

## The Stages of Trial

The trial of both civil and criminal cases is conducted under similar rules of procedures and in much the same manner. The stages of trial usually include:

**(1) Opening Statements.** An opening statement is made first by the attorney for the plaintiff and then by the attorney for the defendant. The purpose of this opening statement is to outline to the jury the facts of the case and what each side will attempt to establish through the presentation of evidence. This is only an explanation of what each side claims. Occasionally, the judge will make a preliminary charge which substitutes for opening statements.

**(2) Presentation of Evidence.** After both sides have been given the opportunity to make opening statements or the judge has made a preliminary charge, the trial moves to the stage in which evidence is presented by each side. The plaintiff first presents all the evidence that supports his contentions and is then followed by the defendant who presents his evidence. The plaintiff may then give evidence to disprove or explain some evidence presented by the defendant.

Evidence may be in the form of a written document, an object, a photograph, or an X-ray. Such pieces of evidence are called exhibits. This physical evidence will be taken with you to the jury room and may be considered in your deliberation.

Most evidence is presented in the form of spoken testimony of witnesses who have taken an oath to tell the truth. The attorney who has called the witness first asks questions of that witness; this is called direct examination. After direct examination is concluded, the lawyer for the other party may ask further questions of that witness, or cross-examine. After cross-examination, the lawyer who called the witness has a final opportunity to ask questions, which is called re-direct examination.

You should pay close attention to each witness as he testifies, not only to what he says but his manner and actions. If at any time you are unable to hear clearly, make the judge aware of the problem by raising your hand.

In some instances, the testimony of a witness who cannot be present at the trial may have been taken before the trial and written down. Such testimony, called a deposition, is given under oath, and if entered into evidence, should be treated as though the witness were testifying in court. All testimony, as well as remarks of the judge, attorneys, and other court officials are recorded by the court reporter. This constitutes the official trial record, which may be of importance in later proceedings.

From time to time during the trial, you may hear the attorneys make "objections". Objections may be made for several reasons, including objections to the conduct of the parties or their attorneys, to the form of a question during the examination of a witness, or to the introduction of evidence. If the objection is deemed improper or not well founded by the judge, he will "overrule" it, and allow the proceedings to continue or the evidence to be introduced. If the judge finds the objection to be valid and proper, he may "sustain" it, thereby discontinuing that conduct or question or he may refuse to allow the introduction of evidence.

Under the rules of law governing the introduction and admission of evidence, a lawyer is within his rights to object to the introduction of any evidence, which he believes is not proper. The judge is the sole authority on what evidence is proper. Since the evidence may be excluded, the jury is usually not allowed to hear arguments as to admissibility. Thus, the judge may send the jury out of the courtroom to allow the attorneys to argue to him whether the evidence should be admitted. Sometimes evidence is viewed by the jury before the attorney has a chance to object. The judge may order the jury to disregard such evidence completely, and if so ordered, it should be disregarded and not considered as evidence.

**(3) Final or Closing Arguments.** After both sides have had an opportunity to present their evidence and have both "rested" their cases, they are given a chance to make final or closing arguments to the jury. First, the plaintiff's attorney, or the prosecutor in a criminal case, followed by the defendant's attorney will make closing arguments in which they sum up the evidence and testimony and try to persuade the jury to find in favor of their respective clients. These arguments, like the opening statements, should be listened to attentively but should not be considered as evidence in themselves.

**(4) Instructions.** After the lawyers have concluded their final arguments, the judge will instruct you on the law that applies to the case, and you must apply that law to the facts as you find them in arriving at your verdict. You are bound under your oath to give full effect to the law as the judge states it to you. You must pay close attention to his instructions.

If the judge should give you any instruction that is different from any statement in this pamphlet, you should accept his instruction as correct and be guided by it.

**(5) Jury Deliberation.** Following the instructions, or charge by the judge, the bailiff will escort the jury to the jury room where you will conduct your deliberations. The foreman that was designated by the judge presides during the deliberations. The foreman acts as the chairman of the jury. It is his duty to see that discussion is carried on in a free and orderly manner, that the matters and issues submitted for your decision are fully and freely discussed, and that every juror is given an opportunity to express himself. No cell phones, pagers, or other communication devices, such as palm pilots, are allowed in the jury room. Such devices should be relinquished to the clerk of court, bailiff, or other court personnel until the conclusion of your jury service.

After you retire to the jury room, you are entitled to have all exhibits brought to you. Should you feel that it is necessary to be reinstructed, or receive additional instruction on the law or to have certain testimony read to you, you may inform the judge through the bailiff. You should not, however, make such requests lightly, for they can be answered only by returning the jury to the courtroom where the Court will resume in full session. The procedure may require considerable time but is justifiable if you seriously believe it to be necessary or helpful to you in discharging your duty.

In weighing evidence, an important distinction exists between civil and criminal cases in the degree of proof required to sustain an allegation. In a criminal case, the defendant must be proven guilty beyond a reasonable doubt in order to be convicted. In a civil case, the party who has made an affirmative allegation against another must prove that allegation by a preponderance

of the evidence to support a finding in his favor on that allegation. In each case, the judge will carefully explain to you the degree of proof required to support particular findings. You should pay the same careful attention to his instructions on this subject, as you are required to pay to all other instructions.

In the jury room, differences of opinion arise among the jurors quite often. When this occurs, each juror should be allowed to express his opinions and reasons. By the process of careful and thorough reasoning, it is generally possible for jurors to reach a verdict. A juror should not hesitate to change his mind where there is good reason for doing so, but one who has a definite opinion on a question should not change that opinion unless he conscientiously is moved to do so as a result of the deliberations, his consideration of the views of his colleagues, or his own further thought on the matter.

It would be wrong for a juror to refuse to listen to the arguments and opinions of the others or to deny the right of another juror to express his own opinions. All jurors should deliberate and vote on each issue to be decided. A juror should never vote against his conscience or his own judgment. He should vote only according to his own honest convictions, arrived at after a full and free discussion with his fellow jurors. After a verdict or after a mistrial, or disagreement, jurors are under no duty or obligation to discuss what took place in the jury room with the lawyers in the case or anyone else.