JURY TRIAL PROCEDURE & CHECKLIST (Criminal Case)

State v.

Case No.



Date:

Final Pretrial Conference

Prosecutor:

Defendant(s) present: Yes \_\_\_\_\_ No \_\_\_\_\_

(NOTE: The court may require that the defendant attend trial but may allow the defendant to appear at the trial through counsel, only. 5 46-16-120, MCA. If the defendant is not represented by counsel the trial may proceed in the defendant's absence if the court finds the defendant had knowledge of the trial date and is voluntarily absent. 5 46-16-122, MCA.)

Defendant's Counsel:

Review Trial Procedure With Parties

 Absent good cause shown, Voir Dire should be limited to 30 minutes for each party. (5 25-24-RuIe 20, MCA)

 Voir Dire panel will consist of 12 persons selected randomly from those jurors in attendance (NOTE: write the name of each juror in attendance on a slip of paper, fold each slip, draw the slips from a box, and seat the panel members in the order the names are drawn. 55 46-16-111 and 3-15-704, MCA)

Each party may remove 3 persons from the Voir Dire panel, resulting in a jury of 6 persons. 5 46-17-201, MCA (NOTE: the parties may agree to a smaller number of

jurors at any time before the verdict is returned.)  Determine whether an alternate juror will be seated. 46-16-118

If an alternate juror will be seated draw 3 additional names for the Voir Dire panel. The parties will each have one peremptory challenge against the 3 members of the alternate juror panel. 5 46-16-118, MCA.

 Review the preliminary Jury Instructions to be read to the jury before the parties make their opening statements. Specifically, in instruction 1-104 insert the name of the defendant, the title of the charge(s), the name of the county, and date the alleged offense(s) occurred.

 Establish time available for opening statements.

Prosecution:minutes



Defense:  minutes

(Will defense reserve opening statement until after the prosecution has rested? Yes No)

Determine who the prosecutor has designated is its representative witness entitled to be in the courtroom throughout the trial. (Rule 615, M. R. Eve)

Prosecution Representative Witness:

Determine whether either party (or the court) requests that other witnesses be excluded from the courtroom until called to testify. (NOTE: if either party or the court requests that other witnesses be excluded the court must exclude witnesses.)

Identify persons the prosecution may call as witnesses.

1.

2.

3.

4.

5.

6.

Identify exhibits the prosecution may offer in evidence.

1.

2.

3.

4.

5.

6.

7.

8.

Identify persons the Defendant may call as witnesses.

1. Defendant (NOTE: the defendant is not required to identify himself/herself as a potential witness until the prosecution has rested its case.)

2.

3.

4.

5.

6.

Identify exhibits the defense may offer in evidence.

1.

2.

3.

4.

5.

6.

7.

8.

Final Pretrial Conference Completed / Summon Prospective Jurors Into The Courtroom

 Good morning ladies and gentlemen. I am Judge Thank you for responding to your jury summons. I hope you find your experience in our court to be both informative and rewarding. The jury is the very foundation of our system of justice.

 During the next hour we will be selecting a jury for a case in which a person has been charged with one or more offenses under Montana law. In a moment you will be asked to stand and an oath will be administered. After that, you will be asked a short series of questions to ensure that each of you possesses the basic qualifications necessary to serve as a trial juror in this court.

 Judge or Clerk administers first oath to prospective jurors.

Please rise and raise your right hand.

Do you and each of you swear or affirm that you will make true answers to

those questions that may be asked of you as to your qualifications to serve on the panel of trial jurors in the case now being heard? If so, please say 'I do'.

Please be seated.

 Judge or Clerk asks questions to determine that each prospective juror is qualified to serve. (A person who does not meet any of the following requirements must be excused.)

Please raise your hand if you are not a citizen of the United States.

Please raise your hand if you are not 18 years of age or older.

Please raise your hand if you have not been a resident of Montana and the city, town, or county in which you have been summoned to serve for at least 30 days.

Please raise your hand if you have been convicted of a felony offense, malfeasance in office, or any other high crime for which rights have not been restored.

Please raise your hand if you have a physical or other condition you believe would interfere with your ability to serve as a juror.

NOTE: a person who claims a physical or other condition should be given an opportunity to explain the condition to the judge semi-privately at the bench with the attorneys present to hear -- before a decision is made whether to excuse the prospective juror.

Judge: Next, the names of 12 of you (or 15 if an alternate juror will be seated) will be selected at random. Please take a seat in the jury box or row of seats in the order your name is called.

Judge: The parties will then have 30 minutes each to introduce themselves to you and ask you questions aimed at ensuring that the persons selected to serve as trial jurors can provide a fair trial to all the parties and follow the law that applies to this case.

Judge: The purpose of the questions is not to embarrass you. If at any point during the next hour you are asked a question you do not feel comfortable answering in front of everyone, please say so and I will have you join me and the attorneys here in front of the bench to discuss the matter more privately.

 Judge: If anyone is excused during this question and answer period you will be excused from further service in this trial. The clerk will then select the name of another person, at random, to fill that seat. Even if you are not selected in the initial group, please remain in the courtroom and pay attention to the questions and the discussion. If you are later called to fill a vacant seat, the parties will expect that you are prepared to join the discussion.

 The names of prospective jurors are selected at random and announced. Fill out the Juror Form with each person's name in the order called.

 Judge: The prosecution may now conduct voir dire (allow 30 minutes unless the time has been enlarged by previous order)

1. If any juror is 'challenged for cause' during voir dire the judge should avoid asking the juror questions but should allow both parties to ask questions to determine whether the juror should be excused.
2. A challenge for cause may be based on a factor included in the statute or for having a state of mind about the case or any party that "would prevent the juror from acting with entire impartiality and without prejudice to the substantial rights of either party."
3. Not all jurors who express concern about their ability to be impartial or follow the law must be excused. Few people are entirely impartial. If a juror expresses concern about impartiality or ability to follow the law, the juror may be given an opportunity to answer additional questions aimed at determining whether the juror can "lay aside any misgivings and fairly weigh the evidence." If the judge is convinced the juror can do so, the challenge for cause should be denied- However, any juror who states he or she is unable or unwilling to suspend or set aside a bias or prejudicial belief and follow the law should be excused for cause.
4. The juror is excused for cause under the statute (46-16-115, MCA) when the juror has one of these relationships to the defendant, the victim, or the complaining party:
   1. Family member
   2. Guardian (or person under guardianship)
   3. Employer or employee
   4. Attorney or client
   5. Landlord or tenant
   6. Debtor or creditor
   7. Party in a lawsuit
   8. Accused by the defendant in a criminal case

- OR, the juror has prior jury experience and:

* 1. Served on a jury concerning the same or related offense charged in this case
  2. Served as a juror in this case (if the case is being re-tried after an appeal or mistrial)

- OR, having a particular state of mind about this case:

* 1. Having a belief the punishment for any charge is too severe

 Once the prosecutor has completed the voir dire examination, determine whether the prosecutor 'passes the jury for cause'.

 Judge: The defense may now conduct voir dire

 Once the defense has completed the voir dire examination, determine whether the defense 'passes the jury for cause'.

 The parties exercise peremptory challenges

1. Give the parties the Juror Form
2. The form is passed back and forth between the parties to exercise peremptory challenges one at a time. A party may waive a peremptory challenge and should indicate on the form which challenge has been waived.
3. (Complete the peremptory challenges to select the alternate juror, if necessary.)
4. When all 6 peremptory challenges have been completed the first 6 names remaining on the Juror Form are the trial jurors. Ask the parties to stipulate or agree to the names of the 6 trial jurors.

 Announce the names of the 6 trial jurors. Excuse all other jurors and thank them for their service.

 Judge or Clerk administers Oath To Trial Jurors.

"Please rise and raise your right hand."

Do you and each of you solemnly swear (or affirm) that you will well and truly try the case now at issue and a true verdict render according to the law and the evidence, so help you God?

 Announce a recess break for jurors and parties and give admonition:

It is your duty not to converse with one another or any other person on any matter that is the subject of this trial, and it is your duty not to form or express an opinion about this trial until the case is finally submitted to you for your verdict.

Reconvene when all parties, attorneys, and jurors are present in the courtroom

Judge: Give Instruction 1-101

Ladies and Gentlemen of the Jury: It is important that as jurors and officersof this Court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the Court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of this trial. In fairness to the Defendants and to the State of Montana, you should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard alt the evidence, after you have heard my final instructions and after the attorneys' final arguments. You may only enter into discussion about this case with the other members of the jury after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell that person you are a juror on the case. If they won't stop talking, leave and report the incident to me as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened. You should not talk to your fellow jurors about anything that you feel necessary to bring to the attention of the judge.

Third, although it is a normal human tendency to talk and visit with people, both at home and in public, you may not, during the time you serve on this jury, talk with any of the parties or their attorneys or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial you may not make any investigation of this case or inquiry outside of the courtroom on your own. You may not go to any place mentioned in the testimony without explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias, research online, using Google, Yahoo, Bing, or any other Internet search engine, or use other reference materials or other sources of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. News accounts may be incomplete or may contain matters that are not proper evidence for your consideration. This prohibition extends to all forms of communication, whether in person, written, or through any electronic device or media, such as the telephone, a cell or smart phone, BlackBerry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, and any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, and Twitter. You must base your verdict solely on what is presented in Court. You are now sworn jurors in this case, and you will hear the evidence and thus be in a better position than anyone else to know the true facts.

Sixth, if during the course of the trial there is reason to believe any of these rules have been violated, I will make inquiry of individual jurors and take appropriate action.

Judge: Give Instruction 1-102

It is my duty to instruct the jury on the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you. No remarks I make or instructions I give are intended to express my opinion as to the facts in this case or what verdict you should return.

You should take the law in this case from my instructions alone. You should not accept anyone else's version as to what the law is in this case. You should not decide this case contrary to these instructions, even though you might believe the law ought to be otherwise. Counsel, however, may comment and argue to the jury upon the law as given in these instructions. If, in these instructions, any rule, direction or idea is stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. You are not to single out any sentence or any individual point or instruction, and ignore the others. You are to consider all of the instructions as a whole, and are to regard each in the light of all the others. The order in which the instructions are given has no significance as to their relative importance.

The function of the jury is to decide the issues of fact resulting from the charge or charges filed in this Court by the State and the Defendant's plea of "not guilty" to the charge or charges. You must perform this duty uninfluenced by passion or prejudice. You must not be biased against a Defendant because the Defendant has been arrested for this offense, or because charges have been filed, or because the Defendant has been brought before the Court to stand trial. None of these facts is evidence of guilt, and you are not permitted to infer or to speculate from any or all of them that the Defendant is more likely to be guilty than innocent.

You are to be governed solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the State and the Defendant have a right to demand, and they do demand and expect, that you will act conscientiously and dispassionately in considering and weighing the evidence and applying the law of the case.

Judge: Give Instruction 1-103

You are the sole judges of the credibility, that is, the believability, of all the witnesses testifying in this case, and of the weight, that is, the importance, to be given their testimony. In judging the effect of evidence you must be fair and impartial and not arbitrary. While you have discretion in judging the effect of evidence, you must exercise that discretion in accordance with these instructions.

The evidence presented by one witness whom you believe is sufficient for the proof of any fact in this case. You are not bound to decide any fact based upon the testimony of a larger number of witnesses whose testimony does not convince you against the testimony of a smaller number of witnesses (or against a presumption), or other evidence which does convince you.

In determining what the facts are in the case, it may be necessary for you to determine what weight should be given to the testimony of each witness. To do this you should carefully consider all the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to indicate whether a witness is worthy of belief.

You may consider:

1. The appearance of the witnesses on the stand, their manner of testifying, their apparent candor, their apparent fairness, their apparent intelligence, their knowledge and means of knowledge on the subject upon which they have testified.
2. Whether the witnesses have an interest in the outcome of the case or any motive, bias or prejudice.
3. The extent to which the witnesses are either supported or contradicted by other evidence in the case.
4. The capacity of the witnesses to perceive and communicate information.
5. Proof that the witness has a bad character for truthfulness.

If you believe that any witness has willfully testified falsely as to any material matter in the case, you must reject such testimony as you believe to have been false and you have the right to view the rest of the testimony with distrust and in your discretion disregard it, unless, after examination of all the evidence, you find such testimony worthy of belief.

This rule does not apply if, a witness:

1. unintentionally commits an error in the witness' testimony, or
2. is unintentionally mistaken as to some matters or facts about which the witness testifies, or
3. gives evidence concerning matters not material in this case without intention of deceiving the Court or jury.

 Judge: Give Instruction 1-104

A Complaint has been filed charging the Defendant,

with the offense(s) of

alleged to have been committed inCounty, Montana, on or about



The Defendant has pled not guilty. The jury's task in this case is to decide whether the Defendant is guilty or not guilty based upon the evidence and the law as stated in my instructions. These are some of the rules of law that you must follow:

1. The filing of a Complaint is simply a part of the legal process to bring this case into Court for trial and to notify the Defendant of the charges against [him/her]. Neither the Complaint nor the charges contained therein are to be taken by you as any indication, evidence or proof that the Defendant is guilty of any offense.

2- By a plea of not guilty, the Defendant denies every allegation of each and every charge.

1. The State of Montana has the burden of proving the guilt of the Defendant beyond a reasonable doubt. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would rely and act upon it in the most important of his or her own affairs. Beyond a reasonable doubt does not mean beyond any doubt or beyond a shadow of a doubt.
2. The Defendant is presumed to be innocent of the charge against him/her. This presumption remains with him/her throughout every stage of the trial and during your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the Defendant is guilty. The Defendant is not required to prove his/her innocence or present any evidence.

 Judge: Give Instruction 1-105

During the trial, the bailiff will keep you together and will prevent inappropriate conversations between you and any other persons. The bailiff will see to your needs during the trial. However, the bailiff cannot answer any questions about this case or provide you with any information, books, or materials, as I have strictly forbidden him/her to do so.

I will instruct you on the laws you must apply to the evidence presented in this case in order to reach a verdict, both orally and by giving you a set of written instructions which you will take with you during your deliberations. These instructions are intended to cover all necessary laws which are pertinent to the case.

 Judge: Ladies and gentlemen, the parties will now begin with their opening statement. It is their opportunity to summarize the evidence in their case to you. The attorney for the prosecution will go first. Next, the defense will have an opportunity to make an opening statement to you, or the defense may reserve its opening statement until after the prosecution has made its opening statement and presented its witnesses and evidence to you. After the prosecution has finished presenting its case, the defense will have the option of presenting to you any additional witnesses or evidence. Please remember: the Defendant has no obligation under our American system of justice to offer evidence or witnesses. After all of the witnesses and evidence have been presented to you, we will break so that that the parties and I can meet to settle the instructions you are to be given for your deliberations. After that process is completed, we will all assemble in the courtroom and I will read you your final instructions. The parties will then present their closing arguments to you and then the case will be submitted to you to begin your deliberations. A written copy of the instructions and a form for you to indicate your verdict will go with you to the jury room.

 Judge: The prosecution may make its Opening Statement

Start Time:



Judge: (unless the defense has reserved) The defense may make its Opening



Statement

Start Time:



 The prosecution presents its case. When the prosecution has completed its case, determine that the prosecution has 'rested' its case.

 If the defense wishes to make motions after the prosecution has rested its case, excuse the jury from the courtroom after repeating the admonition:

Do not converse with one another or any other person on any matter that is the subject of this trial, and do not form or express an opinion about this trial until the case is finally submitted to you for your verdict.

Defense motions.

Often when the prosecution has rested its case the defense will move to dismiss or ask for a judgment of acquittal on the charge(s). The defense may argue the prosecution has failed to prove one or more of the elements of a charge.

If the motion to dismiss is made, read the charge and statute the defendant has allegedly violated. You should grant the motion and dismiss a charge if all the evidence submitted by the prosecution would fail to convince a rational juror (any ordinary and reasonable person) that each of the elements of a charge has been proved beyond a reasonable doubt.

Sometimes, the defense may move for a mistrial. A motion for mistrial may be made at any stage of the trial until the verdict is received, but it is often made after the prosecution has rested its case.

A motion for a mistrial may be granted when the judge is convinced that something has happened that has denied a party a fair and impartial trial. Often the motion is based on the jury hearing evidence or statements that should not have been allowed.

 The defense presents its case.

If the defense has reserved its Opening Statement, the defense makes its Opening Statement at this time.

The defense presents its witnesses and evidence.

The Defendant may choose to testify (or not to testify) at this time. (NOTE: it is not proper to allow the prosecution or any witness to comment on a defendant's decision not to testify during a trial.)

If the Defendant chooses to testify, he or she is subject to questions from the prosecution like any other witness.

When the defense has finished presenting its case, determine the defense has 'rested' its case.

 The prosecution may offer a rebuttal case (if the defense has put on a case).

Rebuttal evidence may be in the form of witness testimony or documents, photos, or video evidence.

Rebuttal evidence should be limited to witness statements or other evidence which contradicts evidence the defense has submitted.

Rebuttal evidence should not consist of evidence the prosecution has already submitted.

 Announce to the jury the parties have rested and the evidence has been presented. Excuse the jury after repeating the Admonition.

 Convene the parties and attorneys to review the proposed jury instructions and verdict form.

The jury is not present for this stage.

Pattern Jury instructions approved by the Montana Criminal Jury

Instruction Commission (MCJI) are typically the appropriate instructions to read to a jury. Sometimes there are blanks in the instructions which must be filled in by the parties. Sometimes there is alternative language that must be selected. The final part of the MCJI instructions includes comments that you may use as a guide to determine how the blanks should be filled in and which alternative language should be selected for a particular case.

The process of settling jury instructions involves the judge going through the list of proposed instructions, one by one, and asking for comments or objections to each instruction by the parties.

If both parties object to an instruction (or the party offering the instruction chooses to withdraw it from consideration), generally the instruction need not be read to the jury.

If neither party objects to an instruction, generally it may be read to the jury.

If a party objects to an instruction the judge must decide whether to overrule the objection and read the instruction to the jury, or sustain the objection and not read it to the jury.

A judge may refuse to read an instruction to the jury if the instruction (1) misstates the law that applies to the case; (2) describes law that does not apply to the case; (3) or presents a legal argument.

Once the instructions have been selected to read to the jury, prepare a clean copy without marks, notes, or comments to be given to the jury for the deliberations.

Review and approve a verdict form. The verdict should indicate the verdict is unanimous and describe each charge separately, along with a blank or space for the indicate whether the verdict is 'guilty' or 'not guilty'. The verdict must have a space for the foreperson to sign.

 Determine how much time will be allowed for closing arguments.

You should give each party the same amount of time for closing argument.

The prosecution argument goes first and the prosecution may divide its time into its initial closing argument and its rebuttal closing argument.

The defense presents its closing argument.

The prosecution presents its rebuttal argument.

You may interrupt and stop the parties' arguments if they go over their time allotment.

 Reconvene when the parties, attorneys, and all members of the jury are present.

Read the jury the instructions.

It is not necessary to read the same preliminary instructions read to the jury at the outset of the case, but a copy of each of the preliminary instructions should be included with the packet of instructions that goes to the jury room for deliberations.

 Prosecution's closing argument

Start time:



 Defense closing argument

Start time:



 Prosecution's rebuttal argument

Start time:



 Judge: Administer the oath to Bailiff (the clerk may also fill this role).

Do you solemnly swear that you will take charge of this jury and keep them together in some private place, and, that you will not permit any person to speak to, or communicate with them, or do so yourself unless by order of the court, and, that when they have agreed on a verdict, or when ordered by the court you will return them to court, so help you

 Dismiss the jury to deliberations, accompanied by a copy of all the instructions read to the jury during the course of the trial, the verdict form, and the tangible evidence admitted during the trial.

If the jury has a question during deliberations the question should be written and signed by the foreperson and given to the bailiff. The judge should not communicate directly with any juror. When the question is received you should assemble the parties and attorneys and read the question to them. You should not answer the jurVs question until you have given an opportunity to the parties to say what the response should be. The answer should be given to the jury in writing and be signed by the judge. The question and answer should be preserved for the file.

 When the foreperson reports to the bailiff that the jury has reached a verdict, assemble the parties and attorneys in the courtroom and have the bailiff return the jury to the courtroom.

Receive the verdict.

Judge: "Will the foreperson please stand?"

Judge: "Has the jury reached a verdict?"

Ask the bailiff to retrieve the verdict form from the foreperson and give the verdict form to you. Review the verdict form to ensure it has been filled out completely and appropriately and has been signed by the foreperson.

 The clerk reads (or 'publishes') the completed verdict form.

 Determine if either party wishes to have the jury polled. The polling process requires the clerk to state each juror's name and ask each to confirm the verdict. The purpose of polling the jury is to ensure that a verdict is, in fact, unanimous.

Judge: "Does the prosecution wish to poll the jury?"

Judge: "Does the defense which to poll the jury?"

If either party wants the jury polled, the clerk states the following.

Clerk: "[Name of juror]. Is this your verdict?"

 Discharge the Jury.

Thank the jury for their service and release them from the courtroom. Let them know that they may now discuss the case and their experience if they wish to.

 If the verdict is Not Guilty to a charge, the charge is dismissed with prejudice. Order than any bond posted is exonerated and release the Defendant.

 If the verdict is Guilty to any charge you may proceed to sentencing or set a sentencing hearing for a later time.

 Sentencing Factors:

1. Jail time
2. Fine
3. Restitution + Handling Charge
4. Conditions of suspended or deferred sentence
5. Public defender fees
6. Costs of prosecution
7. ACT / Prime For Life
8. Counseling
9. Jury costs