

Appendix K – Dialogue for Criminal Jury Trial

Questions to ask before proceeding:

- Does the Court have jurisdiction over the matter?
- Have all parties been served?
- Has a timely request for a jury been made?
- Have all pre-trial matters been resolved?

Calling the case:

“_____ Court is now in session. This is the time and place set for Case Number _____, State of Nevada versus _____ (defendant’s name). Are the parties ready to proceed?”

Introduction to jury panel:

“Good morning ladies and gentlemen. You have been called forward today to serve as jurors in this matter. The State is represented by _____ (attorney’s name), and the _____ (defendant’s name) is represented by _____ (name of attorney, if one).

A trial has a single purpose. It is a search for the truth. In a jury trial, the court, which is another way to refer to the judge, and the jury have a division of responsibilities. It is the duty of the jury to determine the facts in the case and the duty of the Court to rule on the applicable law.

We expect to have the trial completed _____ (today or state the date of anticipated completion). Serving as a juror is an important part of our legal system.

Madame/Mister Clerk, please call the roll of the jury panel members.”

Jury Selection Procedure

Criminal jury trials in limited jurisdiction court consist of six jurors. NRS 175.021. Fourteen potential jurors will be selected from the jury pool. If, after the exercise of all peremptory challenges or challenges for cause, the resulting jury panel is greater than six members, the first six members called will constitute the jury panel.

The court must conduct the initial voir dire of the jurors. Each side is also entitled to question the jurors; this right to question must not be unreasonably restricted. NRS. 175.031.

Either side may challenge a prospective juror for cause. Challenges for cause shall be tried by the court and are in the discretion of the court. NRS 175.036. Each side shall be allowed to strike 4 jurors by peremptory challenge. Peremptory challenges shall be exercised alternately by each side and waived if not exercised in order. NRS 175.051.

The court may direct up to six alternate jurors be selected. The alternate juror shall replace a juror who, prior to the time the jury retires to consider its verdict, becomes or is found to be unable or disqualified to perform his or her duties. The alternate juror shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. If an alternate juror is needed to replace a juror after the jury has retired, the court will reconvene court and resubmit the matter

to the new jury. Each side may exercise one additional peremptory challenge for every two additional alternates selected. NRS 175.061.

Voir dire

Ask voir dire questions to determine whether the jurors know the parties or have any biases or reasons they cannot be fair and impartial. Permit both sides the opportunity to question jurors.

Some suggested questions to ask all the potential jurors:

- You have heard the names of the parties and the attorneys? Do any of you have any personal or business relationship with any of them that is not simply casual in nature?
- If so, will that relationship interfere in your ability to try this matter fairly without regard to that relationship?
- Several witnesses will be called in this case. Look at the list of witnesses on the blackboard (or listen carefully as I read their names) and tell me if you have any personal or business relationship with any of them that is not simply casual in nature?
- Do any of you have any knowledge about the specifics of this case?
- Is there anything that you believe would interfere in your ability to concentrate and devote your time and energy to the case being presented or in your ability to be fair and impartial in this case?

Additional questions can be found in **Appendix W**.

Permit each side the opportunity to conduct voir dire of the jury (not to be unreasonably restricted). NRS 175.031.

Allow challenges for cause and peremptory challenges to the number permitted by the rules outside the hearing of the jurors.

Swearing in of potential jurors

“Madame/Mister Clerk: Please swear in the potential jurors:

Do you and each of you solemnly swear/affirm that you will well and truly answer all questions put to you touching upon your qualifications to serve as a trial juror in this case now pending before this Court, so help you God/under penalty of perjury?”

Administration of Oath to Jurors (by clerk or judge)

“Do you and each of you solemnly swear that you will well and truly try this case, now pending before this court, and a true verdict render according to the evidence given, so help you God?”

Alternative oath:

“Do you and each of you promise and affirm that you will well and truly try this case, now pending before this court, and a true verdict render according to the evidence given, under penalties of perjury?”

Jury Admonition

After swearing in the jurors, the court may admonish the jury with language suggested below:

“Ladies and Gentlemen of the Jury:

No juror may declare to his fellow jurors any fact relating to the case as of his own knowledge.

If any juror discovers during the trial or after the jury has retired that he or any other juror has personal knowledge of any fact in controversy in the case, he shall disclose such situation to me out of the presence of the other jurors.

When any such disclosure is made, I will examine the juror who admits or is alleged to have personal knowledge, under oath, in the presence of counsel for the parties, and I may allow such counsel to examine the juror.

If the juror has disclosed his own knowledge to me and it appears that he has not declared any fact relating to the case to his fellow jurors as of his own knowledge, I will, after the examination, decide whether the juror shall remain or shall be replaced by an alternate juror.

If it appears that the juror has declared any fact relating to the case to his fellow jurors as of his own knowledge, or that his vote was influenced by such knowledge undisclosed, I must declare a mistrial.”

Inform Jury How Trial Will Proceed

“The trial shall proceed in the following manner.

1. Reading the indictment or information may be dispensed with unless the crime charged is a felony.
2. The district attorney, or other counsel for the State, must open the cause. The defendant or his counsel may then either make his opening statement or reserve it to be made immediately prior to the presentation of evidence in his behalf.
3. The State must then offer its evidence in support of the charge, and the defendant may then offer evidence in his defense.
4. The parties may then respectively offer rebutting testimony only; unless the court, for good reasons and in furtherance of justice, permits them to offer evidence upon their original cause.
5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the district attorney, or other counsel for the State, must open and must conclude the argument.”

Taking Notes

Before any evidence has been introduced the judge may inform the jury that they may individually take notes during the trial, but he shall further caution them not to rely upon their respective notes in case of conflict among them, because the reporter's notes contain the complete and authentic record of the trial. NRS 175.131.

Admonition upon Adjourning

Every time the court adjourns and the jurors are permitted to leave the court, you must give the following admonition:

Jurors shall not:

1. Converse among themselves or with anyone else on any subject connected with the trial;
2. Read, watch or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including without limitation newspapers, television and radio; or
3. If they have not been charged, form or express any opinion on any subject connected with the trial until the cause is finally submitted to them.

Witnesses

Either party can request an exclusion of all witnesses who may testify. If this is requested, give the following admonishment:

“Anyone who is going to be, or who might be, a witness in this action is requested to sit outside until called. You are admonished that you are not to discuss your testimony with any other witness before or after testifying. The parties are requested to monitor the courtroom to ensure that potential witnesses stay outside the court.”

Administering Oaths and Affirmations

“You do solemnly affirm that the evidence you shall give in this issue (or matter), pending between _____ and _____, shall be the truth, the whole truth, and nothing but the truth.”

Jury Instructions

At the close of both cases, the court should meet with the attorneys or both sides to settle jury instructions that have not previously been approved by the court. The court may give the instructions before argument by the counsel, unless counsel requests that the instructions be given after argument. However, counsel should know what instructions are going to be given prior to argument so that they can mention the instructions in their argument.

Prior to leaving the court to finalize jury instructions, the court should address the jury:

“Ladies and Gentlemen of the Jury: you have now heard all of the evidence that will be presented in the case. It is necessary that the attorneys/parties and I meet outside of your presence for the purposes of deciding what instructions will be given to you on the law applicable to this case. This is a critical stage of this entire proceeding and we ask that you bear with us during the unavoidable delay.”

The court may hold the discussion about the instructions in chambers. NRS 175.161. The court reconvenes outside the presence of the jury and with the court reporter (if one has been retained by a party in this action). If reported the court should make a statement on the record that the instructions are being considered, indicate whether the instruction is objected to, refused, or accepted.

An original and one copy of each instruction requested by any party must be tendered to the court. The copies must be numbered and indicate who tendered them. Copies of instructions given on the court's own motion or modified by the court must be so identified. When requested instructions are refused, the judge shall write on the margin of the original the word “refused” and initial or sign the notation. The instructions given to the jury must be firmly bound together and the judge shall write the word “given” at the conclusion thereof and sign the last of the instructions to signify that all have been given. After the instructions are given, the judge may not clarify, modify or in any manner explain them to the jury except in writing unless the parties agree to oral instructions. NRS 175.161.

If the court refuses an instruction or modifies it, the court must so indicate in the margin of the instruction and sign the refused or changed instruction.

The only instruction that may be given on reasonable doubt is:

“A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an

abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.”

After the jury has reached a verdict and been discharged, the originals of all instructions, whether given, modified or refused, must be preserved by the clerk as part of the proceedings. NRS 175.161. All instructions, whether given or refused become a part of the record, even though only the accepted instructions are read and provided to the jurors.

Argument

The court reconvenes and permits counsel to argue the case [or the court may deliver the instructions to the jury prior to argument upon request of counsel]. The plaintiff goes first, then the defendant, and then the plaintiff again. Their arguments are part of the two hours they are given, unless the court permits them to have additional time.

Reading the Jury Instructions

After both sides have completed argument (or before argument at the request of counsel), the court reads the instructions to the jury:

“Ladies and gentlemen: I am about to instruct you upon the law, as it applies to this case. I must read these instructions to you, as they are of such importance that almost every word is of some significance. These instructions are relatively long, and some are quite complicated. If they are not especially clear when I read them to you, please bear in mind that when you go to the jury room, you will be able to take these written instructions with you so that you can read them there and consider them carefully.”

Swearing in the Bailiff

Once all the instructions have been read, the case is ready to give to the jury for deliberation.

The bailiff (or other person who takes care of the jury) must be sworn in:

“Do you solemnly swear/affirm that you will conduct this jury to some private and convenient place for their deliberation; keep them together; that you will not allow any person in any manner to speak to or communicate with them, nor do so yourself, except to ask them if they have agreed on a verdict, and when they have agreed, you will conduct them into court, unless otherwise ordered by the court, so help you God/ under penalty of perjury?”

The bailiff then takes the jurors to the deliberation room. If an alternate juror has been part of the trial, the court will have the bailiff take control of the alternate juror in case he or she is needed to fill a vacancy during deliberation. At that time, the juror will be taken into the jury deliberation room with the other jurors.

Jury Requests during Deliberation

After the jury has been taken to the deliberation room, if there is any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must state their problem in writing and give that note to the bailiff to deliver to the court. The court shall inform the parties or attorneys of the written request. If the court decides to provide an answer to the jury, the court will advise both parties/attorneys of the response and will make the response a part of the record. The court may give such a response in open court with the jury reconvened for that purpose.

Return of the Jury

When the jury has reached a verdict, they will be brought back into court with all parties and attorneys present. The court will have the clerk read the roll of jurors. The verdict must be unanimous. NRS 175.451.

The court then inquires:

“Ladies and Gentlemen of the Jury: which of you has been selected as foreman of the jury?”

_____ (foreman’s name): has the jury reached a verdict?

_____ (foreman’s name): please hand the verdict to the bailiff who will hand it to the Court.

(Judge reads the verdict to himself and hands it to the clerk) The clerk will now read the verdict out loud.”

Either party may request that the jury be polled. If such a request is made, the clerk calls the roll and asks each juror if this is his or her verdict. If the number of jurors stating “yes,” is insufficient to meet the requirements for the verdict, the court may send the jury out for further deliberation.

Dismissal of the Jury

“Ladies and Gentlemen of the Jury: I thank you for your time and service to this case. You are now excused until further notice of the Court. You are now free to talk to others and to the attorneys or parties, if you so desire, about this case.”