



*Do you swear or affirm that
you will try the matter in
dispute and give a true verdict
according to the evidence?*

*— N.J.S.A. 2B:23-6
Oath of jurors*

EDUCATIONAL GUIDE FOR
Trial Jurors

Third Edition

NEW JERSEY STATE BAR FOUNDATION



About the New Jersey Judiciary

The New Jersey Judiciary consists of the New Jersey Supreme Court, the Appellate Division of the Superior Court, the Superior Court trial courts, the tax court and the municipal courts. The goal of the Judiciary is to provide access to all who seek justice; timely justice; independent and impartial judges; and fair and equal treatment to all who use the courts, regardless of their wealth, power, race, gender, religion, ethnic background or disability. More information on the Judiciary is provided in a pamphlet titled *The New Jersey Courts, a guide to the judicial process*, available at courthouses in each county. In addition, the Judiciary's Administrative Office of the Courts offers further court-related information online at www.njcourts.com.

About the New Jersey State Bar Foundation

The New Jersey State Bar Foundation, founded in 1958, is the educational and philanthropic arm of the New Jersey State Bar Association. The Foundation is committed to providing free law-related education programming for the public. Dedicated to providing programs for children and teachers, the Foundation sponsors mock trial competitions for elementary, middle and high school students, training sessions for teachers on conflict resolution and peer mediation, as well as trainings to combat bullying. The Foundation also publishes a legal newspaper for kids titled *The Legal Eagle* and a newsletter promoting tolerance and diversity titled *Respect*. Other Foundation publications include *Law Points for Senior Citizens (third edition)*; *Consumer's Guide to New Jersey Law*; *Domestic Violence: The Law and You*; *Students' Rights Handbook*, cosponsored with The American Civil Liberties Union of New Jersey; *Residential Construction and Renovation: A Legal Guide for New Jersey Homeowners*; and *Disability Law Primer (sixth edition)*, cosponsored with the Essex County Bar Association. Some of these publications are available in Spanish and all are available in alternative formats for individuals with disabilities. For more information about Foundation programs or copies of publications, visit us online at www.njsbf.org or call 1-800-FREE LAW.

*"Educational Guide for Trial Jurors" is made possible
by funding from the IOLTA Fund of the Bar of New Jersey.*

*Appreciation is expressed
to longtime volunteer attorney
and New Jersey State Bar
Foundation officer*

Stuart M. Lederman, Esq.,

*for serving as author
of this publication, and to*

Michael F. Garrahan, Esq.,

*Trial Court Services Division,
Administrative Office of the Courts,
who coordinated Judiciary assistance in
preparing and editing this pamphlet.*

The purpose of this pamphlet is to explain how lawsuits are tried and the important role of jurors within the judicial system. The United States jury system and our system in New Jersey have their source in English history. The right to trial by jury in this country dates back to the Colonial period. This right is discussed in the Declaration of Independence, and is guaranteed by the Sixth and Seventh Amendments to the United States Constitution and in Article One of the New Jersey Constitution.

The guarantee of trial by jury is the reason you have been called to serve as a juror. It is both an honor and a duty to participate in our judicial process. As a juror, you will have the opportunity to observe, participate in, and increase your knowledge about the operation of our court system and the judicial branch of government.

What Is the Difference Between a Civil and Criminal Case?

A civil case for which a jury is involved is generally a dispute between two or more parties that does not involve a criminal matter and is not a dispute between family members regarding divorce or child custody. In family matters, a judge handles the case without a jury. In a civil matter, in order for a plaintiff to win a case, it is only necessary for the plaintiff to prove his or her case by a ***preponderance of the evidence*** or in some cases by ***clear and convincing evidence***. The judge will explain the meaning of those terms to the jury.

In a criminal matter, the defendant has a right to a trial by jury. The defendant is also constitutionally entitled to be presumed innocent of the charges until the jury finds otherwise. More proof is required to find a person guilty of a crime than to return a verdict for a plaintiff in a civil case. In order to return a verdict of ***guilty*** in a criminal trial, the charges must be proven ***beyond a reasonable doubt***.

In both a civil and criminal case, the judge instructs jurors on the standards to be applied in the case. In criminal trials, 12 jurors are impaneled. In most civil cases, six jurors sit to hear a matter, although there may be as many as 12 jurors. To accommodate situations in which additional jurors may be needed, such as if a juror needs to be excused after the trial has begun, more than the required number of jurors are initially selected in both civil and criminal trials. These individuals may be selected, immediately prior to deliberations, to serve as ***alternate jurors***. Such jurors do not participate in deliberations unless one of the deliberating jurors cannot continue. Alternate jurors may be directed to remain at the courthouse until deliberations are completed. Those selected as alternate jurors perform a valuable function by

participating at trial and being available to replace excused jurors, if necessary. In a civil trial, five out of six jurors are needed to return a verdict in favor of one party or the other. When 12 jurors deliberate in a civil trial, 10 jurors are needed to return a verdict. In a criminal case the verdict must be unanimous.

How Does My Role as a Criminal Juror Differ From That of a Civil Juror?

The duties of a criminal juror are not significantly different from those of a civil juror. In both cases, jurors are required to pay attention in court, listen to all the evidence presented and render a verdict at the end of the trial based upon the evidence presented and the law, as instructed by the judge. Jurors will not be asked to determine a criminal defendant's sentence. It is the judge who imposes the sentence if a jury finds a defendant guilty.

How Does a Civil Case Get to Trial?

In a civil case, the party filing a lawsuit is called a **plaintiff**. The party against whom the lawsuit is filed is called a **defendant**. Notice of a lawsuit is given to the defendant by the service of a **summons**. The plaintiff's claim and demand are stated in a **complaint**. The defendant's response to the complaint is called an **answer**. If the defendant makes a claim against the plaintiff, this is called a **counterclaim**. If a counterclaim is made, the plaintiff's response is called an **answer to the counterclaim**. If there is more than one defendant, and the defendants make claims against each other, these are called **cross claims**.

All of these papers — a complaint, answer, counterclaim and cross claim — are called **pleadings** and will have been exchanged between the parties some time before the actual trial begins. If more than one party has more than one claim against another party, each claim may be stated as a **cause of action**. After the complaint, answer, counterclaim and cross claims have been filed, the parties engage in a process called **discovery**. This is an exchange of information regarding their claims, including documents, as well as the opportunity to question witnesses. The questioning of witnesses takes place at a **deposition** where the witness is placed under oath. The questions and answers may be recorded by a stenographer and put in the form of a transcript. The deposition may also be videotaped. The case is scheduled for trial after discovery is completed and the parties have filed pretrial motions. Pretrial motions involve matters that the parties need to bring to the court's attention before the trial begins.

How Does a Criminal Case Get to Trial?

All criminal actions are prosecuted in the name of the state of New Jersey. This is because when the offense is committed, it is the laws of the state that are broken, and the offense is against the people of the state. Either a civilian or a police officer may fill out a criminal complaint. The complaint is then forwarded to the county prosecutor's office for a determination of whether it should be brought before a **grand jury**. In some cases, the defendant may waive his or her right to an indictment by a grand jury and the offense charged may be brought directly to court for a trial by a jury.

The primary function of the grand jury is to determine whether there is a **prima facie** (Latin meaning at first glance) case leading the grand jury to believe that a crime was committed and that the accused committed the crime. In short, the grand jury serves as a screening mechanism to protect citizens from having to respond to unfounded charges. The function of the grand jury is not to determine whether someone is guilty or not guilty of a crime — that is the responsibility of the **petit jury**, otherwise known as the trial jury. The grand jury considers whether there is sufficient evidence to bring criminal charges against a person. The standard before the grand jury is not the same as the standard before the criminal trial jury and a complete trial is not conducted before the grand jury. Also, the technical rules of evidence do not apply to the grand jury.

After the charge is presented, the grand jury will hear testimony and review the evidence the state has gathered in support of its charges. The grand jury has the power to compel witnesses to attend its hearings; the accused and any witness on behalf of the accused generally do not testify. Grand jury hearings are not conducted in public so that witnesses may speak freely and so that the accused will not be publicly tainted if no indictment is returned. This is different from civil and criminal trials where, except in the case of family and juvenile matters, the trials are open to the public. The grand jury may either return a **no bill**, which means no indictment, or a **true bill**, which is an indictment. Each offense charged must be separately stated, although the charges may be combined into one indictment. Each charge in an indictment is called a **count**.

Some time before the trial, the defendant will appear before a judge at an **arraignment** and enter a **plea** of **guilty** or **not guilty**. If the defendant pleads not guilty, a trial date is set. Before trial, there is a process called **discovery**, which requires both parties to provide a list of their possible witnesses and other information. The information provided by the

prosecutor must include all relevant evidence, including things that may incriminate the defendant, as well as information that may be helpful to the defendant.

What Are the Requirements of Grand and Petit Juries?

The expressions grand jury and petit jury are both French in origin: “grand” meaning large and “petit” meaning small. The terms refer to the number of jurors serving on each jury, not the importance of the respective functions. There are 23 members who deliberate as a grand jury, but no more than 12 who deliberate as a petit jury, whether in a civil or a criminal trial.

The grand jury is part of the criminal justice system. Although it acts under the authority of the courts and is considered a part of the court system, it is an independent body with the authority to conduct investigations, to direct the prosecutor to assist in those investigations, and to *subpoena* witnesses, that is, order them to appear in court, as well as require the production of other evidence that may be necessary to the investigations it conducts.

State statutes require that there be at least one grand jury sitting in each county at all times. The qualifications for serving as a grand or petit juror in New Jersey are the same: A person must be at least 18 years old, a United States citizen, a resident of the county in which summoned and able to read and understand English. Also, grand and petit jurors may not have pleaded guilty or been convicted of an indictable offense and must be able to mentally and physically perform the functions of a juror. The Judiciary will, with advance notice, provide reasonable accommodations consistent with the Americans with Disabilities Act.

How Is a Jury Selected?

The entire group summoned for service by the assignment judge is called the *jury panel*. The jury manager and the staff of the Jury Management Office within each county works with the trial judges and criminal and civil division managers to schedule a sufficient number of jurors for each day’s anticipated trials. The Jury Management Office communicates with judges or their staffs throughout the day so that jurors are provided when needed and so that members of the jury panel may be dismissed for the day once all trial needs are met.

The first step in a trial is to select the number of jurors required to try the case from the panel. As discussed earlier, in most civil trials there are usually eight jurors seated

in order to allow for alternate jurors. In criminal cases, there are usually 14 jurors selected, again so that there are alternates available. Jurors are randomly selected by computer. If you are called as a prospective juror, you are required to truthfully answer all questions regarding your qualifications to serve as a juror in the case. Each of the lawyers or participants in the case has been provided with a jury list, which contains information regarding each juror's name, address and occupation.

After a short statement is given describing the case and the parties involved, the judge will question the prospective jurors to determine if they are qualified to act fairly, impartially and without interest in the result of the case. There are certain legal grounds for which a juror may be **challenged for cause** and excused, such as a juror being incapable of being impartial due to prior dealings with a party, witness or attorney involved in the case.

In addition, each side can excuse a certain number of jurors without giving any reason. These are called **peremptory challenges**. The number of peremptory challenges is limited and is specified within the court rules. Generally, in a civil case each side has six peremptory challenges, unless the case involves multiple defendants. In that case, the court will determine how many challenges each party will have. The number of peremptory challenges in a criminal trial is dependent on the type and severity of the charges. Jurors who are challenged, including by peremptory challenge, should not feel offended — such procedures are simply another safeguard operating within our trial system.

The lawyers or the judge may ask prospective jurors questions about their personal lives and beliefs. These questions should be answered fairly, openly, candidly and without embarrassment. If there is any reason prospective jurors feel they should not serve, that reason should be made known during this questioning. If there is a question a prospective juror feels he or she cannot answer in public, a request may be made to tell the judge privately at the bench. The entire process of juror questioning is called **voir dire**, which is French for “speak the truth.”

Why Do Jurors Take an Oath In a Civil and Criminal Case?

After the jurors are selected, they are required to swear, or to affirm, that they will “...try the matter in dispute and give a true verdict according to the evidence.” When the jurors take this oath, they become the judge of all questions of fact and are duty bound to act fairly and impartially in considering the evidence presented.

After the oath is administered, the trial begins. At this time, the judge may give some preliminary instructions regarding how the case will proceed, as well as particular instructions regarding procedures in that judge's courtroom.

What Is an Opening Statement?

At the beginning of the trial, each side has the opportunity to make an **opening statement** explaining its case, but is not required to do so, except the prosecutor in a criminal trial. Generally, in an opening statement, attorneys for each party will explain the claims and outline the evidence they will use to prove their party's claim. These statements are not evidence, but only an explanation of what each side claims and expects to prove during the trial. Any claims made in the opening statement must be proven by evidence. In a criminal case, the offense is against the people of the state, and the lawyer representing the state is called the **prosecutor**. As noted above, the prosecutor is required to make an opening statement. The defense is not required to make an opening statement, but either the **defendant**, who is the person accused of committing the crime, or the defendant's lawyer, may make one.

How Does Each Side Present Its Case?

Anthing that tends to prove or disprove a claim about the facts is called **evidence**. Evidence generally takes two forms, oral and documentary. **Oral evidence** comes in the form of testimony from witnesses. **Documentary evidence** may be something in writing, or it may be an article such as a photo or a sound recording. Tangible evidence, such as a piece of an engine or another object, is called an **exhibit**. The trial judge manages the trial and rules on the admissibility of evidence. During the trial, lawyers may refer to exhibits "marked for purposes of identification" and ask the judge to admit the documents or objects "into evidence."

Evidence can also be the statement of a **witness**, a person who observed or participated in an event relevant to the subject of the trial. The witness's statement is called **testimony**. Whether an individual witness may give testimony is a decision made by the judge. In some cases, the parties may present the testimony of **expert witnesses**.

An expert witness may not have observed the event that is the subject of the lawsuit. Rather, an expert witness is someone who, because of his or her qualifications, is in a position to evaluate certain evidence and render an opinion. The judge determines, prior to that person being permitted to testify, whether a witness is qualified, as a matter of

law, as an expert. If a witness is absent, written testimony or, in some cases, videotaped testimony, may have been taken before the trial, with the witness under oath, in a deposition. Parts of the transcript of a deposition may be admitted as evidence at a trial and will be considered with all other evidence presented in the case.

How Are Witnesses Examined?

To help prove a case, witnesses are generally called to testify. The witnesses are sworn to tell the truth. A lawyer who has called a witness proceeds with **direct examination**, asking questions of the witness that will bring out the facts of the case. In any important matter, the lawyer, on direct examination, is not allowed to ask leading questions, which are questions in a form that would suggest the answer. For example, a question that starts out by saying “you agree that. . .” is a leading question and would be prohibited during direct examination. The questions asked must also have some bearing on the case, and must be relevant by addressing things the witness would be expected to know.

If these and other rules are not followed, a lawyer for the other side may **object** to the question. If the question is improper, the judge will **sustain** the objection, which means that the question cannot be answered. If the question is proper, the judge will **overrule** the objection and the witness will be required to answer. The fact that the judge makes a ruling on a particular question does not reflect the judge’s opinion regarding the reliability of a witness, and it is important that jurors not give such rulings any weight when considering the evidence presented by either side.

When the direct examination is concluded, the lawyer for the other side may ask questions of the witness, which is known as **cross-examining** the witness. The cross-examining lawyer is allowed to ask **leading questions** (as described above). At the conclusion of the cross-examination, the first lawyer may ask questions to clarify points developed during the cross-examination. This is called **redirect examination**. If, during testimony by the witness, the judge rules that a portion of the testimony be stricken from the record, the trial judge will instruct the jury to disregard that portion of the testimony.

Each juror should pay close attention to the witness who is testifying, both to hear what the witness says and to watch the witness’s manner and actions. In evaluating a witness’s testimony, a juror may consider the witness’s credibility and ultimately decide how much weight the testimony deserves.

When all evidence for the plaintiff or the state has been submitted, the plaintiff's lawyer or the prosecutor indicates this by **resting the case**. At that time, the defendant's lawyer may or may not call witnesses or offer evidence, following the same rules and procedures outlined for the prosecution. During both criminal and civil trials, the judge will give jurors instructions regarding the burden of proof that applies to that particular trial, as well as instructions on other areas of the law. When the defendant's case has been completed, the defendant's lawyer rests the defendant's case. The plaintiff or prosecutor then has a final opportunity to offer evidence, known as **rebuttal evidence**, to explain or deny any of the defendant's evidence.

What Are Closing Statements?

After all the evidence has been presented, the lawyers may make their final arguments to the jury and give the reasons they believe their client should prevail. Lawyers for each side will attempt to point out why their client's witnesses should be believed and why their evidence is more credible than evidence for the other side. While you should listen to the closing arguments carefully, always remember that lawyers are only arguing for their side of the case. What they say is not evidence. You should not make up your mind until you have heard all sides of the case and the instructions of the judge, and have had an opportunity to deliberate with your fellow jurors.

What Is The Judge's Role During the Trial?

The judge is responsible for making sure that the trial process proceeds in a proper manner. The judge is also responsible for deciding issues of law and procedure that may arise during the trial and for instructing the jury on the law.

During the trial, a lawyer might request a judge to take certain action. This is usually done by making a **motion**. For example, a lawyer may make a motion to strike certain testimony because it was not properly received. If the judge orders the testimony stricken, the jury must disregard it and may not consider it during deliberations. A lawyer may also make a motion to prevent a witness from testifying. These motions are usually heard by the judge alone, after the jury has been excused to the jury room.

During a trial, a juror may notice the judge call the lawyers to the bench, or the lawyers may request to approach the bench to discuss a point of the case out of the hearing of the jury. Such discussions, commonly referred to as **side bar** discussions, are most often between the judge and lawyers and often concern matters of law or

procedure. Having lawyers approach the bench avoids the inconvenience of sending the jury from the courtroom. However, if the discussion is going to be lengthy, most judges will excuse the jury. Because the jury must decide a case on factual issues alone, it has become policy to discuss questions of law and procedure out of the jury's hearing to avoid confusion. Jurors should not attempt to draw any conclusions about what has been said out of their hearing.

At the End of the Trial, Why Does the Judge Give Instructions to the Jurors?

As noted earlier, the judge's role is to decide issues of law, and the jury's duty is to decide issues of fact and apply the facts to the law. The judge does not presume that you, as a juror, know what the law is on any given issue. Rather, at the end of the case the judge will tell you what the law is. You should listen very carefully to these instructions because they will guide your deliberations. The trial judge will identify one of the jurors as the foreperson. The foreperson's duty is to communicate with the court on the jury's behalf and to facilitate discussions between the jurors. The foreperson does not carry any more weight in the deliberations than any other juror. Once the jury has reached a verdict, the jury foreperson will report to the court officer that a verdict has been reached and the jurors will be called back into the courtroom where the jury foreperson will read the verdict.

How Should a Juror Behave During a Trial?

There are certain rules that a juror should follow throughout the trial in order to be fair to all sides. During the trial, jurors should not talk about the case with other jurors, or with other persons, or allow people to talk about the case in their presence. If a person persists, a juror should report the matter to the judge or a court official immediately. Jurors are given juror identification badges during their service so that no one mistakenly attempts to engage them in conversation regarding any case being heard.

During the trial, jurors should not talk about the trial with witnesses, lawyers or anyone related to those persons or to the trial because it could appear that something unfair is going on even though the discussion may have nothing to do with the trial. The judge may also instruct jurors not to listen to the radio, watch television reports or read articles regarding the trial. Even if the judge does not specifically prohibit it, jurors should not read or listen to news reports about the trial during their jury service.

Conclusion

Each day, American citizens just like you participate in our judicial process by serving as jurors. Because the guarantee of a trial by jury extends to a broader range of cases than in any other nation, the extensive use of trial by jury is unique to the United States. If you would like additional information on the role of juries in our judicial system, you might consider the following resources:

American Bar Association Division of Public Education:

http://www.americanbar.org/groups/public_education/resources/resources_for_judges_lawyers/juryresources.html

The Center for Jury Studies: <http://www.ncsc-jurystudies.org/>

Arbetman, Lee P. et. al. *Great Trials in American History: Civil War to the Present*. St. Paul: West Publishing Company (1985).

Arnold, Morris, Bruce Babbitt, Marc Galanter, John Guinther and Patrick Higginbotham. *The American Civil Jury*. Roscoe Pound - American Trial Lawyers Foundation (1987).

Callahan, Cornelius P., Patricia Burt, Kathleen Fitzgerald. *The Search for Truth: An Introduction to the Jury Trial Process*. Sextant (1997).

Dwyer, William L. *In the Hands of the People: The Trial Jury's Origins, Triumphs, Troubles and Future in American Democracy*. Thomas Dunne Books (2002).

Guinther, John. *The Jury in America*. Facts on File Publications (1988).

Joiner, Charles W. *Civil Justice and the Jury*. Greenwood Publishing (1973).

Jonakait, Randolph N. *The American Jury System* (Contemporary Law Series). Yale University Press (2003).

Simon, Rita James. *The Jury: Its Role in American Society*. Lexington Books (1980).

Van Wrightsman, Lawrence, Samuel M. Kassin and Cynthia Willis. *In the Jury Box: Controversy in the Courtroom*. Sage Publications (1987).

Vidmar, Neil and Valerie Hans. *American Juries: The Verdict*. Prometheus Books (2007).

***You can view the New Jersey State Bar Foundation's juror orientation video, You the Juror, at www.njsbf.org/for-the-public/juror-orientation-video.html*



The New Jersey State Bar Foundation
One Constitution Square
New Brunswick, NJ 08901-1520
1-800-FREE LAW • 732-249-5000
www.njsbf.org