue, although the plaintiff has the privilege of dividing the time and making a CONCLUDING ARGUMENT.

**DELIBERATION:** Court bailiffs are sworn to take charge of the jury which withdraws to a private place to decide the issues. Jurors take with them their recollection of the testimony of the witnesses, the exhibits introduced at the trial and a copy of the court's instructions. The jury returns to the courtroom after having reached a verdict.

**DECISION:** The court's instructions tell the jury how many of them must agree to reach a decision. After a decision has been reached, or if agreement is impossible, the jury returns to court.

In a criminal case, the judge will ask the jury if a verdict has been reached. The foreperson will state orally that the defendant was found guilty or not guilty of the various charges, or that the jury cannot agree on a verdict.

In a civil case, the foreperson will have completed and signed a written form stating the verdict, unless agreement was not reached. The foreperson hands it to the clerk who reads it in open court.

In criminal and civil cases either side may then request that the jury be POLLED. This means that each juror must state orally whether he voted for or against the majority decision.

## **Evidence**

As explained earlier, the evidence submitted for consideration by the jury includes oral testimony, the exhibits and a view of anything outside the courtroom as allowed by the court. Over the course of many centuries, certain rules have been established as to what evidence may be admitted in a trial and there are laws dealing with evidence to be considered by a jury.

**THE PURPOSE OF THESE RULES AND THIS PROCEDURE IS TO DISCOVER AND PRESENT PROPER EVIDENCE TO THE JURY SO THAT IT MAY DETERMINE THE TRUTH AND AN FAIR TRIAL AND PROPER RESULT BE ASSURED.**

During the course of a trial, OBJECTIONS to the evidence may be made by lawyers. The judge must decide if the objection is proper and if so, the judge will SUSTAIN the objection. If the evidence is proper, the judge will OVERRULE the objection and the evidence will be submitted for consideration by the jury. If the objection involves something that should not be discussed in front of the jury until the judge reaches a decision, the jury will be excused from the courtroom or the lawyers and judge may retire to the judge's chambers to discuss the matter. When the judge reaches a decision, the trial resumes.

**THE MERE FACT THAT A LAWSUIT HAS BEEN STARTED IS NOT IN ITSELF EVIDENCE IN THE CASE, NOR SHOULD THE STATEMENTS AND ARGUMENTS OF THE LAWYERS BE CONSIDERED AS EVIDENCE. THE JURY SHOULD DISREGARD ANYTHING THE JUDGE ORDERS OR DIRECTS TO BE DISREGARDED.**

## **Conduct of jurors**

**WHEN IN DOUBT CONCERNING ANY ASPECT OF A CASE, A JUROR SHOULD ASK THE JUDGE.**

Jurors must not talk about the case to other members of the jury, lawyers or parties involved, or with any other person until the trial is over and a decision is reached. Jurors should avoid any situation which might give the appearance they are discussing any subject with the lawyers or parties involved in the case. Jurors should avoid radio and television broadcasts and newspaper accounts of the case.

**THE JURY'S VERDICT MUST BE BASED ONLY ON THE EVIDENCE PRESENTED IN COURT AND THE INDIVIDUAL JUROR'S EVALUATION OF IT.**

If any person tries to talk to a juror about a case the jury is hearing, the juror should:

1. Tell the person it is improper for a juror to discuss a case or receive any information about it except during the course of a trial.
2. Refuse to listen if the person persists.
3. Report the incident to the judge at once.

Improper conduct by a member of the jury during the course of a trial may make a new trial necessary. If, during the trial, a juror learns elsewhere of a fact about the case, the judge should be informed although it should not be mentioned in the courtroom. Individual jurors should never inspect the scene of an accident or other event in a case. If the judge decides it is necessary, an inspection will take place under court supervision.

There are some cases which may draw much public discussion or attention. In such cases, the jury may be SEQUESTERED (kept together) until a verdict is reached. This is done to protect the jurors from outside influence.

During the trial, each juror should give close attention to the testimony. Jury members are sworn to keep an open mind, disregard personal prejudices, follow the instructions of the court and to come to a verdict according to their best judgment. Jurors are expected to use their experience, common sense and common knowledge. They are not to rely on any private source of information in deciding a case.

**In the jury room**

After retiring to the jury room to decide the case, the jurors first elect a FOREPERSON. This should be someone who is capable of presiding, and who will give each juror a fair opportunity to express individual views.

In a criminal case, all jurors must agree on a verdict. In a civil case, the instruction of the court will state how many must agree. Jurors must enter the discussion with an open mind. They should exchange views freely and should not hesitate to change opinions. Jurors have a duty to give full consideration to the opinion of their fellow jurors. They should try to reach a verdict whenever possible. **NO JUROR IS REQUIRED TO GIVE UP ANY OPINION WHICH THAT JUROR IS CONVINCED IS CORRECT.**

The members of a jury are sworn to pass judgment on the facts of a particular case. They have no concern beyond that. **THEY VIOLATE THEIR OATH IF THEY MAKE THEIR DECISION ON THE BASIS OF THE EFFECT THEIR VERDICT MAY HAVE ON ANY OTHER SITUATION.**

*This brochure is based in South Dakota law and is designed to inform, not to advise. The material in this handout represents general legal principles. THIS INFORMATION IS NOT INTENDED TO TAKE THE PLACE OF THE JUDGE'S INSTRUCTIONS.*