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User Notes

Thank you for choosing to use the *Trial Notebook.* This work represents the Texas Justice Court Training Center's ongoing commitment to provide resources, information, and assistance on issues of importance to Texas Justices of the Peace and Constables and their court personnel, and continues 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. We hope you will find it to be a valuable resource in providing fair and impartial justice to the citizens of Texas.

The *Trial Notebook (4th ed. September 2023)* is intended to offer a practical and readily accessible source of information relating to issues you are likely to encounter in preparation for and during trial. It is not intended to replace original sources of authority, such as the Civil Practice and Remedies Code or the Texas Rules of Civil Procedure. We strongly recommend that you refer to the applicable statutory provisions and rules when reviewing issues discussed in this book.

The trial scripts section of this notebook is intended to be customized to your court's needs and prepared in advance for each trial. Using them without this preparation will not be helpful and may be confusing to you and the people in the courtroom.

Please note that all references to "Rule __" are to the Texas Rules of Civil Procedure. Any reference to "TRE" is a reference to the Texas Rules of Evidence.

Please do not hesitate to contact us should you have any questions or comments concerning any of the matters discussed in the *Trial Notebook.*

Texas Justice Court Training Center
September 2023

Chapter 1: What is a Trial?

What is a trial and why do we have them?

A trial is a method of settling a fact dispute between private parties (a civil case) or determining whether someone has broken the law (a criminal case).

Most cases never make it to a trial. In most criminal cases, the defendant pleads guilty or no contest to the charge and enters into a plea bargain. Prosecutors can also file a motion to dismiss, resolving cases before trial. In most civil cases, the parties agree to settle the case, or the defendant fails to respond, and a default judgment is entered against them.

There are two kinds of trials:

- Bench trial: the judge hears the facts and decides the case.

- Jury trial: a group of citizens hears the facts and decides the case with the judge managing the trial and handling any legal issues.

Chapter 2: Discovery

A. What is Discovery?

Discovery is the way that parties in a case exchange information, such as pictures, documents, and statements, related to the case.

Despite what is shown on television, surprises are not meant to happen in a trial. This has been the view of the Texas Supreme Court for many years. Discovery is "to allow parties to obtain full knowledge of the issues and facts of the lawsuit before trial." ***West v. Solita.*** The objective of the Texas discovery rules is to prevent trial by ambush. ***Gutierrez v. Dallas ISD.***

1. Discovery in Criminal Cases

Criminal discovery issues are almost always handled by the prosecutor. Most county and district attorney offices automatically give the defense attorney or defendant the information they are asking for.

However, there is a law that governs the process for the defendant to formally request evidence that is relevant to the case and outlines what the state must give to the defense. This is often referred to as the "Michael Morton Act," a 2013 bill of the same name that broadened the scope of information that the state is required to provide to the defendant or their attorney if they have one. The state **must** give the defendant any evidence that is in their possession or allow them to inspect and copy the information. Because of recent scrutiny of this process, many prosecutor's offices have created policies to make sure this is complied with. *Code of Criminal Procedure Art. 39.14*; Chapter 6 of the *Criminal Deskbook.*

KEY POINT

If there is exculpatory, mitigating, or impeaching information in the custody of the state, the state **must** inform the defense and disclose that information to the defense without a request. This includes any information that tends to negate the guilt of the defendant or tends to attack the truthfulness or credibility of a witness. *Code of Criminal Procedure Art. 39.14;* Chapter 6 of the *Criminal Deskbook;* ***Brady v. Maryland.***

COMMON PITFALL

The prosecutor **does not** have the right to request information or evidence from the defendant. The defendant has constitutional rights that allow them to remain silent, and those rights extend to the defendant being asked to produce documents as well.

Examples of what the defendant might ask for in a criminal case: *A copy of the citation, a copy of any police report or any witness statements, the dash cam or body cam footage of the traffic stop.*

2. Discovery in Civil Cases

Discovery may happen at two different times in a civil case: before trial (or "pre-trial") and after trial (or "post-judgment"). This section will first explain various types of discovery requests parties might make, and then outline the step-by-step process a court will go through when they receive a discovery motion or request before trial and post-judgment.

Types of Discovery

There are several types of discovery requests that a party may use to ask the other party for information. Those are:

- Requests for Disclosure
- Requests for Admissions
- Interrogatories
- Requests for Production, **and**
- Depositions

a. Requests for Disclosure

These are specific requests outlined in the Texas Rules of Civil Procedure which have already been approved by the Texas Supreme Court. This is the only type of discovery where the specific list of questions that a party can ask is included in the Rules of Civil Procedure. *Rule 194*.

The requests allow for the exchange of information about:

- Correct names of the parties
- Potential parties
- Potential witnesses and what information they may have
- General legal theories
- How damages were calculated
- Insurance policies
- Medical bills, if claiming injury, **and**
- Expert witness information

Example of a proper Request for Disclosure: *Please provide a list of all potential witnesses and what information that witness has relative to the case.*

KEY POINT

The court should deny any objections to proper requests for disclosure, because these requests have already been approved by the Texas Supreme Court.

b. Requests for Admissions

Requests for admission are written statements that ask the other party to "admit" or "deny" the truth of a statement. *Rule 198.1.* Each request for admission must state a separate fact. These types of requests are not meant to lead to additional evidence or to investigate the case. Requests for admission are intended to narrow the facts of the case and eliminate issues where there is no disagreement, but a plaintiff shouldn't rely only on this tool to prove their whole case.

What are some things to consider when a party asks for an order granting requests for admissions?

COMMON PITFALL

They are not meant to cause a party to admit they have no case or have no defense. ***Stelly v. Papania.*** They are not meant to be "sweepingly broad," asking one party to admit wrongdoing. ***LRT Record Servs., Inc. v. Archer.***

- *Example of a **proper** Request for Admission: (in a debt claim case)*
  Admit that you made charges on the VISA credit card issued by Bank of America with the following number 12345678.

- *Example of an **improper** Request for Admission: (in a debt claim case)*
  Admit that you have no legal defense to the plaintiff's claim.

What if a party doesn't respond?

If a party doesn't respond, the court could give them time to answer and direct them to answer. The court could also apply Rule 198.2 under Rule 500.3(e) and consider that fact admitted. *Rule 198.2.* This is known as a "deemed admission."

If a self-represented litigant failed to answer or they would like to change their response, you can allow them to answer or modify their response. There is even a rule that outlines the process in higher courts. Rule 198.3 of the Texas Rules of Civil Procedure allows this when:

- The party shows "good cause" for the withdrawal or amendment, **and**

- The court finds that the party relying on the responses will not be unfairly prejudiced.

KEY POINT

The option to withdraw a response is only available in a Request for Admission.

COMMON PITFALL

"Good cause" in this case has been addressed by the Texas Supreme Court. Even though self-represented litigants are not usually held to a different standard than attorneys, the Texas Supreme Court recognizes that there is a difference [between attorneys and self-represented litigants] and a court **may** take that difference into account when ruling on a motion to withdraw or amend "deemed admissions," which are admissions that occurred

because the party failed to respond on time to the request for admission. ***Wheeler v. Green.***

c. Interrogatories

Interrogatories are written questions that require an answer **under oath**. They are meant to let the asking party learn more information specific to the case. A party can be asked to describe, in general, the factual grounds for the party's claims or defenses. *Rule 197.1.*

The responding party can object if they think that there is a legal reason that they should not have to answer a particular question. These are different than Requests for Disclosure, because parties are able to draft their own questions rather than using ones set out in the rules.

- ***Example:*** *Explain how you claim your auto body shop correctly fixed the transmission in my 2010 Honda Accord.*

d. Requests for Production

A request for production allows a party to ask to inspect, sample, test, photograph, or copy documents or items that relate to the case. Most of the time, the request will be for copies of documents or photographs.

The request must be specific in what the party is asking for and describe what is being requested in a way the responding party will reasonably know what item is being asked for. *Rule 196.1.*

One common objection to this type of request is that it is not specific enough.

- ***Example:*** *Please provide a copy of all medical bills resulting from the motor vehicle accident that is the basis for the claim in this suit.*

COMMON PITFALL

A party "cannot be forced to prepare" or create a document that does not exist or is not "kept in their normal course of business." **In re Colonial Pipeline Co.**

- ***Example:*** *(to plaintiff in a car accident case) Provide diagram of the motor vehicle collision. [The plaintiff likely doesn't have a diagram and has no obligation to create one just because they were asked to provide one. Other types of requests might include charts/graphs or outlines of data that the answering party did not create. In the case of a car accident, maybe law enforcement created a diagram, but the plaintiff does not have that diagram.]*

e. Depositions

A deposition is sworn testimony for use later either in court or to assist in enforcing a judgment. It can be recorded by a court reporter, by video, or a combination of the two. The people present at a deposition are typically the court reporter, the plaintiff and/or their attorney, the defendant and/or their attorney, and the witness giving testimony. A deposition can be of a party or a witness to the case. *Rule 199.1.*


KEY POINT

Depositions are not used often in justice court, but the court may allow them if the court finds it "reasonable and necessary."

When might a deposition be appropriate in a justice court case?
A couple of examples of when a deposition might be appropriate in justice court are: if an event has a complicated timeline, or an important witness is moving far away and might not be available for a later trial.

Paying for a deposition (typically, the cost of the court reporter) is governed by Government Code § 52.059. Any attorney who "appears" (is present) at, or "takes" (asks the questions at) the deposition can be held liable to pay for the cost of the deposition by the court reporter. However, in practice, a court reporter is going to send the bill to whoever contacted them to take the deposition. This might mean that one side pays and the other owes them for their half of the cost. After a deposition, a transcript may be requested from the court reporter. It is paid for by the party taking the deposition, and the reporter can also charge a fee for making a copy for the other party. The reporter must make the transcript available to both parties to copy. *Rule 203.3(c).*

How do you handle a request to take a deposition pre-trial?

BEST PRACTICE

The court can be specific about how the deposition is scheduled and how notice is given to the other party and witness. The court can instruct the parties to agree to a place and time by a certain date. If they don't agree by that date, the court could set the date and time. It is best practice to order a limit on the length of the deposition. An hour should be more than enough time for a typical justice court case.

After trial (or post-judgment), setting a deposition can happen without approval from the court. *See more about post-judgment discovery on **page 15**.*

Notice of the deposition should be informally served to the person being deposed and the other parties. The person being deposed should be identified in the notice. *Rule 199.2;* See "Informal Service" on **page 10** of this volume and in Chapter 4 of the *Civil Deskbook.*

f. Pretrial Discovery Procedure

Overview

KEY POINT

Pretrial discovery is permitted in justice court **but** is limited to what the judge considers "reasonable and necessary." In this way, the court is the gatekeeper – any request for discovery must be by written motion and approved by the court. *Rule 500.9(a).*

The motion requesting discovery must be served on the responding party. Unless a hearing is requested, the judge may rule on the motion without a hearing. The party asking for discovery cannot serve the discovery on the other party without a signed order from the judge approving the request. This is different than it is in county and district courts where attorneys do not have to get approval from the court to conduct discovery.

Failure to comply with a discovery order can result in sanctions, including dismissal of the case or an order to pay the other party's discovery expenses. ***See page 14 for more on sanctions.***

Below is the step-by-step process of how discovery works in a justice court civil case pre-trial.

Step 1: Motion for Discovery Request Filed

- A party may submit a discovery request at any time after a case is filed, including with the filing. *This will often be discovery requests submitted with the petition instead of as a formal motion. The court should treat it as a motion.*

- The request must also be served on the opposing party.

- Service of discovery can be "informal" – mailed, faxed, delivered in person, or emailed (if agreed to in the petition) *Rule 500.9(a) & Rule 501.4(a).*

There is no need to pay a sheriff, constable, or process server to formally serve every discovery filing. A party may choose to do this, but it is not required of them.

Texas Rule of Civil Procedure 501.4 states how everything **except** a citation must be served on other parties:

- In person;
- By mail or courier – receipted delivery or by certified or registered mail;
- By fax;
- By email – to an email address expressly provided by the receiving party, and only if the receiving party has consented in writing; **or**
- Another method approved by the court.

This is sometimes called **"informal service."**

KEY POINT

What if discovery is sent to a party without court approval?

A party might respond to a discovery request. However, a party has no obligation to respond to discovery that **has not been approved by written order** of the court. If the party responds anyway, the court may choose to deny the improper discovery request and exclude the information from the case. If the party does not respond, the failure cannot be used against the party who did not respond, because the discovery was never approved by the court.

COMMON PITFALL

What if discovery requests are included in the petition?

Sometimes, a plaintiff may list the requested discovery in the petition. This is often called "imbedded discovery." If this discovery does not come to the court as a request, it might

not be seen by the court, so there might not be an order issued approving or denying the discovery. The defendant would not have to respond to the imbedded discovery request unless the court issues an order requiring it. This practice is becoming less common but could still happen.

Step 2: The Responding Party May Object

- The responding party may request a hearing.

- The responding party may object that the discovery requested is unnecessary or unreasonable. Many times, the objection will be that the request is unreasonable, because it is too broad and difficult to answer.

Step 3: Hearing Upon Request (*this does not happen often*)

- The court may hold a hearing on discovery but is not required to unless a party requests one.

- There is no timeframe stated in the rule as to how long the court must wait for the responding party to request a hearing. "Reasonableness" should be considered when setting the hearing to give enough time for both parties to prepare and take time from work.

- If a hearing is requested, the court should set it, provide notice to all parties, and hear any concerns.

- **If the opposing party does not request a hearing**, the court may sign an order granting discovery without a hearing.

Step 4: Issuing the Discovery Order

- The judge **must** issue a signed order if discovery is approved and send a copy of the order to all parties. TJCTC has a discovery order form online available under Civil Procedure on the TJCTC forms page.

- The court has broad discretion in determining what to allow and how long to give a party to respond. The court should ask itself, "What discovery is

reasonable and *necessary*?"

- It is okay to simply mark through sections of discovery that the court does not believe are reasonable and necessary on the proposed order; or the court may require the party to draft a new proposed order based on what the court has decided is appropriate discovery in the case.

- The order needs to be clear as to **what** the party must respond to and **when** the responses are due.

- Once there is an order approving discovery, the discovery must be served on the other parties. This service may be by "informal service." *Rule 501.4*. ***See page 10 for a discussion of informal service.***

Modify the Discovery Request

How does the court modify the discovery request to match what the court will allow?

The judge can simply mark through sections that they do not approve of and can attach it to a signed order.

The judge can also require a party to draft a new order including only the approved discovery requests for them to sign.

There is no required process for these modifications. Just make sure that it is clear what the court has ordered.

Step 5: If a Party Fails to Respond to Discovery

- If a party fails to respond to approved discovery, this should be brought to the court's attention by the filing of a "motion to compel" and should be set for hearing. The motion to compel should **not** be brought by the court on its own. It is up to the requesting party to make a motion to compel.

- A motion to compel may also be brought for failure to adequately respond or failure to respond completely. *Rule 215.1(c).*

- The court should hear the arguments as to why discovery was not responded to or did not sufficiently comply with the order.

- If a court grants a motion to compel, then it may order sanctions, discussed further below. *Rule 500.9(a).*

- The court could also either order a new answer date or modify the original discovery order at a motion to compel hearing.

What is a Motion to Compel? It is a party's request that the court force the party's opponent to respond to the party's discovery request. **Black's Law Dictionary.**

Tips for Reviewing Discovery Requests

If a party asks for information about a **potential witness**, they are allowed to have the following types of information:

- Identity
- Connection with the case
- Witness statements
- Matters not privileged

Rules 192.3(a) & 132.5(c).

If a party asks for "**electronic data**," email is included in that definition. ***In re Weekly Homes.***

In most cases, the dollar amount of a settlement agreement is not disclosed, because it is not relevant. ***Ford Motor Co. v. Leggat.***

Photographs in many forms, such as still pictures, x-rays, video tapes, and motion pictures, are often discoverable. *Rule 192.3(g).*

Income tax returns can be discovered if relevant and material. ***Hall v. Lawlis.***

KEY POINT

The existence of **insurance** in a case should **not** be brought into evidence at trial. *TRE 411.* However, **insurance agreements** can be discovered. The plaintiff may want to use that information to determine how much insurance is available and help guide any settlement agreements. ***Carroll Cable Co. v. Miller.***

When a request asks for "**documents and tangible things**," this includes papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations. *Rule 192.3(b).*

The words "**possession, custody, or control**" of an item mean that the person either has physical possession of the item or has a right to possession that is equal to or superior to that of the person who has physical possession. *Rule 192.7(b);* ***In re Kunts.*** For example, if a person has given documents to their accountant, and a document request calls for production of those documents, the person has an obligation to get them from the accountant in order to produce them.

Sanctions

There are not any specific rules for justice court relating to motions to compel and sanctions. The court may use Rule 215.1 of the Texas Rules of Civil Procedure as guidance for possible sanctions to order.

Some examples of the sanctions available are:

- A court order for reasonable expenses for having to bring a motion to compel, including attorney's fees.

- No more discovery by the disobedient party.

- Facts that were the subject of the discovery order shall be taken as favorable to the claim of the party obtaining the order.

    - ***Example in a car accident case:*** *if the issue of the color of the light was asked in a discovery request, and a party violated the discovery order, the court could find the light was the color favorable to the non-violating party.*

- Facts that were the subject of the discovery order not allowed into evidence.

    - ***Example in a debt claim case:*** *if the issue of the correct address was asked in a discovery request, and a party violated the discovery order, the court could sanction the requesting party to not discuss the correct address.*

- Strike pleadings, dismiss the case with or without prejudice, or grant a default judgment against the disobedient party.

- Contempt

COMMON PITFALL

Contempt should **always** be a last resort. See Chapter 3 of the *Officeholding Deskbook.*

> ***"[F]or sanctions to be just, there must be a direct nexus among the offensive conduct, the offender, and the sanction imposed. A just sanction must be directed against the abuse and toward remedying the prejudice caused to the innocent party and the sanction should be visited upon the offender." Spohn Hops. v. Mayor. This means that sanctions must be related to the bad conduct and aimed at fixing the harm caused to the party who the bad conduct was aimed at.***

g. Post-Judgment Discovery

After a judgment is issued, discovery serves a different purpose. Before the trial, parties are trying to learn what information the other side has. After the judgment, the focus is on determining if there is money or other assets to satisfy the judgment and where they are located. Post-judgment discovery requests often ask very personal questions about finances.

- ***Example:*** *Where do you bank and what is your account number?*

The types of discovery requests most commonly used after judgment are interrogatories, requests for production, and depositions.

KEY POINT

Post-judgment discovery is **not** required to be filed with the court for approval.

Even though they don't require court approval, there are still guidelines for discovery requests after judgment. The requesting party must give at least **30 days** for the other party to respond to the discovery requests. The responding party may file a written

objection with the court within 30 days of receiving the request. If an objection is filed, the judge **must** hold a hearing to determine if the request is valid. If the objection is denied, the judge **must** order the party to respond to the request. If the objection is upheld, the judge **may** modify the request or dismiss it entirely. *Rule 500.9(b).*

Failure to respond to discovery can result in an order from the court after a motion to compel. Failure to respond to that order can result in sanctions. However, some sanctions, like dismissing the case, won't be available. That is because there is already a judgment, and the case can no longer be dismissed. **See page 14 for a discussion of sanctions.**

COMMON PITFALL

The court should **always** use caution when deciding to impose any sanction.

Chapter 3: Preparing for Trial

A. Pretrial Hearings

Holding a pretrial hearing (sometimes called "pretrial conference") is not a requirement, but many courts find that it is a helpful step.

What happens at a criminal pretrial hearing?

In a criminal case, a pretrial hearing can give the defendant and the prosecutor an opportunity to discuss a plea bargain, many times resolving the case more efficiently. Because this is the main purpose of a pretrial hearing in a criminal case (sometimes called a disposition docket), you want to work with your prosecutor to set these hearings at a time when the prosecutor is available. Always remember that the court should never participate in or overhear settlement or plea negotiations, so there should always be a room available for the parties to meet or the judge should only go in the courtroom when the party has reached an agreement for a plea or for a hearing about other pretrial matters.

KEY POINT

Other pretrial matters that might need to be discussed with all parties and the judge are outstanding discovery requests, scheduling, or requests for subpoenas. This can be especially helpful when there are self-represented defendants who might not realize that they have to ask for subpoenas to be issued.

What happens at a civil pretrial hearing?

In civil cases, some courts hold a pretrial hearing every time a case is set for trial. Other courts only set one when the parties ask, or if the court believes that the parties may need some help to be prepared and organized for the trial.

A pretrial hearing gives the court an opportunity to discuss any issues with the parties and make sure that the case is ready. Rule of Civil Procedure 503.4 outlines appropriate issues for pretrial hearings in civil cases. These issues are:

- Discovery;
- The amendment or clarification of pleadings;

- The admission of facts and documents to streamline the trial process;
- A limitation on the number of witnesses at trial;
- The identification of facts, if any, which are not in dispute between the parties;
- Mediation or other alternative dispute resolution services;
- The possibility of settlement;
- Trial setting dates that are amenable to the court and all parties;
- The appointment of interpreters, if needed;
- The application of a Rule of Civil Procedure not in Part V or a Rule of Evidence;
- Any other issue that the court deems appropriate.

COMMON PITFALL

The court must not schedule a pretrial hearing in an eviction case if it will delay trial. *Rule 503.4(b).*

A pretrial hearing is also a good time to remind civil parties that there are special rules in justice court. You may want to remind the parties that the judge must develop the facts of the case to ensure justice is served. This includes the court asking questions of witnesses. *Rule 500.6.*

B. Witnesses and Interpreters

1. Subpoenas

The court **must** issue subpoenas at the request of the parties in both civil and criminal cases.

In **civil cases only**, the court can also use subpoenas to bring in a witness that neither party has listed, but who the court might find helpful to hear from. For example, if the

case is about repair work on a roof and neither party has listed the roofer to testify, the court may want to subpoena that roofer so the court can understand the claims better. *Rule 500.8.*

Subpoenas are used in criminal cases, but only by the parties. If the state or defendant asks the court to issue a subpoena, it **must**. However, in a criminal case, the court **may not** subpoena a witness the court wants to hear from if one of the parties has not requested a subpoena for that witness. See Chapter 6 of the *Criminal Deskbook; Code of Criminal Procedure Arts. 24.01(a), 45.012(g); Government Code § 27.059(b*); ***Averitt v. Gutierrez.***

Subpoena's Initiated by Court or Party?

Civil: A party can request a subpoena, or the court can subpoena a witness on its own.

Criminal: A party can request a subpoena, but a court **may not** subpoena a witness on its own.

COMMON PITFALL

A court cannot subpoena the arresting officer in a criminal case unless one of the parties requests them to do so.

2. Interpreters

Courts are required to provide interpreters if a party or witness requires one to participate in court proceedings. For resources on locating interpreters and full procedural details, including qualifications and compensation, please view the TJCTC module on the topic, available at ***https://www.tjctc.org/onlinelearning/selfpacedmodules.html***.

3. Exclusion of Witnesses

KEY POINT

The following rules apply to both civil and criminal cases.

Witnesses who are not parties to the case may be excluded from the courtroom while other witnesses testify (also called "sequestered"). *Rule 500.7* and *TRE 614.* If excluded, witnesses should wait in a location where they cannot hear the other witnesses testify. The court **must** separate the witnesses if asked by a party but can also do this on their own motion. Most courts automatically keep witnesses separate. If you plan to make this

your practice, make sure your bailiff knows where the witnesses will wait until being called to the witness stand.


KEY POINT

Most lawyers will ask the court to exclude witnesses by "invoking the rule." See Chapter 6 of the *Civil Deskbook.*

C. Control of the Courtroom

Another helpful Texas Rule of Evidence is Rule 611. This rule says that the court controls the trial proceedings. It means that you can control how long a case takes, can protect a witness from harassment, and have overall control of the court proceedings. You do not want to interfere with either party's case, but the courtroom is controlled by the judge. This can come up at all stages of a case: pretrial, during trial, and post-trial.

D. Assisted Representation

The rules for civil cases in justice court allow a party to have "assisted representation." *Rule 500.4(c).* The court should approve this request if a party shows good cause, and it is another good issue to resolve at a pretrial hearing. For further detail on assisted representation, please see Chapter 4 of the *Civil Deskbook*.

E. Postponement of Trial (Continuances)

Attorneys and self-represented litigants in civil or criminal cases can ask for a continuance (sometimes called postponement). *Rule 503.3(b).* The court should balance being fair with maintaining an effective docket.

If a party is abusive in the number of continuances they ask for, even if they always seem to have a "good reason," you can deny the continuance. Many courts allow one continuance for each side (allowing for an emergency). **Exception in a criminal case**: if a defendant gets less than three business days' notice of the trial, the court **must** grant the motion for continuance, which may be oral or written. *Code of Criminal Procedure Art. 29.035, 29.04-29.08.*


KEY POINT

F. Conducting a Virtual Trial

The Supreme Court issued Rule 500.10, effective February 1, 2023, which gives guidance to courts in remote court proceedings in justice court civil cases. This rule allows judges to decide whether to allow or require participants to appear remotely in court proceedings and requires judges holding remote proceedings to still be located in their courtroom or other place provided by the commissioners court for holding court. The court must provide the public the opportunity to observe the court proceeding, unless the judge has determined that the proceeding must be closed to protect an overriding interest, considered all less-restrictive alternatives to closure, and made findings in a written order adequate to support closure.

For more information, including technical information and open court issues, please visit the ***OCA Virtual Hearings Page***.

Chapter 4: The Jury Trial


KEY POINT

Criminal and civil cases can both have jury trials. However, how each kind of case becomes a jury trial is different. In a criminal case, every case set for trial is a jury trial, **unless** the party waives the jury trial in writing. *Code of Criminal Procedure Art. 45.024.*

Criminal Jury Fee

For an offense occurring before January 1, 2020: if the defendant does not waive the jury trial, and they are convicted at the jury trial, then a $3 fee is added to the judgment. The $3 fee also applies if a defendant is convicted based on changing their plea within 24 hours of trial. *Code of Criminal Procedure Art. 45.026, 102.004.*

Please note that this fee was repealed by SB 346 in the 86th Legislative Session (2019). For an offense occurring **on or after January 1, 2020**, the court no longer applies this fee.


KEY POINT

Civil and Eviction Jury Request and Fee

In a civil case, the party who wants a jury trial must ask for it and must pay a $22 jury fee by the 14th day before trial. *Rule 504.1(a)(b).*

If a party who asked for the jury and paid the fee changes their mind, the case will remain on the jury docket unless all other parties present agree to try the case without a jury. A party that withdraws its jury demand is not entitled to a refund of the jury fee. *Rule 504.1(c).*


COMMON PITFALL

In an eviction case, the party who wants a jury trial must ask no later than the 3rd day before trial and pay the $22 fee*. Rule 510.7(b).*

A. Securing Jurors for the Panel

Once a case is set for jury trial, how do you get potential jurors to the court? Check with your county to see if they have an electronic or paper jury "wheel" - or system - for deciding who will be called for jury duty. In some counties clerks for each court notify jurors, and other counties have a central jury system where the district clerk's office notifies potential jurors for every court. Jurors are notified by summons either by the clerk of the justice court or the county or district court, depending on the county. *Rule 504.2(a).*

KEY POINT

Remember, a trial must be held between 10-21 days after filing in an eviction case. Your court **must** follow this rule even if your county only summons jurors once a month. This means that if a jury trial is requested, the clerk may have to summon jurors, or the court may have to have your clerk or constable summon potential jurors that day. You should always check with your county first to see if they are willing to summon jurors through their wheel process or send "overflow" jurors to the justice court, but you must provide the jurors even if the county will not or cannot help provide the jurors. A justice of the peace may command the clerk, sheriff, or constable to immediately summon additional persons for jury service in the justice court if the number of qualified jurors, including persons summoned under Section 62.016, is less than the number necessary for the justice court to conduct its proceedings. *Government Code §§ 62.412, 62.411.*

If a juror fails to appear in response to a summons, the court may fine them. This is technically a contempt proceeding, and the judge would need to hold a hearing with the potential juror present. In a civil case, the fine can be between $100 and $1000. In a criminal case, the fine is up to $100. You always need to be sure the potential juror actually **received** notice before issuing a fine. *Government Code §62.014; Code of Criminal Procedure Art. 45.027.*

> ***Many courts do not fine a person when they fail to appear for jury duty. The national failure to appear rates for all summonses is nine percent. However, the failure to appear rate varies by jurisdiction, from less than one percent to up to 50 percent. Jury responses can be very bad, so if you are in an area with a particularly low response rate, you may want to work with your fellow judges and decide on a policy of how to respond.***
> ***Paula Hanaford-Agor, "Tales of 'Tale' Juries".***

1. Juror Screening

The next piece of information that you need to learn from your county is the screening process they use on potential jurors. This is because there are certain questions that must be asked about a potential juror's ability to sit in a case in the State of Texas. Some counties have an online juror registration system where those questions are asked. Some

counties have a juror orientation where the potential jurors fill out questionnaires that determine if they are qualified to be a juror (sometimes called “pre-qualified jurors”).


COMMON PITFALL

You need to know this process, because if these mandated questions are not asked before the potential jurors get to you, you **must** ask these questions of the potential jurors when they arrive in your court and after they have sworn to the first of two oaths that are given during the jury selection process (discussed further in the next section). If you need to ask these questions, they are provided in the suggested scripts in this Trial Notebook. ***Please see Appendix: Suggested Scripts for Trial Proceedings.***

In general, information about the potential jurors and the selected jury panel (including addresses and other information) is confidential. *Code of Criminal Procedure Art. 35.29; Government Code § 62.0132(f).*

Juror Qualifications

All potential jurors must meet certain qualifications to be selected as a member of the jury panel in both civil and criminal cases. Each juror is only eligible if the person:

- Is at least 18 years of age;
- Is a citizen of the United States;
- Is a resident of Texas and of the county in which the person is to serve as a juror;
- Is qualified under the constitution and laws to vote in the county in which the person is to serve as a juror;
- Is of sound mind and good moral character;
- Is able to read and write;
- Has not served as a petit juror for six days during the preceding three months in the county court or during the preceding six months in the district court;
- Has not been convicted of misdemeanor theft or a felony; **and**

- Is not under indictment or other legal accusation for misdemeanor theft or a felony.

Government Code § 62.102.

KEY POINT

Any potential member of the jury that does not meet these qualifications can **never** serve as a jury member.

Juror Exemptions

There are also "exemptions" from jury service. These are categories that exempt a person from jury service, so if a person falls into one of these categories, then they can elect not to serve on the jury, and the court **must** excuse them **if** the person claims the exemption. An exemption may be established if a person:

- Is over 75 years of age;

- 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;

- Is a student of a public or private secondary school;

- Is a person enrolled and in actual attendance at an institution of higher education;

- Is an officer or an employee of the senate, the house of representatives, or any department, commission, board, office, or other agency in the legislative branch of the state government;

- Is summoned for service in a county with a population of at least 200,000, unless that county uses a jury plan under Government Code Section 62.011 and the period authorized under Section 62.011(b)(5) exceeds two years, and the person has served as a petit juror in the county during the 24-month period preceding the date the person is to appear for jury service;

- Is the primary caretaker of a person who is unable to care for himself or herself;

- Is summoned for service in a county with a population of 250,000 and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service. (This does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror) **or**;

- Is a member of the United States military forces serving on active duty and deployed to a location away from the person's home station and out of the county of residence.

Government Code § 62.106.

KEY POINT

If a potential juror meets an exemption, but they still want to serve, they can. For example, if a potential juror is 78 years old and otherwise meets all of the juror qualifications, they can elect not to take the exemption.

Juror Excuses

Potential jurors might also have a good excuse for why they can't serve as a juror for a particular time period, and the court may hear those excuses and determine if they are sufficient. *Government Code § 62.110.* The judge should hear the excuses, determine if they are sufficient, and then reschedule the prospective juror for another panel if applicable.

Examples of common, sufficient excuses are that the potential juror has a surgery scheduled during the trial or the potential juror has a pre-arranged trip scheduled while the trial will be pending. In these cases, both potential jurors could be a qualified juror for another case on a different day, but they have a good reason not to serve that particular day.

COMMON PITFALL

Often, potential jurors will claim they cannot serve because they will miss work and lose money. Generally, this is not an adequate reason not to serve on the panel. *Civil Practice and Remedies Code § 32.110(c).*

The court should accept legitimate excuses if there are enough potential jurors left over. Potential jurors who have something else going on in their life which caused them to ask to be excused might not be paying close attention to the evidence. If the judge explains to potential jurors what kind of excuses will be accepted prior to hearing the potential jurors' excuses, frivolous excuses should be limited.

B. Jury Selection

When the potential jurors arrive in your court, jury selection happens. This is also called "voir dire" – the Latin root means "to speak the truth," and the phrase in French means, "to see, to say." Both sides can question the jurors in every case. The court can also ask questions of the jurors in civil cases and ask questions to clarify a potential juror's answer in both civil and criminal cases. The prosecution or the plaintiff will go first because they have the burden of proof. Many courts give a time limit for the length of the jury selection. A typical amount of time for each side in a justice court case is 15 minutes.

KEY POINT

There are two oaths that must be given to the jurors. The first is when the potential jurors are sworn in to be questioned (prior to any questioning about qualifications) and the second is when the potential jurors are sworn in as jurors.

The judge must read the first oath to the potential jurors before jury selection begins.

REQUIRED LANGUAGE

In a civil case: *"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." Rule 504.2(b).*

Use of the Jury Panel for Multiple Trials

The court may use the same panel of prospective jurors, but jury selection **must** be conducted for each trial where both parties get to ask questions and strike objectionable jurors. Every case has different parties (in criminal cases, the defendant always changes), and each of those parties is entitled to ask questions of the potential jurors. The court **cannot** just pick a jury of six and re-use those same jurors for all four trials that are set that day.

REQUIRED LANGUAGE

In a criminal case: *"You, and each of you, 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 your service and qualifications as a juror." Code of Criminal Procedure Art. 35.02.*

How the logistics of jury selection is handled varies from court to court. Some courts bring in potential jurors one at a time. Some courts will question a section of jurors and only bring in more potential jurors if a panel of six cannot be selected out of the people already questioned. However, the most common way to pick jurors is to bring all potential jurors into the courtroom and place them in the audience. The parties turn to face them and ask questions of the whole panel at once and may choose to ask specific jurors questions. There may be space limits placed on your court based on the size and layout of the courtroom you use for trials.

Trials are open to the public (including jury selection). If a person comes to watch jury selection, they can't be excluded from the courtroom. The judge or bailiff may ask them to stand in the hall while potential jurors are seated, but they must be allowed back in the courtroom when the actual process of picking the jury begins.

Press-Enterprise Co. v. Superior Court.

Remember, the court must make sure that the jurors are qualified before the parties ask them questions. See a discussion of juror qualifications on ***page 24.***

KEY POINT

Once the questioning begins, there may be potential jurors who want to respond to a question "privately." Both parties are entitled to hear what the potential juror has to say, so a good way to handle these instances is to have the potential juror and both parties approach the bench and allow the juror to answer and allow the parties to ask any follow-up questions quietly at the bench.

- ***Example:*** *In an assault case, a potential juror may be the victim of domestic violence in the past and wants to express their inability to be fair to the defendant but may not want to tell everyone about their past experience.*

The judge will have discretion to allow or disallow specific questions and determine the amount of time each side will have for this process. *Rule 504.2(c).*

The types of questions that the judge shouldn't allow are questions that are irrelevant or immaterial to the case, repetitious questions, or commitment questions.

Commitment Questions

While the form of questions is generally under the court's discretion, there are some questions that the law prohibits parties from asking. These questions are called "commitment questions." A commitment question is when a party asks a juror to commit to a particular verdict based on facts other than something that would prove they were not impartial. ***Davis v. State; Standefer v. State.***

- ***Example:*** *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 based on specific facts or scenarios.*

In a criminal case a commitment question would be something like, "If the defendant refused a breath test, would you convict them?" Or "could you convict a person arrested with a crack pipe that contains a measurable amount in it?" ***Atkins v. State.*** But a prosecutor may question a jury panel about the burden of proof, beyond a reasonable doubt, in a criminal case, such as "Would you be able to convict if you found the State had proven its case beyond a reasonable doubt?" ***Lavigne v. State.***

How does a party remove a potential juror they do not want on the jury panel?

After both parties have completed their questions to the panel, the selection process begins. However, it is more of a de-selection – each side uses "strikes" (sometimes referred to as challenges) to remove potential jurors that they find objectionable. Up until now, the process has been in open court in front of the jurors. Now, the jurors should be taken to another place in the courthouse. This is to give the parties an opportunity to make their "strikes" with the court and speak openly about the process.

There are two ways for a party to remove or "strike" a potential juror from the panel: a "strike for cause" and a "peremptory strike."

1. Strikes for Cause

Just like a judge hearing a case, the jury must be fair and impartial, and they must wait to hear the evidence before deciding who should win. Some jurors will say things (either on purpose or unknowingly) that show they cannot be fair. A "strike 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 makes the juror unfit to sit on the jury. A party may then ask for that witness to be stricken for "cause."

A party may strike any juror for cause. 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 strike. When a strike for cause has been sustained, the juror must be excused. *Rule 504.2(d); Code of Criminal Procedure Art. 35.16.*


KEY POINT

There is no limit to the number of jurors who can be stricken for cause.

- ***Example in a civil case**: "I don't like lawsuits. People should just work it out privately."*

- ***Example in a criminal case**: "She must have done something, or the police wouldn't have arrested her."*

In both of these examples, the jurors would not be fair and impartial to both parties.

2. Peremptory Strike

After the judge determines any strikes for cause, each party may select up to three jurors to excuse for any reason or no reason at all. *Rule 504.2(e); Code of Criminal Procedure Art. 45.029, 35.14.*


KEY POINT

A juror that one party tried to strike for cause but was ruled against can then be struck using one of their three peremptory strikes.

Batson Challenge

KEY POINT

An exception to the party not having to state a reason for using a peremptory strike is if there is an objection that a party is striking a juror on the basis of race, ethnicity, or gender. If a party objects – and **only** if a party objects – then the court **must** ask the striking party the reason for asking a juror to be removed. The court would then determine if the reason is neutral and not actually related to race, ethnicity, or gender. (Criminal)*: **Batson v. Kentucky;** Code of Criminal Procedure Art. 35.261;* (Civil)*: **Edmonson v. Leesville Concrete**.*

If the court determines that the strike was made for a reason related to race, ethnicity, or gender, then the party will **not** be allowed to use their peremptory strike on that potential juror, who will then stay on the panel. The party would be allowed to use that peremptory strike on another potential juror if they choose.

3. Empaneling the Jury

Once the parties have had the chance to eliminate potential jurors with strikes for cause and peremptory strikes, the judge will then determine who the first six remaining jurors are – this will be the jury panel. The judge will then call out those remaining jurors and have them sit in the jury box. The rest of the panel of potential jurors should be excused and thanked for participating in the process at this time.

What if there are not enough jurors or too many are eliminated after questioning?

The judge may order the sheriff or constable (usually the bailiff) to summon a sufficient number of qualified persons and allow them to be questioned by the parties in the same way until there are six jurors left to serve on the jury. *Code of Criminal Procedure Art. 45.028*; *Rule 504.2(g).*

COMMON PITFALL

If there is a reason that the trial may last longer than a day, the judge may want to also select an alternate. In that case each party is entitled to another peremptory strike to exercise on the next three jurors after the judge has determined who will be the six members of the jury. *Government Code § 62.020(e).* The first remaining juror after the strikes will be the alternate. It is best to do this process after determining who the jury will be but prior to calling out their names and seating them. It can be done at the bench outside of the hearing of the jury.

One of the following oaths should be given to the final six jurors before the trial begins:

REQUIRED LANGUAGE

In a civil case: "*You solemnly swear or affirm that you will render a true verdict according to the law and the evidence presented." Rule 504.2(h).*

In a criminal case: *"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." Code of Criminal Procedure Art. 35.22.*

Chapter 5: Practice Tips for the Judge During Trial

If Parties Don't Appear for Trial

COMMON PITFALL

Remember, the defendant cannot be convicted if the prosecutor does not show up for trial, and the court proceeds to trial. The state can't prove their case if they don't put on any evidence! See Chapter 6 of the *Criminal Deskbook* for further discussion.

What is a post-answer default in a civil case?

Sometimes in a civil case, after a defendant answers, they fail to appear at trial. In this instance, the plaintiff will still need to prove their case – that the defendant did something wrong and prove the damages owed. In this situation, you will hold the entire trial without the defendant present. If the plaintiff proves their case and damages, you will issue a "post-answer default judgment."

See Chapter 4 of the *Civil Deskbook*.

What do you say during the trial?

In the ***Appendix: Suggested Scripts for Trial Proceedings*** section of this notebook, you will find suggested scripts for what you may choose to say to the parties and any jurors during the trial. The rules about jury selection and the jury oaths on the previous pages are **required**.

BEST PRACTICE

The scripts in this Trial Notebook are not required in total but contain best practices. If there is a jury, it is helpful for them to understand the process and what to expect. Even if there is not a jury, some of these statements are helpful to the self-represented litigants (especially if the court did not hold a pretrial hearing).

COMMON PITFALL

There are some required portions, such as the oath to the jurors, required juror questions, and, in a criminal case, required instructions. Those portions will be noted in the scripts.

The approach to these scripts is to make them accessible for justice court – "not overly formal" and easy for self-represented litigants to understand. However, a very formal and lengthier outline can be found in Texas Rules of Civil Procedure 226a, the required language for district and county courts to use.

KEY POINT

These scripts are intended to be used as the judge prepares for a trial. The documents have several places where the judge can fill in or type in the party's names, correctly

BEST PRACTICE

identify court personnel, and make other choices based on options. TJCTC strongly suggests the judge use these scripts by reviewing the case file and making the scripts match the individual case. Without this preparation, the judge may feel just as unorganized during the trial as if they had no script at all.

Preparing Documents for the Trial

Remember that in a criminal case, the defendant can elect in writing - before jury selection begins – for the jury to decide their punishment.

The court should have the judgment or verdict form ready before the trial begins. This way, the judge will be prepared to complete the judgment and be prepared to provide the verdict form to the jury to be filled out for the case.

Jury Charges

The judge only provides the law in the form of a jury charge to the jury in a criminal case. Generally, a proposed jury charge is provided by the prosecuting attorney. There should be a copy of the jury instructions for the judge and each party, as well as for the jurors. The defendant **must** be allowed to review the proposed instructions and if there are objections, the judge will need to decide what the charge should say.

CLICK HERE

There are a few jury charge forms for criminal trials in the ***Appendix*** *of this Trial Notebook.* The Texas Municipal Court Education Center also maintains a bank of common Class C jury charge forms on their website at ***https://www.tmcec.com/resources/jury-charges/***.

COMMON PITFALL

There is no jury charge provided to the jurors in a civil case. *Rule 504.3.*

Terminology Used in Trial

- **"Pass the witness"**: what a party might say when they have finished asking a witness questions.

- **"Step down"**: what the court will ask a witness to do once the witness has finished testifying. It means to leave the witness stand.

- **"Approach the bench"**: what the court says to parties when the court wants to have a discussion where the jury cannot hear. A party might also ask to

"approach the bench" to talk to the court and other party without the jury hearing.

- **"Outside the presence of the jury"**: another request an attorney may make is to have the jury leave the court room so that an issue can be discussed.

During Jury Selection

Many things are happening during the jury selection process. The scripts are short, because there are too many options as to what jurors or parties may say.

There are several questions that must be asked of the jury panel. If a juror answers those questions a certain way, they may not serve on the jury. The judge should wait until the end of these questions to thank the jurors for their time and tell those unqualified jurors that they are excused.

The judge should allow jurors to "approach the bench" and discuss sensitive personal issues with the judge and the parties privately.

When a party asks to strike a juror for cause, the party must name the juror and the reason they are asking to strike for cause. The other party can argue against it. The judge must decide if the juror cannot be fair and impartial.

During Trial

If a self-represented party chooses to testify, they should take the stand and be sworn in like any witness. A party's testimony will be them telling a story rather than asking themselves questions and answering.

If there are any documents either side wants to use during trial, the judge should make sure that they show them to each other before showing the court, the witness, or the jury.

BEST PRACTICE

If there are items a party wants shown to the jury, a good way to handle it is this: "Members of the jury, the (state/plaintiff/defendant) has an item for you to examine. Bailiff, will you show the item to the jury?" (Bailiff hands the document to the jury; the Bailiff takes it back from the jury when they have finished looking at it).

Chapter 6: Verdicts and Judgments

At the end of the evidence portion of the trial, the issues will be given to the jury to decide. The jurors should go in a room by themselves where they can discuss what their decision or "verdict" is. This process is called jury deliberations. During deliberations, the jurors will have a verdict form and any evidence submitted in the case (and in a criminal case they will also have jury instructions).

The "jury room" or "deliberation room" is often a room in the back of the courtroom behind the judge's bench. However, some courts may use a conference room down the hall or some other meeting space if many judges share the court space or if they have a very small courtroom. The key is that the room is private.

Determination of Punishment in Criminal Jury Trial

KEY POINT

Usually in a criminal jury trial, if the jury finds the defendant guilty, the judge then determines what the punishment will be. However, the defendant can choose – before jury selection begins – for the jury to decide their punishment. This must be in writing. *Code of Criminal Procedure Art. 37.07, Sec. 2(b).*

What if the jurors ask a question while they are deciding the case?

During deliberations, the court should allow the bailiff to deliver written questions the jurors have to the judge. The jurors should still be in the deliberation room, so that the judge can speak with the parties in open court. The judge then reads the question to the parties, and everyone discusses as a group any objections to answering. Once the judge has listened to both parties, they should then send back a written response to the jurors that is approved by the parties, or the bailiff can bring the jurors into the courtroom for the judge to answer the question.

What kind of things may jurors ask?

Most often jurors ask to be reminded of what a witness said. Even in higher court cases with a transcript, the court rarely gives the jurors the testimony. The court should respond with something like, "You should rely on your memory as to what was said during the trial."

Sometimes a document is requested. Any evidence the jury can consider should have already been submitted to the jury for deliberations.

It can be frustrating, but most of the time, the judge won't be able to respond directly to the jury's questions. Usually, the questions are asking for the judge to comment on the evidence, and the judge must remain neutral.

COMMON PITFALL

Almost every question asked by a jury should be answered by the judge with the following: "Thank you for your question. My response to you is the following: you should rely on your memory as to what was said and what you saw."

The court should keep the jury together until they agree to a verdict, are discharged, or the court recesses. *Code of Criminal Procedure Art. 45.034; Rule 282.*

Once the jury agrees to a verdict, the bailiff will bring them back into court. The bailiff should then hand the verdict to the judge so that the court can make sure that it is filled in correctly. In civil cases, this means if the case was over a piece or pieces of personal property, the court must make sure that the jury has decided a dollar amount for the value of the items. This information is needed for the judgment to be correct. *Rule 504.4; Code of Criminal Procedure Art. 45.03.*

After this, the judge should hand the verdict form back to the bailiff, who will give it to the foreperson to read.

What Happens to the Evidence After the Jury is Done?

At the end of the trial, any evidence submitted to the court should be returned to the parties, because **justice court is not a court of record** that retains evidence. (This also applies in bench trials.)

Completing the Judgment

KEY POINT

You must then complete the judgment. The judgment is a critical part of civil and criminal cases. In both types of cases, the judgment should be signed on the day it was made. So, in a jury trial, that means that date of the verdict. *Code of Criminal Procedure Art. 45.041; Rule 505.1.*

A judgment in a bench trial should be dated the day that the judge ruled on the case. Many times, the judge will do this on the day that they hear the case. Sometimes, the

judge takes a case under advisement, and should sign and date the judgment on the day that they bring the parties back to court to announce their decision.

What if the jury rules in a way that is opposite of the law or the facts?

The judge may, in a civil case, "throw out" the verdict and issue one that is consistent with what actually happened in that case. This is called a "judgment notwithstanding the verdict" or "JNOV." *Rule 505.1(a).*

COMMON PITFALL

This is a **very rare** action to take. Even if you do not agree with the jury, they rarely are wrong on the law or the facts. The judge cannot enter a JNOV just because they don't believe a witness was credible or a piece of evidence wasn't persuasive or merely because the judge would have reached a different result.

Other Common Verdict Issues

You can find a discussion of other common verdict issues like what to do if the jury returns a verdict for more than the jurisdictional amount in Chapter 2 of the *Civil Deskbook*.

- ***Example in a civil case****: The landlord clearly proved the tenant owed back rent and the defendant admitted it, but the defendant kept telling the jury that their family, including a young child with cancer, would be homeless. The jury ruled in favor of the tenants. This is likely because they felt bad for them, but that is not a legal reason to allow the tenants to win.*

- ***Another example in a civil case****: Over a piece of jewelry, the plaintiff shows evidence that the jewelry is worth $5,000. The defendant shows evidence that the jewelry is worth $3,000. The jury returns a verdict valuing the jewelry at $8,000. There was zero evidence of the jewelry being worth $8,000.*

Directed Verdicts

KEY POINT

A judgment notwithstanding the verdict (JNOV) is not allowed in a criminal case. However, there can be what is called a directed verdict in a criminal case. After the state "rests," the defendant has a chance to argue that the state did not give enough evidence for a "reasonable" jury to find the defendant guilty. Usually this means that the state forgot or failed to put on evidence of one or more elements of the crime alleged to have been committed.

The defendant could make this argument again after putting on their case. If the defendant requests a directed verdict, and if the court agrees, the court instructs the jury to find the defendant not guilty instead of having the jurors deliberate. The state **does not** have this option. In other words, the state **cannot** request a directed verdict by arguing that a reasonable juror could not acquit (find not guilty) the defendant. *Code of Criminal Procedure Art. 45.032.*

What if the jurors cannot decide?

Sometimes the bailiff will come back into the courtroom after the jury has told the bailiff they cannot agree. The court should encourage the jury (through the bailiff) to try a little longer and thank them for their hard work and for being so careful. If the jury is still unable to reach a verdict, the judge may then give the jury something called an "Allen charge." ***Allen v. United States.*** The court may say something like this:

> *"I'm going to ask that you continue your deliberations in an effort to reach a verdict. This case is important to the parties, and they have prepared for this case. If you cannot agree, we will have to start this whole process again, and that is costly to the parties and the county. No one is asking you to give a false verdict, but I'm asking you to give a little more time to see if a verdict can be reached. Thank you for your hard and important work."*

KEY POINT

Remember, in a criminal case the verdict must be unanimous – meaning all six jurors **must** agree. In civil cases, only five out of six must agree. *Rule 292.*

If the jury has deliberated for a reasonable amount of time, and they still claim that they cannot agree, the court can discharge the jurors. This is called a mistrial.

In criminal cases, it will be up to the state if they want to proceed with charges or dismiss the case. If the state wants to proceed, the case will be reset for trial on another date. In civil cases, the case will automatically be reset to another day. *Code of Criminal Procedure Art. 45.035; Civil Practice and Remedies Code § 30.009.*

KEY POINT

It is common in both criminal and civil cases for the parties to come to a plea bargain or settlement following a mistrial. For this reason, it may be particularly helpful to have a pretrial hearing before the retrial of the case following a mistrial.

Chapter 7: The Texas Rules of Evidence in Justice Courts

A. Application of the Rules and Objections

CLICK HERE

This chapter is only a summary of the most commonly applicable rules of evidence in justice court cases. The full text of the Rules of Evidence can be found at ***https://www.txcourts.gov/rules-forms/rules-standards/.***

The rules of evidence are the guidelines for how a court should determine what information is considered in a case. This could mean testimony from a witness, or it could mean items like documents, pictures, or videos.

KEY POINT

In criminal cases, the rules of evidence **always** apply just as they do in county and district court. *Code of Criminal Procedure Art. 45.011.*

In civil cases, the rules of evidence generally **do not** apply. However, the court **may** choose to apply a rule of evidence to make sure the trial is fair to all parties. *Rule 500.3(e).*

How do you know when to allow a rule of evidence in a civil case?
Applying the rules of evidence is more of an issue in a jury trial because the court may need to keep the jury from hearing information that could improperly influence their verdict. The court will need to rely on its judgment to decide if information goes too far.

In a bench trial, the court would hear the information even if a party wanted to object, so the court would simply use its judgment to ignore information that should not be considered as part of the case.

TJCTC's position is that some rules are good to apply, because they ensure procedural justice and fairness in the process. These are emphasized throughout this section of this Trial Notebook.

How will the rules of evidence be used during a trial?
If a party has an issue with information that is going to be talked about or shown during a trial, they will make an "objection."

COMMON PITFALL

In criminal cases, the court should not make any decision on evidence without an objection from a party. In civil cases, the court may apply the rules where it is fair to both sides (even if neither side objects).

What happens if someone makes an objection?

A party may know to say "objection" and give the reason they are objecting (for example: irrelevant, unfair prejudice, hearsay). But often, a self-represented litigant may simply ask "are they allowed to say that?" or "I don't want anyone to see this piece of paper." The court should accept those types of responses as objections and allow the person to make an argument.

Because in civil cases the rules generally do not apply, the court may often tell parties that the court will not rule on objections because the rules of evidence are not applicable to this case.

If there is a jury, the parties need to make arguments where the jury cannot hear. The parties should ask to "approach the bench" and speak quietly to the court about their concerns with the information they are objecting to. The court may discuss its ruling while the parties are at the bench. The court may also need to instruct the parties how to proceed. For example: if a party has already been warned not to talk about a certain fact, the court can remind them that they may not discuss that fact again.

Ruling on Objections

Objections need to be ruled on. This should be done after the parties walk away from the bench, so that the jury can hear your ruling.

If there is no jury, there is no need for the parties to approach the bench.

There are two rulings to an objection:

- **"Sustained"**: the court **agrees** with the objection and the information will be kept out.

- **"Overruled"**: the court **does not agree** with the objection and the information can be brought into the trial.

KEY POINT

An alternative to "sustained" or "overruled.": The court may want to make its statements more accessible and easier for the self-represented parties and jurors to understand. If so, the court can use something like "I'm going to allow the question," or "I'm not going to allow that document."

COMMON PITFALL

It is important to note that rules of evidence will work together, and more than one may apply to the admissibility or inadmissibility of a piece of evidence.

B. Relevance

What is relevant evidence? It is information that will help the judge or jury make a decision about the case. It needs to be information about a fact in dispute. It also needs to be about a fact that is important to the case.

If evidence is relevant, it should be allowed. If it is not, it should not be allowed. *TRE 401 & 402.*

- ***Example in a civil case:*** *The make and model of the car the defendant is driving at the time of the accident* ***is relevant*** *to identifying which car caused the accident. The amount of the defendant's monthly car payment* ***is not relevant*** *to who caused the accident.*

- ***Example in a criminal case:*** *A picture of the posted speed limit sign on the stretch of road the defendant was traveling at the time of the citation* ***is relevant****. The music the defendant was listening to* ***is not relevant*** *to determining if he was speeding.*

Best Practices for Self-Represented Litigants

The procedure of "approaching the bench" and objections may need to be explained to a self-represented litigant prior to trial. In cases where there are self-represented litigants, it is a best practice to explain to both parties, even prior to jury selection, when or if the rules of evidence apply and how the judge expects to maintain control of the courtroom.

For example, the judge might want to make sure the parties know that the plaintiff, and any witnesses for the plaintiff, testify first, then the defendant may cross-examine the plaintiff and the plaintiff's witnesses. The defendant and any witnesses for the defendant may then testify, then the plaintiff may cross-examine the defendant and the defendant's witnesses. The judge might also mention that the parties should not talk about any settlement offers.

C. Personal Knowledge

When a witness testifies, they should only state things that they know themselves. Testimony should not be based on guessing someone else's thoughts. It should not be based on hearing or reading it from another source. *TRE 602.*

- ***Example in a civil case:*** *The defendant has no personal knowledge in a car accident case to testify that the plaintiff must have been texting during the accident. This would just be a guess. Even if the defendant thought that they saw the plaintiff on their phone, they should only say what they actually saw – that they saw the person holding the phone, not assume they know what they were doing.*

- ***Example in a criminal case:*** *The law enforcement officer has no personal knowledge to testify that the defendant was reading the Bible while driving. This would be a guess. Even if the defendant had a copy of the Bible on the front seat of the car, and the officer saw it during the stop, the officer should only testify to what they saw.*

Exception: An expert witness testifying under Rule 703 of the Texas Rules of Evidence does not have to have personal knowledge of what they say on the witness stand. An expert witness can listen to other testimony and look at documents to give their opinion in a case. This means that they don't always have to be excluded like other witnesses. *TRE 614, 706.* ***See page 61 for a discussion of expert testimony.***

D. Authentic Evidence

"Authentic" evidence means the document or item actually is what it claims to be. It must be authentic to be admitted. *TRE 901.*

- ***Example in a civil case:*** *The plaintiff shows an invoice for the defendant's unpaid charges at her store. If the defendant objects that the plaintiff made it up, the plaintiff could use an email to show that the invoice was sent to the defendant's email or testify about how the invoice was generated by the plaintiff's computer system.*

- ***Example in a criminal case:*** *In a speeding case, the defendant may object, and claim it is not his signature on the citation. The state could ask the defendant's boss to testify that he has seen the defendant's signature many times and that the signature on the citation belongs to the defendant.*

E. Judicial Notice

There may be a point that is part of the case that is a true "fact" and is provable. The court can do something called taking "judicial notice" of that fact.

- ***Example in a civil case:*** *The defendant wants the court to take judicial notice of the fact that the car accident on May 21, 2020, happened on a Thursday. This can be proven by looking at a calendar.*

- ***Example in a criminal case:*** *The state wants the court to take judicial notice of the fact that it was raining during the time of the traffic stop for speeding. This can be proven by looking at the weather report.*

In both of these examples, the information is a provable fact, not an opinion or interpretation.

If you do choose to take judicial notice of a fact, you can inform the jury by saying, "The court can inform you that May 21, 2020, was a Thursday."

If it is a bench trial, the court will just remember the fact that it took judicial notice of when deciding how to rule.

F. Unfair Prejudice

Even if evidence is authentic, admissible, and violates no other law or rule, there may be something simply too 'unfair' about the information. Rule 403 of the Texas Rules of Evidence contains a balancing test. Information that is so 'unfair' that it is more of a distraction than helpful can be kept out of evidence. You may find the information is too confusing, would cause an unreasonable delay, or is simply too inflammatory.

- ***Example in a civil or criminal case:*** *If a party in a car accident case wanted to use a graphic photo of the crash scene, but other photos are available. While photos of the scene are definitely relevant and may be used to prove elements of the case, there are probably less-graphic options. The nature of that graphic photo may be too offensive or distracting to be part of the evidence, especially if there is a jury. The jury may be so distracted by the photo that they ignore the facts of the case and decide the case based on the photo alone. In a situation like this, the court could either not allow the photo or require the party to use a different, less-graphic photo.*

G. Hearsay

1. What is Hearsay?

Hearsay can be broken into three different parts.

- A statement,
- made outside of court,
- offered for the truth of the matter asserted in the statement.

What is a Statement?

A statement is words or actions that assert a fact. The person who made the statement had to have intended for their actions to assert a fact.

A statement does not have to be testimony, it can be words written down or the action of pointing at a particular thing. *TRE 801(a)(d).*

- ***Example in a civil case:*** *The officer testifies that at an accident scene he asked the witness, "Who was driving the red car?" The witness responded (at the scene, not in the courtroom) by pointing at the defendant who was still at the scene. Pointing to the defendant is a "statement" that the defendant was the one driving the car and is hearsay, because the witness intended to say that the defendant was the driver with the action of pointing at him.*

- ***Example in a criminal case:*** *The written report the DPS trooper made about a traffic stop for speeding. The written report is hearsay, because the trooper wrote the words to say what the facts were.*

COMMON PITFALL

Both examples may be able to come into court for other reasons, but they are both examples of hearsay.

What does it mean to be out-of-court?

This basically means that the statement was made other than while testifying. Many times, it will be easy to identify out-of-court statements, because they start with, "he said…" or they are documents offered with writing on them.

What does it mean to be for the truth of the matter asserted?

This simply means that the party asking the question or offering the document is doing it because they want the jury to believe that it is true or correct. Many times, a statement that seems like hearsay isn't, because it isn't offered for the truth of the matter asserted but rather to show only that the statement was made or to show the state of the person (the "declarant") who made the statement (for example, that they were excited, sad, awake, etc.).

- ***Example in a civil case:*** *In a car accident case the passenger of a car testifies that they heard the driver say, "Those are pretty flowers," before the passenger heard the crash. This statement could be offered to show that the driver was distracted, not that the flowers were actually pretty.*

- ***Example in a criminal case:*** *In a prosecution for perjury, a statement by the defendant is offered by the prosecutor not to prove the statement was true, but to prove that it was made; then other evidence is used to show that the statement was false.* ***Anderson v. United States.***

- ***Example in a civil case:*** *A witness (who is not available to testify) said at the car accident scene, "I know the accident happened 20 minutes ago, because right after it happened, I noticed I was late for my dentist appointment." The statement from the witness is hearsay. But if the plaintiff does not want to use it for the truth (that the witness was late for a dentist appointment) and wants to use it to show the*

correct time of the accident, the court could rule that the statement could come into evidence.

- ***Example in a criminal case:*** *DPS trooper stops the defendant for speeding. Defendant says he was waiting for an important call and must have been distracted. The DPS trooper says, "I know what you mean – my wife could have our first baby any minute now." The statement from the trooper is hearsay. But if the defendant does not want to use it for the truth (that the trooper's wife could have a baby any minute) and wants to use it to show that the trooper was distracted, the court could rule that the statement could come into evidence.*

These are some examples where the court could rule that the statement is not hearsay, so it can be heard by the jury as evidence, or it can "be admitted." Lawyers might say something like, "This is not being offered for the truth of the matter asserted, but for (insert reason here)," when they ask a question, and they believe the answer is not hearsay for this reason.

2. Statements that are Not Hearsay


KEY POINT

One of the most important things to remember about justice court is that most of the kinds of testimony you will hear are **not** hearsay because they either don't meet the full definition of hearsay *(examples above)* or have been excluded by the Texas Rules of Evidence.

What if a statement is hearsay?
If a statement is hearsay, it is inadmissible unless it meets one of the hearsay exceptions discussed on ***page 49***.

a. A Witness's Prior Statement

At a trial, a witness can be subject to cross-examination by the opposing party about statements that they made prior to coming to court. Usually, these statements are inconsistent with what they are saying at trial, or the statements identify a person as someone the witness had perceived prior to trial (for example, a witness identified the

defendant to police at the scene of a crime but at trial the witness says they cannot identify the defendant). These prior statements are **not** considered hearsay.

b. Statements by the Opposing Party

Statements made by the opposing party are **not** considered hearsay. Sometimes the opposing party is called a "party opponent." *TRE 801 (e)(2).*

- ***Example in a civil case:*** *In a car accident case, the plaintiff testifies that he heard the defendant say, "I was not paying attention to the color of the light."*

- ***Example in a criminal case:*** *In a speeding case, the officer testifies that the defendant told him, "I didn't know the speed limit changed when I entered town."*

Both of these examples are **not** hearsay and **are admissible**.

In civil cases, someone who qualifies as a "party opponent" also includes an employee of a party.

- ***Example:*** *As you drive your car home from the auto body shop, it feels like it was driving strangely. You call the auto body shop and the mechanic who worked on it said. "I was rushed and might have forgotten to tighten a few things down." If you were hurt because of this and sued the auto body shop, what the mechanic employee said could be used against the company.*

The one way the party opponent rule is different in a criminal case is that the "state" is not the opposing party under this rule. It is not really a person, or a company, or entity – it is a governmental body. Even though law enforcement or other witnesses can always testify to what the defendant said, the defendant does not necessarily get to testify to what law enforcement or other state witnesses said. The state couldn't offer this testimony either because law enforcement and state witnesses are not "party opponents" in a criminal case. A party cannot offer their own out-of-court statement under this rule. ***Williams v. State.***

3. Exceptions to Hearsay Statements

In addition to statements that are not hearsay, there are also statements that **are** hearsay **and are** being used for the truth **but are still admissible** as an exception to the rule.

These exceptions are generally based on what are called "indicia" of reliability. This means the person who said the statement, the way it was said, or the circumstances surrounding when it was said, make the statement more believable or reliable.

This *Trial Notebook* will highlight a few exceptions that are likely to happen in justice court. For a full list of hearsay exceptions, please see *TRE 803.*

a. Present Sense Impression

A present sense impression is a statement describing or explaining an event or condition that was made while the event was ongoing or immediately after the event was perceived by the person making the statement. *TRE 803(1).*

These statements are considered reliable because they happened so close to the event. The idea is that the person making the statement hasn't put thought into making up a lie, and it hasn't been long enough for them to have forgotten what happened.

- ***Example in a civil case:*** *In a contract case, an employee at a car dealership testifies that the car salesman told his co-worker immediately after the plaintiff had signed the contract and walked outside, "Man, we really tricked them! That car is a hunk of junk!"*

- ***Example in a criminal case:*** *In an assault case, one witness testifies that another said to her, "Look there's Jan hitting John!"*

b. Excited Utterance

An excited utterance is exactly what it sounds like: "a statement relating to a startling event or condition, made while the [person who made the statement] was under the stress of the excitement that it caused." *TRE 803(2).*

- ***Example in a civil case:*** *The passenger in a car accident makes a statement 30 minutes after the accident. They are visibly upset and still crying. They tell law enforcement that the driver of the car (the plaintiff) was texting right before the collision.*

- ***Example in a criminal case:*** *The passenger of the defendant pulled over for speeding testified that while they were pulled over, a sports car went by quickly and startled the DPS trooper. The trooper said, "Now there's a car that was definitely speeding."*


KEY POINT

It is not how long ago the "exciting" event happened that determines if a statement counts as an excited utterance, but whether the person making the statement is still under the effects of that event. After witnessing or being in an event like a car accident, it can take some people several hours to fully relax.

c. Then-Existing Mental, Emotional, or Physical Condition

These are statements that show how the person making them was feeling either emotionally, mentally, or physically at the time of making the statement. These statements tend to be reliable for many of the same reasons as Present Sense Impressions and Excited Utterances. *TRE 803(3).*

State of mind can be very important in both civil and criminal cases. It might not be an element of the cause of action or the offense, but it can show motive, intent, or a plan for someone to act a certain way. A simple example of this is if a witness testifies that another witness told them, "I am going to Dallas tomorrow for a week." This will likely be admissible (as long as it is also relevant to the case) to show that the witness had a plan to go to Dallas the next day and stay there. This might be relevant to show that the witness was travelling towards Dallas, not away from Dallas when they saw a car accident.

- ***Example in a civil case:*** *In an intentional tort case, the plaintiff holding his hand to his mouth and saying, "My jaw hurts," after the defendant has punched him in the face.*

- ***Example in a criminal case:*** *A friend of the victim testifies that the victim told him that he was going to give the defendant what was coming to him the next time he saw him. This could show the victim's intent or plan to start a fight with the defendant when he saw him and could be very important to a claim of self-defense.*

d. Statements for Medical Diagnosis or Treatment

If a statement is made and reasonably related to a medical diagnosis or treatment and describes either medical history, past or present symptoms or sensation, how symptoms started, or the cause of symptoms, it will be admissible under this exception. *TRE 803(4).*

e. Business Records

This is technically called "records of regularly conducted activity," but it is often referred to as the business records exception. It covers the sorts of things that might be introduced in justice courts from businesses, like invoices, receipts, estimates, customer records, and other documents that businesses regularly keep. *TRE 803(6).*


KEY POINT

Business records affidavits are commonly used in debt claim cases for the judgment creditor to prove up the amount of debt owed. See Chapter 4 of the *Civil Deskbook*.

- ***Example from a civil case:*** *The plaintiff wants to introduce the work order estimate from the auto body shop for repairs needed after the accident to show the damage to the vehicle. They may also use the final bill to help them prove up how much the repairs cost.*

- ***Example from a criminal case:*** *The State could offer medical records from an accident to show what the defendant said to the EMT who treated him on scene about how the accident happened. (**Note:** this statement is not hearsay, because it is a statement by the defendant (opposing party to the state). See the above discussion of hearsay on* ***page 45*** *and discussion of hearsay within hearsay on* ***page 53****).*

COMMON PITFALL

- ***Example from a criminal case:*** *The State* ***cannot*** *offer an offense report into evidence in a criminal case. The offense report contains hearsay, and even if there is an exception to hearsay, the defendant has a right to "confront" witnesses against them and they cannot cross examine the report. The officer needs to have a memory of the events and testify to those. TRE 801(8).*

Business records need to either be explained through the testimony of a representative from the business or through an affidavit. To comply with the rule, the testimony or affidavit must show that:

- The record was made at or near the time of the event;
- The person making the record had personal knowledge of the event; **and**
- The record was made and kept in the regular course of business.

A business records affidavit shows that the documents are authentic as required by Rules 901 and 902 of the Texas Rules of Evidence.

KEY POINT

It is important to note that the Rules of Evidence require a business record affidavit and the records that go along with it be served on the opposing party at least 14 days prior to trial. This requirement exists to prevent the party from being surprised at trial, and so they can contest the affidavit's validity or call a witness in response if they need to at trial. *TRE 902(10)(a); U.S. Const. amend. VI and XIV.*

f. Public Records

The public records exception is similar to the business records exception. A document is admissible if it is a record or statement of a public office which sets out:

- The office's activities,

- A matter observed while under a legal duty to report (excluding reports by law enforcement in criminal cases), **or**

- In a civil case or against the state in a criminal case, factual findings from a legally authorized investigation.

TRE 803(7).

The public records must also either be sealed and signed or certified and signed by an official representing the public entity (like a county clerk for county records) if there is not a witness present at trial to testify to the authenticity of the document. *TRE 902(1), (2).*

The opposing party can always rebut the trustworthiness of a public record and if the judge is convinced, the public record won't be admissible. Examples of things that might fall under the public records exception are reports of internal government policies, documents kept in the court's files, copies of licenses issued by a public office, and autopsy reports.

4. Hearsay within Hearsay

Sometimes called "double hearsay," Rule 805 of the Texas Rules of Evidence allows layers of hearsay to be admitted into evidence if each piece of hearsay meets an exception.

- ***Example in a civil case:*** *The plaintiff brings in the defendant's auto body repair records (business record exception to hearsay) that state the defendant told her mechanic (admission by party opponent) she was drinking at lunch before the car accident.*

H. Credibility and Character of a Witness

We often hear the term "character witness" on legal shows, but what do they mean? There are very specific guidelines as to what kind of information about a person's character is admissible in court.

Hearsay within Hearsay

Sometimes there is additional hearsay within business records that a party could object to. This is called "hearsay within hearsay" or "double hearsay". If the additional statement is hearsay and there is no exception, it may have to be redacted (blacked out so that they can't be read). An area where this comes up frequently is medical records. Medical records sometimes include statements by the person who is being treated. Generally, these statements are hearsay. However, they are usually admissible, because they meet a hearsay exception – Statement for Diagnosis of Treatment, which is discussed on ***page 51***. *TRE 805, 803(4).*

1. Character Evidence

Character evidence is any evidence about a person's personality traits or their likelihood to act a certain way. Because this type of evidence is not always relevant to the facts of a case and can be very harmful, it is only allowed in limited circumstances. Examples of personality traits are truthfulness, peacefulness, violence, honesty, or sobriety.

COMMON PITFALL

A party cannot introduce past "bad acts" to claim – "they did it before, so they did it this time" (called acting in conformity). There are ways that a party could use the same information for other purposes, but those are very unlikely to happen in justice court. *TRE 404b.*

Rules 404 and 405 of the Texas Rules of Evidence also discuss other uses of character evidence in higher-level criminal cases and civil cases.

Character Evidence of Criminal Defendants

KEY POINT

Criminal defendants can offer character evidence of a pertinent or relevant personality trait. The defendant **must** only offer this evidence through reputation and opinion testimony and **not** through specific acts or times where the defendant showed the character trait.

- ***Example in a criminal case:*** *A defendant's friend could testify, "Sally is known as a sober person, she doesn't drink alcohol," in a public intoxication case. However, that defendant's friend couldn't testify, "Sally didn't drink alcohol at the Party Bar on October 1, October 3, or October 5 when I was there with her."*

KEY POINT

The defendant **cannot** offer evidence of general good character. Sometimes this is called "law abiding nature," – meaning that the defendant is known to follow the law. *TRE 404(a)(2)(A), TRE 405(a).*

If a criminal defendant offers evidence of a good character trait, a prosecutor can rebut that testimony and even use specific instances of conduct. *TRE 404(2)(A), 405(a).*

Character Evidence of Witnesses

Evidence relating to a witness' character can only be admitted during impeachment as discussed below on ***page 56***.

a. Habit or Routine Practice

Evidence of a person's habit or an organization's routine **may** be admitted to prove that a person acted in that same way in the case on trial. *TRE 406.*

- ***Example in a criminal case:*** *A defendant offers evidence that they always go the speed limit or use cruise control either through their own testimony or through another witness.*

- ***Example in a civil case:*** *A party offers evidence that their business handles all receipts a certain way, maybe to prove that if a transaction happened, there would have been a receipt.*

This is similar to character evidence, but slightly different. Character evidence focuses on a person's disposition or "how they are" while habit describes how a person responds to a repeated practice or situation.

KEY POINT

Remember Rule 403 of the Texas Rules of Evidence applies to all evidence. If a piece of evidence's value is substantially outweighed by the prejudice it causes, the court can rule that it won't come in at trial. *TRE 403.* Refer back to ***page 44*** of this *Trial Notebook* for a full discussion.

b. Crimes, Wrongs, or Other Acts

There are limited other uses in criminal cases where the state can use evidence of crimes, wrongs, or other bad acts against a criminal defendant. This evidence can be

Mode of Conduct

It is sometimes called a "modus operandi" or mode of conduct when this type of "bad act" character evidence is used to prove identity.

Usually, one party is trying to prove that the other does things in the same way every time or that they have a "signature."

Think of a bank robber who always wears a clown mask or a hacker who always writes in a certain piece of code into each computer virus.

admissible if it is used to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." *TRE 404(b)(2).*

The state **must** give the defendant notice of this information prior to trial in criminal cases unless they only discover this information at trial. *TRE 404(b)(2).* This will be limited in justice court, but it might come up.

There is a two-part test to determine if this type of evidence is admissible:

- Is the bad act relevant to a fact of consequence (such as identity, intent, or motive), rather than just to prove that the defendant acted the same way in this case as he did in the prior bad act? ***Torres v. State.***
- Is the value of the evidence strong enough that it is not substantially outweighed by unfair prejudice?

TRE 403.

- ***Example in a criminal case:*** *After the defendant commits a hit-and-run, he then commits other crimes trying to cover up that he was at the scene, like destroying evidence. If the prosecutor has evidence of the "bad acts" he committed in trying to cover up the hit-and-run, they may be admissible at the trial to show knowledge or identity.*

- ***Example in a civil case:*** *If the owner of a body shop has been sued multiple times for replacing car parts with stolen parts that he scrapes off serial numbers in the same manner each time, those other instances where he committed the "bad acts" where he was criminally convicted for destroying the serial numbers or even just evidence that he did it (a witness saw him do it), might be admissible in a new civil case where he is being sued for the same conduct to show identity, motive, opportunity, or plan.*

2. Impeachment

Using character evidence is one way to "impeach" someone's credibility. Impeach means to show that the person should not be believed.

KEY POINT

A witness's credibility and bias are always at issue in a case, and any party can attack any witness's credibility. However, a party can't call a witness only for the purpose of impeaching that witness's credibility. *TRE 607.*

Categories of Impeachment

There are five common ways that are permitted for a party to impeach a witness's credibility.

- Prove that the witness has made inconsistent or contradictory statements. *TRE 613(a).*
- Show that the witness is biased for or against a party or has a financial interest in the case.
- Attack the character of the witness to prove that they are generally not truthful or worthy of being believed. *TRE 405, 609.*
- Attack the witness's ability to perceive, remember, or recount the facts correctly. *TRE 601(a).*
- Call another witness specifically to disprove the facts testified to by the witness. This is sometimes called "specific contradiction."

Each category of impeachment is discussed further below.

a. Inconsistent or Contradictory Statements

A party can question a witness about prior statements that are inconsistent with or contradict what that witness says in court. This is a very common way for parties to impeach a witness, and even most self-represented litigants will do this. The witness must be given an opportunity to explain or deny the prior statement. It also must be clear to the witness when, where, and to whom the statement was made. *TRE 613.*

b. Bias or Interest

A party can impeach a witness by asking questions regarding favoritism, hostility, or showing a financial interest.

- ***Example in a civil case:*** *The plaintiff can ask questions to get an eyewitness to a car accident testifying for the defendant, to admit they do not like lawsuits (this may mean they are biased against the plaintiff for bringing the lawsuit).*

- ***Example in a criminal case:*** *The defendant might try to get the DPS trooper who pulled the defendant over for speeding to admit it was the defendant's red sports car that made him notice the car and that he thinks owners of sports cars speed (this could show a bias against sports car owners).*

c. Truthfulness


KEY POINT

The **only** kind of character trait evidence that can be admitted for impeachment purposes is for truthfulness. Also note that evidence that a witness *is* truthful may only be presented after that witness has already been "attacked" (questioned) about their truthfulness.

Opinion and Reputation Testimony

Generally, the only evidence that can be presented about whether or not a witness is truthful is:

- another person's opinion about if the witness is or is not truthful; **or**

- if the witness has a reputation for being or not being truthful.

Specific acts or statements that were made by the witness may not usually be presented. *TRE 608(a).*


KEY POINT

There is an exception to hearsay for reputation testimony for truthfulness. *TRE 803 (21).*

Example in a civil or criminal case:

Do you know the defendant?

- Witness: Yes, I do.

How do you know her?

- Witness: I have known her for 10 years, we are neighbors, and live two houses away from each other.

Do you know her personally, have a business relationship, or social relationship with her?

- Witness: She is an acquaintance, but I do not socialize or do business with her.

Are you aware of her reputation for truthfulness in your community?

- Witness: Well, I know what everyone thinks of her generally, if that's what you mean.

Yes, please tell us what you understand is her reputation for telling the truth.

"Objection!"

Court: Overruled, the witness can answer the question.

- Witness: She has a reputation as a liar. People in our community do not think she is the sort of person who tells the truth.

Have you heard of any specific times she was not truthful?

"Objection!"

Court: *Sustained*

Have you ever seen the defendant do anything deceitful?

"Objection!"

Court: Sustained

COMMON PITFALL

Specific Acts

However, there is an exception where a party may use a specific act, a criminal conviction, to show that a witness is not truthful; and that is if they introduce evidence of a prior conviction.

A party can't use a specific bad act like a witness lying on income taxes or cheating on his wife to impeach his credibility under this rule. ***Hammer v. State***.

There are several requirements to admit evidence of prior crimes:

- The offense must be a felony or crime of "moral turpitude" (fraud, theft);
- It must be admitted by the witness or established by a public record (usually a judgment and sentence; if a felony, should include fingerprints);
- It cannot be more than 10 years from the date of conviction or release from custody (whichever is later); **and**
- The side who wants to introduce the evidence must give the opposing party "sufficient" written notice.

If those requirements are met, then the court **shall** allow the evidence of the prior crime in. *TRE 608(b), 609(a).*


KEY POINT

There is an exception to hearsay for evidence of a prior conviction. *TRE 803(22).*

d. Witness Perception or Memory

A party could impeach a witness's testimony by asking questions to show that they couldn't see, hear, or otherwise perceive the event well, can't remember the event, or are just bad at telling the jury what happened.

e. Specific Contradiction

This simply means calling another witness to prove that the first witness had the facts wrong.

- ***Example:*** *The defendant calls Dave to testify, "the car was red," after the other side's witness, Joe, testified, "the car was blue."*

I. Refreshing Witness Memory

Sometimes a witness forgets a fact in the case. If this happens, a party can remind, or "refresh" the witness's memory. This can be done by showing the witness information

that could help the witness remember, letting the witness review it, taking the information away from the witness, and then asking the witness the question again. *TRE 612.*

COMMON PITFALL

Any time a party is going to approach a witness, they should ask the court's permission first. Any time a party is going to show a document to a witness, they should show the document to the other side first.

- ***Example in a civil case:*** *The mechanic in a car accident case cannot remember the amount of the estimate he gave the plaintiff for repairs. The plaintiff refreshes the mechanic's memory by letting the mechanic look at the written estimate.*

- ***Example in a criminal case:*** *The DPS trooper in a speeding ticket case cannot remember the date of the traffic stop. The prosecutor refreshes the trooper's memory by letting the trooper look at the citation.*

KEY POINT

The witness should **not** read the document or information given to them aloud, they should just be reminded of the information by reading it themselves and then answer from their newly refreshed memory.

J. Expert Testimony

Some witnesses have specialized knowledge that can help the judge or jury better understand the case. These witnesses can be considered an "expert" in their field. Their expertise may be based on "knowledge, skill, experience, training, education … scientific, technical, or other specialized knowledge." *TRE 702.*

- ***Example in a civil case:*** *The mechanic could give his expert opinion on why such extensive work was needed to repair the plaintiff's car after the accident.*

- ***Example in a criminal case:*** *The DPS trooper in a speeding case, who has accident reconstruction and speed reconstruction training, could give his expert opinion as to the speed the defendant was driving.*

KEY POINT

"Lay," or non-expert opinion testimony can also be permitted if it is based on what the witness perceived and is helpful to the judge or the jury in deciding a fact. *TRE 701.*

- ***Example in a civil case:*** *A witness testified that it had rained before the car accident. The witness went into a store, and the street was dry. When he came out and saw the accident, the roads were wet.*

- ***Example in a criminal case:*** *The DPS trooper testified that the defendant "looked nervous." He saw the defendant looking around quickly, wide-eyed, and fidgeting.*

K. Privileges

There are some "relationships" that create a legal right to keep information confidential. These are called privileges. This means that if a party speaks to someone who fits the relationship, that person cannot communicate what the party told them. The Rules of Evidence explain the privileges in further detail, including requirements for their use and exceptions to their use. These will rarely come up in a justice court case. The relationships that create a privilege with a party are:

- Attorney—Client. *TRE 503.*
- Doctor—Patient. *TRE 509.*
- Spouse—Spouse. *TRE 504*.
- Clergy member—Parishioner. *TRE 505.*
- Mental health professional—Patient. *TRE 510.* (civil cases **only**)

L. Other Information that Should Not be Admitted in a Trial

Information that should not be admitted in a jury trial, even if there was no objection. Some information is too influential to be allowed in front of a jury, even if there is not an objection. There is a strong public policy argument for keeping the type of information listed below from the jury. There are some exceptions, but they would be rare in any court and highly unlikely in justice court.

The following topics should not be mentioned for the purpose of showing a party is liable (*especially if there is a jury*).


KEY POINT

It is good to remind the parties before the trial begins, and before a potential jury panel is brought into the courtroom, that the following items are not to be mentioned.

1. In Civil Cases

Criminal Pleas

A plea of nolo contendere in a separate criminal case should not be discussed. *TRE 410.* Because the plea-bargaining system is so essential to the criminal justice system moving smoothly, there is a strong policy to not allow the discussion of earlier pleas, even in a civil case. The law generally values compromise and settlement and allowing plea bargain discussion at trial would encourage parties to avoid plea bargains if there is either a pending civil lawsuit or the threat of one. It is important to note if a defendant is actually convicted of a crime, that conviction may be admissible under Rules 609 and 803. This Rule is discussed further on ***page 59*** regarding criminal cases.

Settlements, Negotiations, and Offers

Settlement negotiations, offers to settle the case, or any offer to pay medical or similar bills should not be discussed at trial to show a person acted negligently or otherwise wrongfully. *TRE 408, 409.*

There are two main reasons to keep information related to settlement discussions out of trial: it isn't relevant and to encourage settlement of cases. Whether or not someone actually committed a wrongful act, they may be motivated to try and settle lawsuits without a trial for a variety of reasons. Trials are unpredictable, and a defendant could have a totally unrelated reason other than that the plaintiff's claim is true for settling the case. A person may also be hesitant to participate in any sort of settlement discussion if they thought it could be used against them at trial. This could ultimately result in slowing down or overloading the justice system, because trials take time and resources.

Any evidence of payment of medical bills must be excluded for some of the same reasons as settlement discussions, as well as the fact that medical bills may be paid as a humanitarian effort or to avoid other bad collateral consequences like late fees. It is

important to note that sometimes an offer to pay medical bills can be combined with an admissible statement. For example, if after a car crash one of the drivers sees the other hurt and says "Oh it is all my fault! I'll pay for you to get your arm checked out…" The first statement indicating that the person believes they did something wrong may be admissible, but the offer to pay medical expenses will not. See *TRE 409, 801.*


KEY POINT

Insurance

Any mention of car, home, or any other type of insurance is generally not allowed to prove that a person acted negligently or otherwise wrongfully. This type of evidence may be admissible to show bias or prejudice or to prove agency, ownership, or control (if disputed).*TRE 411.*

Like settlement negotiations, the existence of insurance doesn't tend to prove whether or not a person committed a wrongful act. In fact, in Texas, it is mandatory for drivers to maintain a certain level of insurance. Of course, having insurance can't mean that every insured driver is at fault in a car accident!

Collateral Source Rule

The collateral source rule is a common law rule that prevents a defendant in a personal injury case from introducing evidence that a plaintiff's damages were paid by another **collateral** source. For example, if a person is in a car wreck and their grandmother decides to pay their hospital bills, that doesn't mean that the person who caused the wreck isn't still liable for the damage they caused, including the medical bills. Ultimately, if the person collects the money for the hospital bills, the grandmother may have a claim for reimbursement from the injured party. Another common time this comes up is when insurance or public benefits step in and cover medical or other bills.


KEY POINT

The amount of a plaintiff's damages will not be offset because the costs were covered by a collateral source. **Note**, if it is the defendant's insurance rather than the plaintiff's that covers damages, that would reduce the amount that the defendant owes.

Texas has somewhat limited the collateral source rule related to medical expenses through Civil Practice and Remedies Code § 41.0105. Under this statute a plaintiff may only recover medical expenses that a health care provider has been paid or has a legal right to be paid under law or contract. This means that if part of an original medical bill

was “written off” or waived by the healthcare provider as part of an agreement with insurance, Medicare, Medicaid, or some other contract, that part of the bill cannot be awarded as damages in a lawsuit. ***Haygood v. De Escabedo***.

2. In Criminal Cases

Plea Negotiations

The process of plea negotiations makes the criminal judicial system more efficient, and there is a public interest in keeping the discussions between prosecutors, defense attorneys, and defendants private. If these negotiations were disclosed at trial, it would deter any future criminal defendants from entering into these negotiations. On the flip side, prosecutors may be hesitant to make favorable offers in fear that they will weaken their case at trial.

The court should never allow the following to be discussed in front of the jury in criminal trials:

- Any statement made during plea negotiations.

- Any plea of guilty or nolo contendere that was later withdrawn. *TRE 410*.

Appendix: Suggested Scripts for Trial Proceedings

Script - Jurors Not Needed

What if a potential jury panel is brought to your court, but the criminal defendant takes a plea, or the civil parties settle? This is a suggested script you can use to thank the jurors for their service. Suggested language for the judge in blue.

> Ladies and Gentlemen, I have just been informed that the case has been resolved. This means that you are no longer needed to serve today.
>
> But before you go, please accept my gratitude for your service. _____ County thanks you for the time you took to make plans to be here. Without you, we would not have been able to proceed. Appearing for jury duty is one of the most patriotic actions you can take. Other countries do not have the benefit of our justice system. Having a jury of your peers is one of the best ways to ensure a fair and correct outcome in a case.

Script - Criminal Bench Trial

Suggested language for the judge in blue. Required language in ***bold italics***.

Bailiff asks for all to rise, announcing the judge, county, and precinct.

> Good morning. My name is Judge _____. You've met the bailiff, _____ already. My court clerk, _____, (is seated here **or** may also enter the courtroom from time to time and if he/she does, he/she will sit here.)
> This other chair is called the witness stand, and anyone who will be giving testimony under oath will sit here to speak.
>
> Today we have the case of The State of Texas v. _____.
>
> Mr./Ms. _____(defendant), now that you are here for your trial day, I want to make sure you understand your rights. First, you do not have to say or do anything. You may choose to make arguments, ask questions of witnesses, and present evidence, but you do not have to do any of these things. You also do not have to testify.
>
> Do you understand your rights?
>
> You may also choose to change your plea now or at any time before the case is over, and I have given my judgment.
>
> Do you understand this choice that you have?
>
> Are both parties ready?

Allow both parties to respond.

> It is important to keep all electronic devices **off.** If your phone is not turned off, the bailiff will hold it until the trial is over.

This case will not likely last longer than a couple of hours, but I will pay attention to the need for comfort breaks.

This is a criminal case. The State of Texas claims that a law was broken and has brought this case to trial.

My role is to apply the law and make sure that the case proceeds fairly.

Because the State of Texas brought the charges, they will always go first. Mr./Ms. _____ (defendant), you will always have an opportunity to respond.

The State will now read the complaint against the defendant (prosecutor reads complaint).

We will begin with opening statements. Then the State will have any witnesses testify and provide any physical evidence they are relying on. Mr./Ms. _____ (defendant), you will have a chance to question those witnesses and look at any documents presented.

When the State is finished, Mr./Ms. _____ (defendant), you will have the chance to call any witnesses and provide any physical evidence you would like me to consider. The State may choose to put on a rebuttal case. Both sides will then have a chance to make their final arguments.

Both sides will have five minutes for an opening statement. Mr./Ms. _____ (prosecutor), you may begin your opening now.

Once the state is finished:

Mr./Ms. _____ (defendant), you may begin your opening statement if you choose now.

The defendant can also waive their opening statement until the beginning of their case. If the defendant waives, make sure to ask again after the state has "rested" their case.

Once the defendant is finished:

> Mr./Ms. _____ (prosecutor), please call your first witness.

If there are any documents either side wants to use during this trial, make sure that they show each other before showing the witness or the court.

To the witness:

REQUIRED LANGUAGE

> ***Please take the stand to be placed under oath. Raise your right hand: "Do you solemnly swear to tell the whole truth, and nothing but the truth"?***

> Mr./Ms. _____ (prosecutor), you may begin to ask questions.

Once the state has finished:

> Mr./Ms. _____(defendant), do you have any questions for this witness?

If yes, allow them to ask, if no, ask the witness to step down.

> You may begin to ask questions now.

Once the defendant is finished:

> Mr./Ms. _____ (prosecutor), do you have any follow-up questions?

You may allow the defendant and state to continue to take turns asking follow-up questions, but do not have to.

If yes, allow them to ask, if no, ask the witness to step down.

To the witness:

> Please step down from the witness stand.

Follow this same process for any additional witnesses.

Once the state is finished with their witnesses and documents, they should say that they "rest."

If the defendant waived their opening, you should ask if they would like to make theirs now.

> Mr./Ms. _____(defendant), you may make an opening statement now, if you choose.

> Mr./Ms. _____(defendant), do you have any witnesses that you would like me to hear from? You may also testify yourself.

If they choose to testify, they should take the stand and be sworn in like any other witness; a party's testimony will be them telling a story rather than asking themselves questions and answering. You may need to explain this to them.

> Mr./Ms. _____(defendant), please call your first witness.

Once the defendant has finished:

> Mr./Ms. _____ (prosecutor), do you have any questions for this witness?

If yes, allow them to ask, if no, ask the witness to step down.

> You may begin to ask questions now.

Once the state is finished:

> Mr./Ms._____ (defendant), do you have any follow-up questions?

Once the defendant is finished:

> Mr./Ms._____ (prosecutor), do you have any follow-up questions?

You may allow the defendant and state to continue to take turns asking follow-up questions, but do not have to.

If yes, allow them to ask, if no, state the below.

To the witness:

> Please step down from the witness stand.

Follow this same process for any additional defense witnesses.

> Mr./Ms. _____ (defendant), do you have any further witnesses or any documents you want to introduce?

If yes, follow the procedure above. If no, say the below:

> Defendant, do you rest your case, meaning you are finished with your witnesses and evidence?

The Defendant should say yes.

> At this time, both sides will have a chance to make a closing argument. Each side will have 10 minutes. State, you may reserve up to two minutes of the 10 for a potential rebuttal.

Mr./Ms. _____ (prosecutor), you may begin with your closing argument.

Once the state is finished:

Mr./Ms. _____(defendant), you may begin your closing argument.

Once the defendant is finished:

Mr./Ms. _____ (prosecutor), do you wish to make a rebuttal statement?

If yes, give them two minutes. If no, say one of the following options:

After hearing from both sides:

- I am prepared to give my judgment. I find the defendant (guilty/not guilty).
- I am going to take a brief recess and return shortly with my judgment.
- I am going to take my decision under advisement and will issue a ruling in open court on _____ (date).

For steps on handling the verdict and judgment, please see ***Chapter 6***.

Script - Criminal Jury Trial

Suggested language for the judge in blue. Required language in ***bold italics***.

Bailiff asks for all to rise, announcing the judge, county, and precinct.

Before the jury is brought in, you need to have a discussion with the defendant while the state is present; this can be in your office or chambers but may also be held in the courtroom.

> Mr./Ms. _____(defendant), now that you are here for your trial day, I want to make sure you understand your rights. First, you do not have to say or do anything. You may choose to make arguments, ask questions of witnesses, and present evidence, but you do not have to do any of these things. You also do not have to testify.
>
> Do you understand your rights?
>
> You may also choose to change your plea now or at any time before the case is over, and you have been found not guilty or guilty.
>
> Do you understand this choice that you have?

Bailiff brings in the potential jurors.

> Good morning. My name is Judge _____. You've met the bailiff, _____ already. My court clerk, _____ (is seated here **or** may also enter the courtroom from time to time and if they do, they will sit here.)
>
> This other chair is called the witness stand and anyone who will be giving testimony under oath will sit here to speak.
>
> Today we have the case of The State of Texas v. _____.

Are both parties ready?

Allow both parties to answer.

I am now going to call roll for the potential jurors.

Call the roll.

(to the jury) Now that we know who is here, I need to place you under oath before the questioning begins. Please raise your right hand.


REQUIRED LANGUAGE

"You, and each of you, 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 your service and qualifications as a juror."

We will be selecting six of you today. Even if you are not chosen, we want to thank you for your service.

Please turn **off** all electronic devices. If your phone is not turned off, the bailiff will hold it until jury selection is over. This applies to the parties as well.

Your job as jurors is to determine the facts of this case; my job as judge is to ensure that the case proceeds fairly.

This is a criminal case. The State of Texas claims that a law was broken and has brought this case to trial.

This will probably not be necessary, but if this case should go on longer than a couple of hours, there may be breaks where you would have an opportunity to see the parties or witnesses outside of the courtroom. Remember to keep your distance from them and do not communicate, other than basic pleasantries such as good morning or good afternoon. It is

important that we keep this process fair and neutral, and the parties and lawyers (if applicable) have been given these same instructions.

Know the jury process in your county – these questions may have already been asked in pre-jury service qualification proceedings.

The law requires me to qualify or make sure that jurors are eligible to serve. Please listen carefully to the six qualifications.

REQUIRED LANGUAGE

- ***All jurors must be 18 years of age or older,***
- ***A citizen of this county and of this country,***
- ***Be able to read and write,***
- ***Currently are, or are 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,***
- ***Not convicted of a misdemeanor theft or any felony, and***
- ***Not under indictment or legal accusation for a misdemeanor theft or any felony***

If you don't meet one or more of these qualifications, could I please get you to form a line here?

Remember to allow individuals to come up to the bench and discuss these issues privately with the judge and the parties.

*If anyone does not meet these **required** qualifications, they may not serve on the jury; you should wait until the end of these questions to thank the jurors for their time and tell them that they are excused.*

Thank you for your patience. I have a few more questions to ask. If any of these questions apply to you, you may choose to be excused, but it does not mean that you are not allowed to stay and be considered for the jury if you choose to. Please raise your hand **only** if you do qualify and **want** to be excused.

REQUIRED LANGUAGE

- ***Is anyone over 75 years of age?***
- ***Does anyone have legal custody of a child younger than 12 years of age, and being here means the child does not have adequate supervision?***
- ***Are there any secondary school students with us (grade 9-12)?***
- ***Is anyone enrolled and in actual attendance at an institution of higher education?***
- ***Are any of you 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?***
- ***Are any of you primary caretakers of an invalid unable to care for himself/herself?***
- ***Does anyone have a physical or mental impairment or are you unable to understand or speak English?***
- ***Are any of you 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?***

If anyone raised their hand to say that they meet the criteria and want to be excused, you can ask follow-up questions to make sure that they do meet the criteria to be excused.

You should wait until the end of these questions to thank the jurors for their time and tell them that they are excused.

> For those of you remaining, I am now going to ask for any excuse why you cannot serve on this jury today. This trial should only last a couple of hours. Let me inform you that generally, the fact that you are missing work is not enough. Does anyone have an excuse why you cannot serve today?

Hear the reasons but know that if one "works," other jurors may try the same excuse. Because of this it is best to allow the jurors with excuses to form a line and hear them at the bench as well.

> The parties will now have an opportunity to ask you questions. They may ask you individually or as a whole panel. They cannot ask you how you would rule in this case. Each side will be limited to 15 minutes.
>
> State, you may begin.

Once the state is finished:

> Mr./Ms. _____ (defendant), you may now begin your questioning of the jury panel.

Once the defendant is finished:

> Potential jurors, thank you for being upfront in your responses to the questions. At this time, I'm going to have Bailiff _____ take you out of the courtroom so that we can determine who will serve on the jury for this case.

Jurors leave the courtroom.

Give both sides an opportunity to look over their notes.

To the parties:

> We will first discuss any strikes/challenges for cause. This means, did any juror say something that you believe makes them unable to be fair and neutral in this case?
>
> Mr./Ms._____ (prosecutor), do you have any challenges for cause?

If a party says yes, they must state which juror, what was said, and the other party can argue against striking for cause. Then you must decide to strike the juror for cause or not.

> Mr./Ms._____(defendant), do you have any challenges for cause?

Once all challenges for cause are stated:

> Now that the challenges for cause are complete, I will give each side five minutes to decide on your three peremptory strikes. Please use (the "Peremptory Strike Form," the list of jurors, or your county's form for this) and sign at the bottom when you are finished.

Collect the lists and create your own master list of the selected jurors.

Read aloud the six remaining jurors **in order** *to the parties.*

Remember, if one side objects to the other improperly striking someone based on race, ethnicity, or gender, you must ask the striking party for a "neutral" reason for striking and rule on it.

You do not have to have an alternate juror, but if you choose to, follow this procedure.

> That makes jurors _____ (list the next three jurors by number or name) the potential alternate jurors.

You have one strike each. Mr./Ms. _____ (prosecutor), do you have a peremptory alternate strike? (make their one strike)

Mr./Ms. _____(defendant), do you have a peremptory alternative strike? (make their one strike)

Does either side have an objection to the panel?

Bailiff _____, please bring the jurors back into the courtroom.

Jurors re-enter the court room.

Ladies and gentlemen, again thank you for your time. As I mentioned before the questions began, we were trying to pick the best jury for this particular case. None of you did or said anything wrong. If you are not selected, please do not take it personally.

The following jurors are needed to remain:

List the jurors.

All other potential jurors are free to go at this time. Thank you for your service today.

After other jurors leave:

Now that you have been selected, I need you to raise your right hand and take a new oath:

REQUIRED LANGUAGE

"You, and each of you, do solemnly swear that in the case of the State of Texas versus _____, you will render a true verdict according to the law and the evidence, so help you God".

BEST PRACTICE

I am going to read to you the following jury instructions. I will then sign them and give them to the bailiff so that you will have them during deliberations.

- Do not mingle with or talk to the attorneys, witnesses, parties, or any other person who might be connected with, or interested in this case, except for casual greetings. They must follow these same instructions and you will understand it when they do.

- Do not discuss this case among yourselves until after you have heard all of the evidence, court's charge, attorneys' arguments, and until I have sent you to the jury room to consider your verdict.

- Do not make any investigation into the facts of this case by phone calls or internet searches. This is improper. All evidence must be presented in open court. This means you should not call friends, search for newspaper articles, look at Google Maps, or try to read the law online. If you know, or learn, anything about this case except from the evidence admitted during the course of this trial, you should tell me about it at once. You have just taken an oath that you will render a verdict on the evidence submitted to you under my rulings.

- Do not tell other jurors your own personal experiences, other persons' experiences, or relate any special information. A juror may have special knowledge of matters such as business, technical or professional matters, or he may have expert knowledge or opinions, or he may know what happened in this or some other case. To tell the other jurors any of this information is a violation of these instructions.

You may keep these instructions and review them as the case proceeds. A violation of these instructions should be reported to me.

Members of the jury, before the trial begins, I also want to let you know what is going to happen today.

As I mentioned before, this case will not likely last longer than a couple of hours, but I will pay attention to the need for comfort breaks.

REQUIRED LANGUAGE

This is a criminal case in which the defendant stands charged by complaint with the offense of _____, and to this complaint the defendant has pleaded "Not Guilty." The State will now read the complaint *(Prosecutor reads the complaint).*

You are instructed that in all criminal cases the burden of proof is on the State. The defendant is presumed to be innocent until the guilt of the defendant is established by legal evidence beyond a reasonable doubt, and in a case where you have a reasonable doubt as to the defendant's guilt you shall acquit him and say by your verdict "Not Guilty."

You are further instructed as a part of the law in this case that the complaint against the defendant is not evidence in the case, and that the true and sole use of the complaint is to charge the offense and to inform the defendant of the offense alleged against him.

Every defendant in a criminal case has the right to testify if he desires to do so, but he also has the constitutional right not to testify. If a defendant does not testify, you will be instructed that you cannot comment on the failure of the defendant to testify, and you cannot consider it as any evidence against the defendant.

Only *if the defendant has elected to have the jury assess punishment say this:*

REQUIRED LANGUAGE

The punishment authorized for this type of criminal case is _____.

We will begin with opening statements. Next the State will have any witnesses testify and provide any physical evidence they are relying on.

Mr./Ms. _____ (defendant), you will have a chance to question those witnesses and look at any documents presented.

When the State is finished, Mr./Ms. _____(defendant), you will have the chance to call any witnesses and provide any physical evidence you would like the jury to consider. The State may choose to put on more witnesses or evidence in rebuttal. Both sides will then have a chance to make their final argument and you will then decide your verdict in the case.

Both sides will have five minutes for an opening statement.

Mr./Ms. _____ (prosecutor), you may begin your opening now.

Once the state is finished:

Mr./Ms. _____ (defendant), you may begin your opening statement if you choose now.

The defendant may choose to do their opening statement at the beginning of their case. If the defendant waives, make sure to ask again after the state has "rested" their case.

Once the defendant is finished:

Mr./Ms. _____ (prosecutor), please call your first witness.

If there are any documents either side wants to use during this trial, make sure that they show each other before showing the witness or the court.

If there are items a side wants shown to the jury, it should be handled like this:

Members of the jury, the (plaintiff/defendant) has an item for you to examine. Bailiff, will you show the item to the jury?

Bailiff hands the document to the jury.

To the witness:

REQUIRED LANGUAGE

Please take the stand. Raise your right hand: "Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?"

Mr./Ms. _____ (prosecutor), you may begin to ask questions.

Once the state has finished:

Mr./Ms. _____ (defendant), do you have any questions for this witness?

If yes, allow them to ask, if no, ask the witness to step down.

You may begin to ask questions now.

Once the defendant is finished:

Mr./Ms. _____ (prosecutor), do you have any follow-up questions?

You may allow the defendant and state to continue to take turns asking follow-up questions, but do not have to.

If yes, allow them to ask, if no, ask the witness to step down.

To the witness:

Please step down from the witness stand.

Follow this same process for any additional witnesses.

Once the state is finished with their witnesses and documents, they should state that they "rest."

If the defendant waived their opening, you should ask if they would like to make theirs now.

> Mr./Ms. _____(defendant), you may make an opening statement now, if you choose.

> Mr./Ms. _____(defendant), do you have any witnesses that you would like me to hear from? You may also testify yourself.

If the defendant says yes, allow them to bring a witness forward and/or testify themselves.

If they choose to testify, they should take the stand and be sworn in like any witness. Their testimony will be them stating what happened rather than asking themselves questions and answering. You may need to tell them this if they are confused.

> Mr./Ms. _____ (defendant), please call your first witness.

Once the defendant has finished:

> Mr./Ms. _____ (prosecutor), do you have any questions for this witness?

If yes, allow them to ask, if no, ask the witness to step down.

> You may begin to ask questions now.

Once the state is finished:

> Mr./Ms. _____(defendant), do you have any follow-up questions?

You may allow the defendant and state to continue to take turns asking follow-up questions, but do not have to.

If yes, allow them to ask, if no, ask the witness to step down.

To the witness:

> Please step down from the witness stand.

Follow this same process for any additional defense witnesses.

> Mr./Ms. _____ (defendant), do you have any further witnesses or any documents you want to introduce?

If yes, follow the procedure above. If no, say the below:

> Now that both sides have presented their cases, I will read the jury charge to the jury.

Jury charges do not have to be in writing, but it is strongly advised. The bailiff will give the written jury charge to the jury when they deliberate, so they can remember what law to apply.

You will find a few criminal jury charge forms on the TJCTC website and in the Appendix on ***page 103*** *of this volume. In addition, TMCEC has a jury charge bank on their website at* ***https://www.tmcec.com/resources/jury-charges/****.*

The jury charge regarding the law should be provided by the prosecuting attorney. You need to allow the defendant to review and if there are objections, you will need to decide what the instructions should say.

Read the jury charge regarding the law.

At this time, both sides will have a chance to make a closing argument. Each side will have 10 [or _____] minutes. State, you may reserve up to two [or _____] minutes of the 10 [or _____] minutes for a potential rebuttal.

Mr./Ms. _____ (prosecutor), you may begin your closing argument.

Once the state is finished:

Mr./Ms. _____ (defendant), you may begin your closing argument.

Once the defendant is finished:

Mr./Ms. _____ (prosecutor), do you have a rebuttal statement?

If yes, give them up to two [or _____] minutes, if no, say the below.

Thank you both for presenting your case.

Bailiff _____, please take the jurors to the (jury room/ deliberations room) to decide which side should win. Jurors, I am sending the jury instructions back with you. I am also sending the verdict form back with you. As you can see from reading it, the first thing you will need to do is pick a foreperson. The verdict must be unanimous – meaning everyone must agree.

For steps on handling the verdict and judgment, please see ***Chapter 6***.

Script - Civil Bench Trial

Suggested language for the judge in blue. Required language in ***bold italics***.

Bailiff asks for all to rise, announcing the judge, county, and precinct.

> Good morning. My name is Judge _____. You've met the bailiff, _____ already. My court clerk, _____ (is seated here **or** may also enter the courtroom from time to time and if they do, they will sit here.)
>
> This other chair is called the witness stand and anyone who will be giving testimony under oath will sit here to speak.
>
> Today we have the case of _____ v. _____.
>
> Are both parties ready?

Allow both parties to answer.

> It is important to keep all electronic devices **off.** If your phone is not turned off, the bailiff will hold it until the trial is over.
>
> This case will not likely last longer than a couple hours, but I will pay attention to the need for comfort breaks as needed.
>
> This is a civil case. No crime has been committed. One citizen claims that another citizen has done something wrong and is bringing that claim to this court.
>
> My role is to apply the law and make sure that the case proceeds fairly.
>
> One of the things I would like to remind both parties of is that the justice court rules permit me to ask questions of witnesses. This is to ensure I have

all the information that I need to make the right decision. If I do ask any questions, please do not think that means I prefer one side over the other. I have no opinion of this case.

The rules of court proceedings are that the party who filed the case must present their case first. In this case, that means that the plaintiff will always go first. The defendant will always have an opportunity to respond.

We will begin with opening statements. Then, the plaintiff will have any witnesses testify and provide any physical evidence they are relying on. The defendant will then have a chance to question those witnesses and look at any physical evidence presented. When the plaintiff is finished, the defendant will have the chance to call any witnesses and provide any physical evidence they would like you to consider. The plaintiff may choose to put on a rebuttal case. Both sides will then have a chance to make their final argument, and I will then decide the case.

Both sides will have five [or ____] minutes for an opening statement.

Plaintiff, you may make an opening statement at this time.

Once the plaintiff is finished:

Defendant, you may begin your opening statement.

Once the defendant is finished:

Plaintiff, please call your first witness. You may also testify yourself.

If they choose to testify, they should take the stand and be sworn in like any witness.

If there are any documents either party wants to use during this trial, make sure that they show each other before showing the witness or the court.

If there are items a side wants shown to the jury, it should be handled like this:

Members of the jury, the (Plaintiff/Defendant) has an item for you to examine. Bailiff, will you show the item to the jury?

Bailiff hands the document to the jury.

To the witness:

REQUIRED LANGUAGE

Please take the stand to be placed under oath. Raise your right hand: "Do you solemnly swear to tell the whole truth and nothing but the truth"?

Plaintiff, you may begin to ask questions.

Once the plaintiff has finished:

Defendant, do you have any questions for this witness?

If yes, allow them to ask, if no, ask the witness to step down.

You may begin to ask questions now.

Once the defendant is finished:

Plaintiff, do you have any follow-up questions?

You may allow the plaintiff and defendant to continue to take turns asking follow-up questions but do not have to.

If yes, allow them to ask, if no, ask the witness to step down.

To the witness:

Please step down from the witness stand.

Follow this same process for any additional witnesses.

Once the plaintiff is finished with their witnesses and documents, they might say that they "rest."

> Defendant, do you have any witnesses that you would like me to hear from? You may also testify yourself.

If they choose to testify, they should take the stand and be sworn in like any witness.

> Defendant, please call your first witness.

Once the defendant has finished:

> Plaintiff, do you have any questions for this witness?

If yes, allow them to ask, if no, ask the witness to step down.

> You may begin to ask questions now.

Once the plaintiff is finished:

> Defendant, do you have any follow-up questions?

You may allow the plaintiff and defendant to continue to take turns asking follow-up questions, but do not have to.

If yes, allow them to ask, if no, ask the witness to step down.

To the witness:

> Please step down from the witness stand.

Follow this same process for any additional defense witnesses.

> Defendant, do you have any further witnesses or any documents you want to introduce?

If yes, follow the procedure above. If no, say the below:

> Thank you both for presenting your cases. At this time, both sides will have a chance to make a closing argument. Each side will have 10 [or ____] minutes. Plaintiff, you may reserve up to two [or ____] minutes of the 10 [or ____] minutes for a potential rebuttal.
>
> After hearing the arguments from both sides (choose one of the following):
>
> - I am prepared to give my judgment. I rule in favor of the _____ and award _____.
>
> - I am going to take a brief recess and return shortly with my judgment.
>
> - I am going to take my decision under advisement and will issue a ruling in open court on _____ (date).

For steps on handling the verdict and judgment, please see ***Chapter 6***.

Script - Civil Jury Trial

Suggested language for the judge in blue. Required language in ***bold italics***.

Bailiff asks for all to rise, announcing the judge, county, and precinct.

> Good morning. My name is Judge _____. You've met the bailiff, _____ already. My court clerk, _____ (is seated here **or** may also enter the courtroom from time to time and if they do, they will sit here.)
>
> This other chair is called the witness stand and anyone who will be giving testimony under oath will sit here to speak.
>
> Today we have the case of _____ v._____.
>
> Are both parties ready?

Allow both parties to answer.

> I am now going to call roll for the potential jurors.

Call the roll.

> Now that we know what potential jurors are here, I need to place you under oath before the questioning begins. Please raise your right hand.

REQUIRED LANGUAGE

> ***"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."***
>
> We will be selecting six of you today. Even if you are not chosen, we want to thank you for your service.

Please turn **off** all electronic devices. If your phone is not turned off, the bailiff will hold it until jury selection is over. This applies to the parties as well.

This is a civil case. No crime has been committed. One citizen claims that another citizen has done something wrong and is bringing that claim to this court.

You are going to determine the facts of this case; I will ensure that the case proceeds fairly.

This will probably not be necessary, but if this case should go on longer than a couple of hours, there may be breaks where you would have an opportunity to see the parties or witnesses outside of the courtroom. Remember to keep your distance from them and do not communicate, other than basic pleasantries such as good morning or good afternoon. It is important that we keep this process fair and neutral, and the parties and lawyers (if applicable) have been given these same instructions.

Know the jury process in your county – these questions may have already been asked in pre-jury service proceedings.

The law requires me to qualify or make sure that jurors are eligible to serve. Please listen carefully to the six qualifications:

REQUIRED LANGUAGE

- ***All jurors must be 18 years of age or older***
- ***A citizen of this county and of this country***
- ***Be able to read and write***
- ***Currently are, or are 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

- ***Not convicted of a misdemeanor theft or any felony***

- ***Not under indictment or legal accusation for a misdemeanor theft or any felony***

If you don't meet one or more of these qualifications, could I please get you to form a line here?

Remember to allow individuals to come up to the bench and discuss these issues privately with the judge and the parties.

*If anyone does not meet these **required** qualifications, they may not serve on the jury; you should wait until the end of these questions to thank the jurors for their time and tell them that they are excused.*

Thank you for your patience. I have a few more questions to ask. If any of these questions apply to you, you may choose to be excused. But it does not mean that you are not allowed to stay and be considered for the jury if you choose. Please raise your hand ***only*** if you qualify and ***want*** to be excused.

REQUIRED LANGUAGE

- ***Is anyone over 75 years of age?***

- ***Does anyone have legal custody of a child younger than 12 years of age, and being here means the child does not have adequate supervision?***

- ***Are there any secondary school students with us (grade 9-12)?***

- ***Is anyone enrolled and in actual attendance at an institution of higher education?***

- ***Are any of you 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?***

- ***Are any of you primary caretakers of an invalid unable to care for himself/herself?***

- ***Does anyone have a physical or mental impairment or are you unable to understand or speak English?***

- ***Are any of you 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?***

If anyone raised their hand to say that they meet the criteria and want to be excused, you can ask follow-up questions to make sure that they do meet the criteria to be excused. You may want the jurors to form a line and discuss their exemptions at the bench.

You should wait until the end of these questions to thank the jurors for their time and tell them that they are excused.

> For those of you remaining, I am now going to ask for any excuse why you cannot serve on this jury today. Let me inform you that generally, the fact that you are missing work is not enough. Does anyone have an excuse why you cannot serve today?

Hear the reasons but know that if one "works," other jurors may try the same excuse. For this reason, it may also be good to allow any jurors with an excuse to form a line and discuss at the bench as well.

> The parties will now have an opportunity to ask you questions. They may ask you individually or as a whole panel. They cannot ask you how you would rule in this case. Each side will be limited to 15 [or ____] minutes. Plaintiff, you may begin.

Once the plaintiff is finished:

> Defendant, you may now begin your questioning of the jury panel.

Once the defendant is finished:

> Potential jurors, thank you for being upfront in your responses to the questions. At this time, I'm going to have Bailiff _____ take you out of the courtroom so that we may decide the jury for this case.

Jurors leave the courtroom.

To the parties:

> We will first discuss any strikes/challenges for cause. This means did any juror say something that you believe makes them unable to be fair and neutral in this case.
>
> Plaintiff, do you have any challenges for cause?

If a party says yes, they must state which juror, what was said, and the other party can argue against striking for cause. Then you must decide to strike the juror for cause or not.

> Defendant, do you have any challenges for cause?

Once all challenges for cause are stated:

> Now that the challenges for cause are complete, I will give each side five minutes to decide on your three peremptory strikes. Please use (the "Peremptory Strike Form," the list of jurors, or your county's form for this) and sign at the bottom when you are finished.

Collect the lists and create your own master list of the selected jurors.
Read aloud the six remaining jurors **in order** *to the parties.*

Remember, if one side objects to the other improperly striking someone based on race, ethnicity, or gender, you must ask the striking party for a neutral reason for striking and rule on it.

You do not have to have an alternate juror, but if you choose to, follow this procedure.

> That makes jurors _____ (list the next three jurors by number or name) the potential alternate jurors. You have one strike each.
>
> Mr./Ms. _____ (Plaintiff), do you have a peremptory alternate strike? (make their one strike)
>
> Mr./Ms. _____(Defendant), do you have a peremptory alternative strike? (make their one strike)
>
> That makes _____ our alternate juror (read the first name left that has not been stricken).
>
> Does either side have an objection to the panel?
>
> Bailiff _____, please bring the jurors back into the courtroom.

Jurors re-enter the court room.

> Ladies and gentlemen, again thank you for your time. As I mentioned before the questions began, we were trying to pick the best jury for this particular case. None of you did or said anything wrong. If you are not selected, please do not take it personally.
>
> The following jurors are needed to remain:

List the jurors.

All other prospective jurors are free to leave, and we thank you for your service.

After other jurors leave:

Now that you have been selected, I need you to raise your right hand and take a new oath:

REQUIRED LANGUAGE

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

Members of the jury, before the trial begins, I want to let you know what is going to happen today.

As I mentioned before, this case will not likely last longer than a couple hours, but I will pay attention to the need for comfort breaks.

Do not discuss this case with anyone, even your spouse or a friend, either in person or by any other means like social media or your phone.

Do not discuss this case with other jurors until the end of the trial so that you do not form opinions about the case before you have heard everything. Then you will discuss the case with the other jurors and reach a verdict.

Do not consider or guess whether a party is covered by insurance.

Do not investigate this case on your own in any way. This rule is very important, because we want a trial based only on what happens in this courtroom. Information from other sources could be wrong.

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

The rules of court proceedings are that the party who filed the case must present their case first. In this case, it will be the plaintiff who will always go first. The defendant will always have an opportunity to respond.

We will begin with opening statements. Then the plaintiff will have any witnesses testify and provide any physical evidence they are relying on. The defendant will then have a chance to question those witnesses and look at any physical evidence presented. When the plaintiff is finished, the defendant will have the chance to call any witnesses and provide any physical evidence they would like you to consider. Both sides will then have a chance to make their final argument. You will then decide the case.

One of the things I'd like to add is that the justice court rules permit me to ask questions of witnesses. This is to ensure you have all the information that you need to make the right decision. If I do ask any questions, please do not think that means I prefer one side over the other. I have no opinion of this case – you are to decide the outcome.

Plaintiff, you may make an opening statement at this time.

Once the plaintiff is finished:

Defendant, you may begin your opening statement.

Once the defendant is finished:

Plaintiff, please call your first witness. You may also testify yourself.

If they choose to testify, they should take the stand and be sworn in like any witness.

If there are any documents either side wants to use during this trial, make sure that they show each other before showing the witness or the court.

If there are items a side wants shown to the jury, it should be handled like this:

Members of the jury, the *(plaintiff/defendant)* has an item for you to examine. Bailiff, will you show the item to the jury? *(Bailiff hands the document to the jury.)*

To the witness:

REQUIRED LANGUAGE

Please take the stand. Raise your right hand: "Do you solemnly swear to tell the whole truth, nothing but the truth"?

Plaintiff, you may begin to ask questions.

Once the plaintiff has finished:

Defendant, do you have any questions for this witness?

If yes, allow them to ask. If no, ask the witness to step down

You may begin to ask questions now.

Once the defendant is finished:

Plaintiff, do you have any follow-up questions?

You may allow the plaintiff and defendant to continue to take turns asking follow-up questions, but do not have to.

If yes, allow them to ask. If no, ask the witness to step down.

Please step down from the witness stand.

Follow this same process for any additional witnesses.

Once the plaintiff is finished with their witnesses and documents, they might say that they "rest."

Defendant, do you have any witnesses that you would like me to hear from? You may also testify yourself.

If the defendant says yes, allow them to bring a witness forward and/or testify themselves.

If they choose to testify, they should take the stand and be sworn in like any witness.

Defendant, please call your first witness.

Once the defendant has finished:

Plaintiff, do you have any questions for this witness?

If yes, allow them to ask. If no, ask the witness to step down.

You may begin to ask questions now.

Once the plaintiff is finished:

Defendant, do you have any follow-up questions?

You may allow the plaintiff and defendant to continue to take turns asking follow-up questions, but do not have to.

If yes, allow them to ask, if no, state the below to the witness.

Please step down from the witness stand.

Follow this same process for any additional defense witnesses.

Defendant, do you have any further witnesses or any documents you want to introduce?

If yes, follow the procedure above. If no, say the below.

> Plaintiff, do you have any rebuttal evidence or witnesses?

If yes, follow the same procedure for any witness testimony or documents and physical evidence; if not, state the below.

> At this time, both sides will have a chance to make a closing argument. Each side will have 10 [or ____] minutes. Plaintiff, you may reserve up to two [or ____] minutes of the 10 [or _____] minutes for a potential rebuttal.
>
> Thank you both. Members of the jury, the parties have presented their cases. Now it is time for you to make your decision, and to find in favor of either the plaintiff or the defendant.
>
> **** If you had an alternate juror*** Mr./Ms. _____ , by now you may have realized that you were our seventh, or alternate, juror. Please remain in the courtroom for a few minutes, so that we can be sure we have a good contact number for you in case we need your help further, but for now, you are free to go.
>
> I am giving the bailiff the verdict form for you to have during your decision making. As you can see on the form, 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. You will need to select a presiding juror, sometimes called foreperson, when you go back to the jury room.
>
> If you find there were any damages, or money owed, in this case, please fill in the blank spaces in the verdict form.
>
> Bailiff, please take the jury to the deliberations room.

For steps on handling the verdict and judgment, please see ***Chapter 6.***

CAUSE NO. _____

STATE OF TEXAS	§	IN THE JUSTICE COURT
	§	
v.	§	PRECINCT ____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The Defendant, _____, stands charged by complaint with the offense of _____, alleged to have been committed in _____ County, Texas, on or about _____, 20____. To this charge, the Defendant has pleaded "Not Guilty."

You are instructed that a person commits the offense of _____ if _____.

Definitions: _____.

You are the exclusive judges of the facts, of the credibility of the witnesses, and of the weight to be given to the testimony, but you must follow the law given to you by the Court found in this charge.

In all criminal cases, the burden of proof is on the State. All persons are presumed innocent, and no person may be convicted unless each element of the offense charged is proven beyond a reasonable doubt. The fact that a person has been arrested, confined, or charged with an offense is not evidence of guilt. The law does not require the Defendant to prove innocence or put on a case at all. The presumption of innocence alone is sufficient to find the Defendant, "Not Guilty," if the elements of the offense are not proven beyond a reasonable doubt.

You must only consider the evidence presented in this case and not any outside information. In deliberating the case, do not refer to or discuss matters not in the evidence presented to you during trial.

Keeping in mind the instructions in this charge, if you believe from the evidence, beyond a reasonable doubt, that the Defendant, _____, on or about _____, 20___, in _____County, Texas, did then and there commit the offense of _____, you shall find the defendant

"Guilty," and assess a fine of not less than _____ dollars ($_____) and not more than _____ dollars ($_____). If you do not so believe, or have a reasonable doubt thereof, you will acquit the Defendant and find the Defendant, "Not Guilty."

You will now go to the jury room and select a presiding juror. The presiding juror will preside over your deliberations. Your verdict must be unanimous. When you reach a unanimous verdict, you will return to the Court.

ISSUED AND SIGNED on _____, 20____**.**

_____
JUSTICE OF THE PEACE, PRECINCT _____
_____ COUNTY, TEXAS

CAUSE NO. _____

STATE OF TEXAS	§	IN THE JUSTICE COURT
	§	
v.	§	PRECINCT ____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

CHARGE OF THE COURT – ASSAULT BY CONTACT

MEMBERS OF THE JURY:

The Defendant, _____, stands charged by complaint with the offense of Assault by Contact, alleged to have been committed in _____ County, Texas, on or about _____, 20____. To this charge, the Defendant has pleaded "Not Guilty."

You are instructed that a person commits the offense of Assault by Contact if that person intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other would regard the contact as offensive or provocative.

Definitions: _____.

A person acts intentionally, or with intent, with the respect to the result of the person's conduct when it is the person's conscious objective or desire to engage in the conduct or to cause the result.

A person acts knowingly, or with knowledge, with respect to a result of the person's conduct when the person is aware that the person's conduct is reasonably certain to cause the result.

"**Reasonable belief**" means a belief that would be held by an ordinary and prudent person in the same circumstances as the defendant.

You are the exclusive judges of the facts, of the credibility of the witnesses, and of the weight to be given to the testimony, but you must follow the law given to you by the Court found in this charge.

In all criminal cases, the burden of proof is on the State. All persons are presumed innocent, and no person may be convicted unless each element of the offense charged is proven beyond a reasonable doubt. The fact that a person has been arrested, confined, or charged with an offense is not evidence of guilt. The law does not require the Defendant to prove innocence or

put on a case at all. The presumption of innocence alone is sufficient to find the Defendant, "Not Guilty," if the elements of the offense are not proven beyond a reasonable doubt.

You must only consider the evidence presented in this case and not any outside information. In deliberating the case, do not refer to or discuss matters not in the evidence presented to you during trial.

Keeping in mind the instructions in this charge, if you believe from the evidence, beyond a reasonable doubt, that the Defendant, _____, on or about _____, 20__, in _____County, Texas, did then and there commit the offense of Assault by Contact, you shall find the defendant "Guilty," and assess a fine of not less than one dollars ($1.00) and not more than five hundred dollars ($500.00). If you do not so believe, or have a reasonable doubt thereof, you will acquit the Defendant and find the Defendant, "Not Guilty."

You will now go to the jury room and select a presiding juror. The presiding juror will preside over your deliberations. Your verdict must be unanimous. When you reach a unanimous verdict, you will return to the Court.

ISSUED AND SIGNED on _____, 20____**.**

_____
JUSTICE OF THE PEACE, PRECINCT _____
_____ COUNTY, TEXAS

CAUSE NO. _____

STATE OF TEXAS	§	IN THE JUSTICE COURT
	§	
v.	§	PRECINCT ____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

CHARGE OF THE COURT - SPEEDING

MEMBERS OF THE JURY:

The Defendant, _____, stands charged by complaint with the offense of Speeding, alleged to have been committed in _____ County, Texas, on or about _____, 20____. To this charge, the Defendant has pleaded "Not Guilty."

You are instructed that a person commits the offense of Speeding if that person operates a vehicle at a speed greater than is reasonable and prudent under the existing circumstances. Any speed in excess of the posted speed is prima facie evidence that the speed is unreasonable or imprudent.

Definitions:

_____

_____.

A person "**operates**" a motor vehicle if that person drives or has physical control of a vehicle.

"**Vehicle**" means a device that can be used to transport or draw persons or property on a highway.

"**Prima facie**" means evidence which stands proved until rebutted by other evidence.

You are the exclusive judges of the facts, of the credibility of the witnesses, and of the weight to be given to the testimony, but you must follow the law given to you by the Court found in this charge.

In all criminal cases, the burden of proof is on the State. All persons are presumed innocent, and no person may be convicted unless each element of the offense charged is proven beyond a reasonable doubt. The fact that a person has been arrested, confined, or charged with an offense is not evidence of guilt. The law does not require the Defendant to prove innocence or

put on a case at all. The presumption of innocence alone is sufficient to find the Defendant, "Not Guilty," if the elements of the offense are not proven beyond a reasonable doubt.

You must only consider the evidence presented in this case and not any outside information. In deliberating the case, do not refer to or discuss matters not in the evidence presented to you during trial.

Keeping in mind the instructions in this charge, if you believe from the evidence, beyond a reasonable doubt, that the Defendant, _____, on or about _____, 20___, in _____County, Texas, did then and there commit the offense of Speeding, you shall find the defendant "Guilty," and assess a fine of not less than one dollar ($1.00) and not more than two hundred dollars ($200.00). If you do not so believe, or have a reasonable doubt thereof, you will acquit the Defendant and find the Defendant, "Not Guilty."

You will now go to the jury room and select a presiding juror. The presiding juror will preside over your deliberations. Your verdict must be unanimous. When you reach a unanimous verdict, you will return to the Court.

ISSUED AND SIGNED on _____, 20____**.**

_____
JUSTICE OF THE PEACE, PRECINCT _____
_____ COUNTY, TEXAS

CAUSE NO. _____

STATE OF TEXAS	§	IN THE JUSTICE COURT
	§	
v.	§	PRECINCT ____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

CHARGE OF THE COURT – CLASS C THEFT OF PROPERTY

MEMBERS OF THE JURY:

The Defendant, _____, stands charged by complaint with the offense of Class C Theft of Property, alleged to have been committed in _____ County, Texas, on or about _____, 20____. To this charge, the Defendant has pleaded "Not Guilty."

You are instructed that a person commits the offense of Class C Theft of Property if that person unlawfully appropriates property with the intent to deprive the owner of property and the value of that property is less than fifty dollars ($50.00).

Definitions:

_____

_____.

A person acts intentionally, or with intent, with respect to the result of the person's conduct when it is the person's conscious objective or desire to engage in the conduct or to cause the result.

A person acts knowingly, or with knowledge, with respect to a result of the person's conduct when the person is aware that the person's conduct is reasonably certain to cause the result.

Appropriation of property is unlawful if it is without the owner's effective consent; the property is stolen, and the actor appropriates the property knowing it was stolen by another; or property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

"**Deprive**" means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner; to restore property only upon payment of reward or other compensation; or to dispose of property in a manner that makes recovery of the property by the owner unlikely.

"**Appropriate**" means to bring about a transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; or to acquire or otherwise exercise control over property other than real property.

"**Property**" means real property; tangible or intangible personal property including anything severed from land; or a document, including money that represents or embodies anything of value.

You are the exclusive judges of the facts, of the credibility of the witnesses, and of the weight to be given to the testimony, but you must follow the law given to you by the Court found in this charge.

In all criminal cases, the burden of proof is on the State. All persons are presumed innocent, and no person may be convicted unless each element of the offense charged is proven beyond a reasonable doubt. The fact that a person has been arrested, confined, or charged with an offense is not evidence of guilt. The law does not require the Defendant to prove innocence or put on a case at all. The presumption of innocence alone is sufficient to find the Defendant, "Not Guilty," if the elements of the offense are not proven beyond a reasonable doubt.

You must only consider the evidence presented in this case and not any outside information. In deliberating the case, do not refer to or discuss matters not in the evidence presented to you during trial.

Keeping in mind the instructions in this charge, if you believe from the evidence, beyond a reasonable doubt, that the Defendant, _____, on or about _____, 20____, in _____County, Texas, did then and there commit the offense of Class C Theft of Property, you shall find the defendant "Guilty," and assess a fine of not less than one dollars ($1.00) and not more than five hundred dollars ($500.00). If you do not so believe, or have a reasonable doubt thereof, you will acquit the Defendant and find the Defendant, "Not Guilty."

You will now go to the jury room and select a presiding juror. The presiding juror will preside over your deliberations. Your verdict must be unanimous. When you reach a unanimous verdict, you will return to the Court.

ISSUED AND SIGNED on _____, 20____**.**

_____
JUSTICE OF THE PEACE, PRECINCT _____
_____ COUNTY, TEXAS

List of Cases

Allen v. United States, 164 U.S. 492 (1896).
Anderson v. United States, 417 U.S. 21 (1974).
Atkins v. State, 951 S.W.2d 787 (Tex. Crim. App. 1997).
Averitt v. Gutierrez, 567 S.W. 2d 505, 506 (Tex. Crim. App. 1978).
Brady v. Maryland, 373 U.S. 83 (1963).
Batson v. Kentucky, 476 U.S. 79 (1986).
Carroll Cable Co. v Miller, 501 S.W.2d 299 (Tex. 1973); *Rule 192.3 (f).*
Davis v. State, 313 S.W.3d 317 (Tex. Crim. App. 2010)
Edmonson v. Leesville Concrete, 500 U.S. 614 (1991).
Gutierrez v Dallas ISD, 729 SW2d 691 (Tex. 1987).
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