

*This information is provided to assist you in your self-represented jury trial. This does not contain any legal advice. This handout does not cover everything you need to know for trial, but it will give you a basic understanding of the trial process and expectations. You are expected to follow all rules and expectations just like the lawyers who appear before the court. **Each judge has his/her own trial expectations. Please ask your judge about his or her trial preferences.***

Self-Represented Criminal Jury Trial Guidelines

What to Bring to Trial:

The process of a criminal jury trial is fairly uniform.

- You will want to be appropriately dressed for trial.
- If you are in custody, you need to have a family member/friend bring you appropriate clothing to wear for trial. The court will take steps to ensure the jury panel does not know you are in custody.
- You are expected to bring any exhibits you plan to introduce to the hearing. The court will not print documents for you and, generally, will not make copies.
- You should also bring any reference material you believe you may need. The court will provide you with writing paper and a pen, if needed.

Basic Jury Rules:

Addressing the Jury:

Parties are only allowed to speak directly to the jury during certain parts of the trial. Speaking, writing, or sending messages to the jury, as a whole or individually, is *not* allowed. You may speak directly to the jury during jury selection, opening statement(s), closing argument(s), and when you testify, if you choose to testify on your own behalf.

Jury Selection

On the day of your trial, a group (called a pool) of jurors will be brought to the courtroom. Everyone in the courtroom stands for the jury when they enter or leave the courtroom, every time.

The judge will give the jury some general instructions and place them under oath (an oath is a promise to tell the truth). The goal of jury selection – also called “*voir dire*” – is to help ensure there is a fair and impartial jury for both you and the prosecution. The judge will first ask general questions about the individual jurors’ backgrounds, experience, and understanding of the criminal justice system. The judge will also talk with the jurors about some basic legal concepts. This may include the presumption of innocence, the prosecution’s burden of proof, and other ideas related to your case. You will then be allowed to ask the jury questions if you want. The prosecution always goes after you when questioning the jury. The jury will be questioned as a whole, meaning you can ask questions of individual jurors or all the jurors together.

Jury selection is *not* the time to make arguments or to present your case.

Examples of appropriate questions:

- Have you ever had racially-prejudiced thoughts about another person, even if those thoughts made you feel uncomfortable or uneasy?
- What do you do when you hear different versions of the same incident?
- How many of you would believe the police over another witness?

Examples of inappropriate questions:

- If there is no crime video, how many of you feel comfortable convicting the defendant?
- The law says..., do you agree that it's a fair law?
- Do you believe the government charges are too severe?

Removing a Juror

There are two ways to remove a juror from the pool: “strike (remove) for cause” and “peremptory strikes.”

To “strike for cause” is the process of removing a juror because you believe the juror would not be fair and listen to all the facts. If you believe you have a strike for cause, you should ask permission to speak outside the jurors’ hearing. The jury is not allowed to hear any discussions related to strike for cause. When you complete your questioning and do not want to strike any more jurors for cause, you should tell the judge you are “passing the jury pool for cause” or similar words. When you are done questioning the jury, the prosecution is allowed to ask questions. When the prosecution is done questioning the jury, it will also “pass for cause.”

You may also remove a juror using your “peremptory strikes.” Peremptory strikes allow you to remove a juror for any reason – except a party cannot base a peremptory strike solely upon a juror’s race or gender. If a peremptory strike is based on race or gender, then either you or the prosecution can object to the peremptory strike using a *Batson* challenge¹ after all peremptory strikes are made. There is no other discussion on peremptory strikes. You simply use your peremptory strikes when the judge tells you it is time to narrow the pool down to the numbers needed to hear your case. As the defense, you have 5 peremptory strikes, and the prosecution has 3. These numbers will change if you are facing the possibility of life in prison. Here’s an example of what that process may look like:

You are handed a list of the jurors’ names that will be passed back and forth between the Defendant and prosecutor. Defendant goes first and strikes one juror by drawing a line through their name and writing “Defense #1”. Defendant goes again and strikes a second juror by drawing a line through their name and writing “Defense #2”. Then the prosecutor strikes by drawing a line through a juror’s name and writing “State #1.” Defendant strikes third juror and writes “Defense #3”. State makes second strike and writes “State #2”. Defendant strikes fourth juror and writes “Defense #4”. Prosecutor strikes third juror and writes “State #3”. Defendant strikes fifth juror and writes “Defense #5”.

¹ *Batson v. Kentucky*, 476 U.S. 79 (1986)

The list of jurors will be narrowed down to the number needed for your trial (6 or 12), plus alternate(s). An alternate is a juror who will listen to the entire trial but does not get to decide the case. The alternate will only get to decide the case if another member of the jury is unable to complete his/her duty. Usually you and the prosecutor will know who the alternate(s) are before the trial begins.

Start of Trial

Opening Statements

Once the jury is picked, the parties can make an “opening statement.” Your opening statement is the time to introduce yourself to the jury and to explain the big picture of your case. This is *not* the time to introduce evidence. This is *not* the time to testify. This is *not* the time to make legal arguments. The prosecution always goes first, followed by you.

State’s Case-in-Chief (phase of a trial where the state presents its evidence).

The prosecution presents its case first. The prosecution has the burden of proof. The prosecution must prove beyond a reasonable doubt that you committed the crime. The prosecution will call witnesses. Witnesses will be sworn in and questioned. The party calling a witness is the first to question the witness. If you believe the prosecutor is asking a legally inappropriate question, you may “object.” An objection is not proper simply because you do not like the answer or you believe the witness is wrong – that is the purpose of cross-examination (described below). A list of common objections:

COMMON TRIAL OBJECTIONS

A. VOIR DIRE

1. Attempting to commit jurors to a specific verdict
2. Asking about votes in prior cases
3. Unnecessary probing in juror’s background
4. Questions not going to ascertaining juror qualifications

B. OPENING STATEMENT

1. Arguing the law
2. Discussing inadmissible facts
3. Misstatements of the law
4. Expressing personal belief on the merits

C. WITNESS QUALIFICATIONS

1. Competency to Testify (prior to swearing in witness)
2. Privilege
3. Non-qualified expert

D. OBJECTIONS DURING DIRECT EXAMINATION

1. Leading
2. Not relevant
3. Hearsay
4. Calls for Speculation
5. Calls for a narrative answer

6. Asked and answered
7. Cumulative
8. Prejudicial effect outweighs probative value
9. Assumes facts not in evidence
10. Lack of personal knowledge (no foundation)
11. Misstatement of the record (misquoting the witness)
12. No proper foundation (specify missing elements)

E. OBJECTIONS DURING CROSS-EXAMINATION

1. Beyond the scope of direct
2. Hearsay
3. Asked and answered
4. Assumes facts not in evidence
5. Compound question
6. Misstatement of the record (misquoting the witness)
7. Argumentative
8. Improper impeachment
9. No good faith basis for the question

F. DOCUMENTS

1. Identification
2. Authentication
3. Relevancy
4. Best Evidence
5. Hearsay
6. Privilege

G. CLOSING ARGUMENT

1. Improper argument – facts not in evidence
2. Improper argument - Misstatement of the facts
3. Improper argument - Misstatement of the law
4. Stating personal belief in the merits of the case
5. Asking jurors to place themselves in the party's position
6. Deals with improper subject matter – settlement discussions, insurance, right to remain silent, etc.
7. Unduly prejudicial/inflammatory

H. JURY INSTRUCTIONS

1. Misstating the facts of the case
2. Misstatement of the law
3. Unduly placing weight on certain legal issues or evidence
4. Failing to give instructions consistent with theory of the case
5. Failing to give requested instructions
6. Confusing/ambiguous

The prosecution completes its “direct examination” of a witness. Direct examination asks the witness questions that answer

- Who,
- What,
- How,
- When, and
- Where.

These types of questions are intended to draw the story of the case out to the jurors. An example of a direct examination question is: “Where were you on the night of December 15, 2018?”

Once the prosecution completes its direct examination, you are allowed to “cross examine” the witness. Cross-examination is asking questions to a witness, who has already testified, in order to check or discredit the witness's testimony, knowledge, or credibility. Unlike direct examination, you are allowed to ask leading questions on cross-examination of a witness. An example of a cross-examination question is: “On the night of December 15, 2018, did you pull over an SUV?” It is a leading question because you are asking the witness to confirm a fact which the witness can only answer with a “yes” or “no”.

You do not have to cross-examine the prosecutor's witnesses. Questioning a witness is not the time to argue your case. Rather, it is the time to draw out facts you want the jury to know. Once you are done with cross-examination of a witness, the prosecutor is allowed to “redirect.” Redirect is the process of asking questions only on issues you brought out during your cross-examination. You will be allowed to “re-cross” the witness on issues raised by the prosecution's re-direct. Neither the prosecution nor you should ask questions that have already been answered.

The prosecutor will continue to call witnesses, following the same process detailed above for each witness. The prosecutor will “rest” their case when they have no more witnesses and have no other evidence to introduce.

The judge is allowed to limit the number of witnesses if the witnesses will present “cumulative evidence” (meaning the same information as other witnesses).

Once the prosecutor rests, you may verbally motion the court for a judgment of acquittal on one or more of the charges if the evidence presented is insufficient to support a conviction. The judge will rule on your request. If the judge denies your motion, then it is your opportunity to call your own witnesses. This is called the Defendant's case-in-chief.

Your Case-in-Chief

During this phase of the trial you are allowed to bring your own witnesses. You can also testify. In general it is your time to introduce your evidence. ***You are not required to call witnesses, introduce evidence, or testify.*** However, if you want to call witnesses or testify this is your time and opportunity.

You have an absolute right to testify or not testify. This right is guaranteed by both the federal and state constitutions. If you choose to testify, you will be subject to cross-examination, just like any other witness. The prosecutor may also attempt to "impeach" you with any prior felony conviction(s) or any conviction(s) involving dishonesty. Impeachment is the process in which the prosecution will attempt to discredit you by presenting evidence that you have lied in the past. You can object to a question on a legal basis. However, if the judge requires you to answer a question, you must answer it. You cannot pick and choose which questions you will answer.

If you choose not to testify, the prosecution cannot make any comment about your choice not to testify. The judge also cannot comment on your decision not to testify with one exception: you may ask the judge to tell the jury not to base their decision on your choice not to testify during the final instructions.

You will present your side of the case the same way the prosecution presented its case. You may call witnesses. You will question the witnesses during direct examination. The prosecutor will be able to cross-examine those witnesses. You may then re-direct and the prosecutor can re-cross.

After you have called all of your witnesses, you should indicate that you "rest." This means you will call no more witnesses and present no more evidence. The prosecution can then ask to call any rebuttal witnesses it may have, after which you may ask to do the same.

Final Jury Instructions:

The final jury instructions will be drafted using the Minnesota Criminal Jury Instruction Guides ("CrimJIGs") as a guide. The judge may provide a draft copy of all the potentially relevant instructions. As the trial progresses, certain instructions may be removed if they are not needed. The judge will give you and the prosecutor a chance to argue for or against the inclusion of certain instructions after you and the prosecutor have rested and before the jury receives the final instructions.

Closing Argument:

After both sides rest, each side may make a closing argument to the jury. This is the time you can argue your case and make legal arguments. You can talk about and use exhibits that were

introduced during the trial. The prosecution will always go first, followed by you. After you have finished your closing argument, the prosecution has the option to present a second short argument (called rebuttal argument) since the prosecution has the burden of proof.

Deliberation:

The jury will receive final instructions and privately talk over the case with each other. At this time, if the jurors have a question they will pass a note to the judge through a deputy. The judge's clerk may then call you and the prosecutor to the courtroom to discuss the question. The jury may then be called to the courtroom to receive an answer.

When the jury has reached a decision ("verdict"), you and the prosecutor will be called to the courtroom. You are expected to stand during the reading of the jury's decision. If you are found guilty, you have the right to appeal.

General Courtroom Procedure:

Addressing the Court:

While the jury is present, you may speak directly to the judge when you make objections, introduce evidence, or ask permission to move about the courtroom. If you have something to say to the judge that you do not believe the jury should hear, you may ask to "be heard outside the presence of the jury." The judge will then hear from both parties outside the hearing of the jury.

Moving Around the Courtroom:

If you need to move around the courtroom during the trial, then you must ask permission to approach a witness.

Trial Rules

You should read and understand the following rules during the trial because you are expected to follow them:

- The Minnesota Rules of Criminal Procedure
- The Minnesota Rules of General Practice
- The Minnesota Rules of Evidence
- The Minnesota Supreme Court Rules of Decorum

You should know the process for introducing evidence at trial. The judge cannot help you lay proper foundation or overcome specific objections at trial. The judge also cannot provide legal reasons to support any objection you raise. You are expected to provide legal reasoning to support any objection you raise.

CRIMINAL JURY ORDER OF EVENTS

