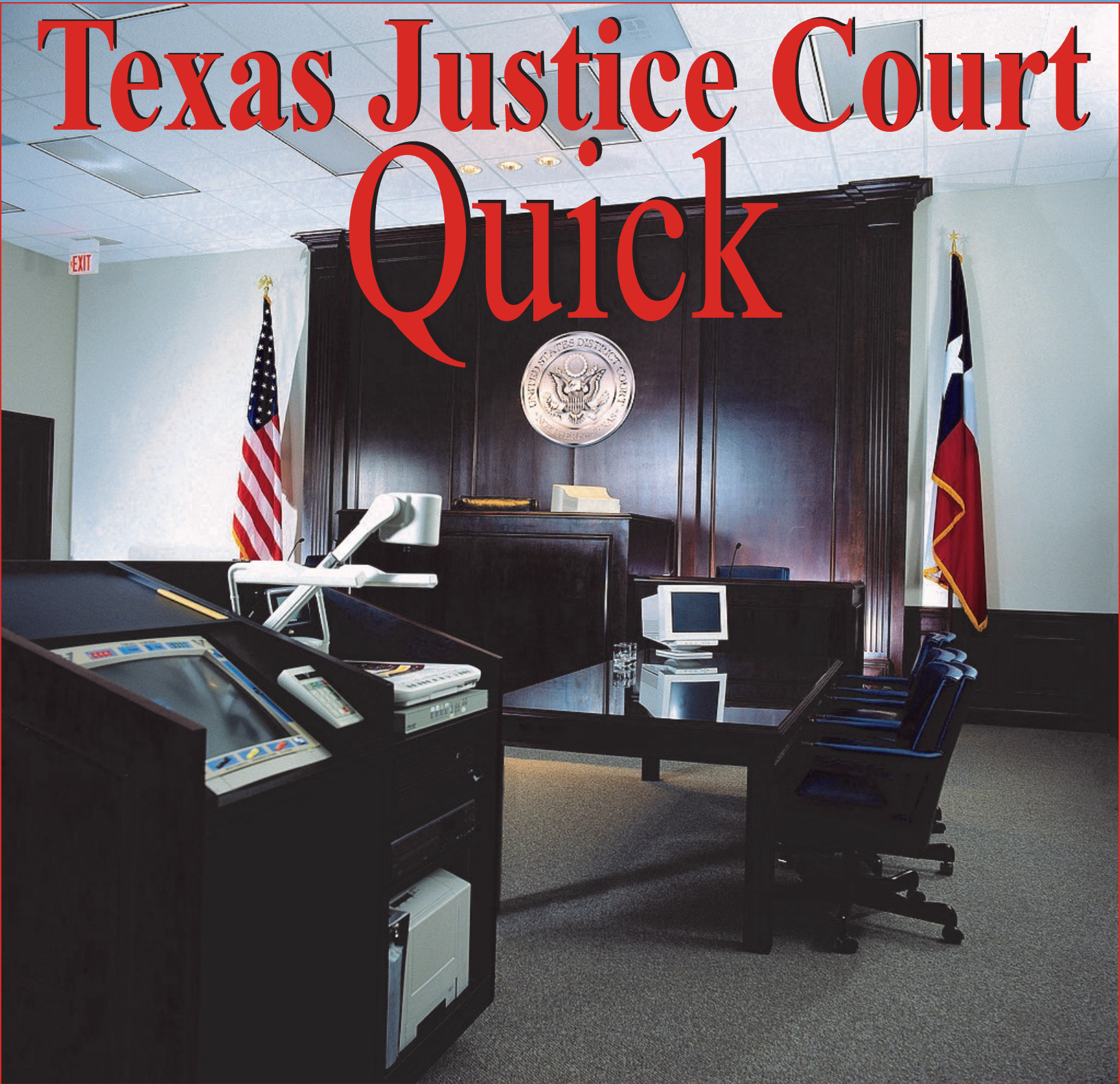


Texas Justice Court Quick



Reference Trial Handbook

9th Edition

2010

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Texas State University—San Marcos
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Texas Justice Court

Quick Reference Trial Handbook

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FOREWARD

The *Justice Court Quick Reference Trial Handbook, 9th Edition*, represents the Texas Justice Court Training Center's on-going commitment to providing timely technical assistance, and emphasizes a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc.

A handwritten signature in black ink, appearing to read "Roger Rountree". The signature is fluid and cursive, with a long horizontal stroke at the end.

Roger Rountree
Executive Director

USER NOTES

The *Quick Reference Trial Handbook* is a practical guide to conducting a civil or criminal trial, whether jury or bench trial. There are two sections - civil and criminal - with each section containing instructions for jury trials and bench trials. The source statutes or rules for each are cited under the section heading or in footnotes. This edition replaces the trial script contained in the Deskbook.

References to “counsel” appear throughout the Handbook even though a party is not required to have an attorney. If a party is appearing without counsel (*pro se*), the instruction or action described still applies.

This Handbook is not designed to replace original sources of authority, such as the Texas Code of Criminal Procedure, the Texas Rules of Civil Procedure, the Rules of Evidence, or Civil Practice & Remedies Code. We strongly suggest that you review applicable provisions of the Codes and the Rules before conducting a trial. If your court does not have a copy of the Civil or Criminal *Deskbook*, contact the Texas Justice Court Training Center to obtain one.

In certain situations, some suggestions for what the court should say (scripts) have been included. *Scripts* are clearly indicated by *italics*. **NOTE: The oaths and jury questions are statutory and the jury instructions are prescribed by the Supreme Court in the Texas Rules**

USER NOTES

(continued)

of Court. Please read them **verbatim**; otherwise, the scripts are merely suggestions. You may use your own words if you desire.

CIVIL TRIALS

Part I. Jury Trials

1. OPENING CEREMONY

Opening announcement given by judge, bailiff or court clerk as follows:

“All rise! The Justice Court of ___ County, Precinct ___, is now in session. The Honorable ___, Judge, presiding.” (If judge announces, simply state the name of the court and introduce yourself.)

2. JUDGE’S OPENING REMARKS

Explain court procedures and identify participants (judge, clerk, and bailiff).

3. CALLING CASES FOR TRIAL*

(TEX.R.CIV.P. 546)

Open the proceedings by stating:

“I call the Case of (plaintiff’s name) versus (defendant’s name).”

Both sides announce ready for trial or present motions for continuance. If a motion for continuance is offered, you should grant or deny based on any applicable statute.**

*You may prefer to read or have the clerk read (call) the list of all cases on the day’s docket so the parties to each case can state an estimate of the time they will need to try their case (this method is very useful if one or both of the parties are represented by counsel). After a jury is seated, you will call each case individually in its docket order.

**§§ 23.002, 30.003 and .005, Civil Prac. & Rem. Code.

4. CALLING THE ROLL OF THE JURY PANEL

(Gov't Code § 23.203)

Before calling the jury roll, you announce to all present:

"This is a jury trial and the next order of business is to select a jury."

If there is to be a jury in the case, you will need to "call the roll" to ascertain whether all persons who were summoned have actually appeared for jury duty. After roll call, you should ask if each member of the jury panel has received a copy of the State Bar of Texas' *Uniform Jury Handbook*. If necessary, distribute copies to any members of the panel who did not receive one.

A juror lawfully notified shall be fined not less than \$100 nor more than \$500 if the juror fails to attend court without reasonable excuse or files a false claim of exemption.¹ (Gov'T CODE § 62.111)

5. CHALLENGING THE ARRAY (MEMBERSHIP OF JURY PANEL)

(TEX.R.CIV.P. 221, 547; Gov'T CODE § 62.001, *et seq.*)

A challenge to the membership of the jury panel can be made that alleges a defect in the juror selection and summons procedure or a violation of the jury-wheel statute. Either party can object in writing to the mix of people on the panel. All such challenges must be supported by affidavit of the party or some other credible person.

¹Civil cases **only**. The fine is different in a criminal case.

Following a challenge to the array, if any, and before testing the qualifications of the panel, the court should have a list made of the panel members in the order in which they are seated.
(TEX.R.CIV.P. 224)

6. CHALLENGE IS SUSTAINED

(TEX.R.CIV.P. 222)

If the challenge to the array is sustained, the array of jurors shall be discharged, and the court shall order other jurors summoned. The court shall direct that the officer who summoned the persons discharged, and or account of whose misconduct the challenge was sustained, shall not summon any other jurors in the case.

7. DRAWING THE JURY

(TEX.R.CIV.P. 548)

If no challenge is made to the array, the judge shall write the names of all the jurors present on separate slips of paper, place them in a box, and mix them well. The judge **shall** then draw the names one by one from the box, write them down upon separate slips of paper as they are drawn, and deliver on copy to each of the parties, or their attorneys.

8. SWEARING PROSPECTIVE JURORS

(Gov't Code § 62.412 and TEX. R.CIV.P. 226)

Administer the following oath to the jury panel:

“You, and each of you, do solemnly swear (or affirm) that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God.”

9. INSTRUCTIONS TO JURY PANEL

(TEX.R.CIV.P. 226a, Part I)

After the panel members have been sworn, the court **shall give** the following instructions **verbatim** to jurors:

“Ladies and Gentlemen of the Jury Panel:

“The case that is now on trial is _____ versus _____ . This is a civil action, which will be tried before a jury. Your duty as jurors will be to decide the disputed facts. It is the duty of the judge to see that the case is tried in accordance with the rules of law. In this case, as in all cases, the actions of the judge, parties, witnesses, attorneys and jurors must be according to law. Jury conduct is a critical part of a fair trial. Misconduct may be grounds for a motion for new trial, and jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I am now going to give you, as well as others which you will receive while this case is on trial. If you do not obey the instructions I am about to give you, it may become necessary for another jury to re-try this case with all of the attendant waste of your time here and the expense to the litigants and the taxpayers of this county for another trial. These instructions are as follows:

“1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow

these same instructions and you will understand it when they do.

"2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.

"3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband, nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.

"4. The parties through their attorneys have the right to direct questions to each of you concerning your qualifications, background, experiences and attitudes. In questioning you, they are not meddling in your personal affairs, but are trying to select fair and impartial jurors who are free from any bias or prejudice in this particular case.

"a. Do not conceal information or give answers which are not true. Listen to the questions and give full and complete answers.

"b. If the attorneys ask some questions directed to you as a group which require an answer on your part individually, hold up your hand until you have answered the questions.

"Do you understand these instructions? If not, please let me know now.

"Whether you are selected as a juror for this case or not, you are performing a significant service which only free people can perform. We shall try the case as fast as possible consistent with justice, which requires a careful and correct trial. If selected on the jury, unless I instruct you differently, you will be permitted to separate at recesses and for meals, and at night.

"Jury selection will now begin."

10. DETERMINING QUALIFICATIONS OF JURORS

(Gov't. Code, § 62.102)

Ask the following questions of the jury panel as a whole:

"Are any of you younger than 18 years of age?"

"Are you a citizen of this state and of this county?"

"Can you read and write?"²

"Are you now, or are you eligible to become, a qualified voter in this county or state under the Constitution and laws of this state?"*

**See voter qualifications on page 35.*

This does not mean you must be registered to

²If it appears to the court that the requisite number of jurors able to read and write cannot be found in the county, you may suspend this qualification. Likewise, you may suspend the qualification regarding prior service, if it appears that the county's sparse population makes enforcement seriously inconvenient. (Gov't Code, § 62.103)

vote, but only means your privilege to vote has not been lost.

“Have you ever been convicted of a misdemeanor theft or a felony?”

“Are you under indictment or legal accusation for a misdemeanor theft or any felony?”

If any member of the panel answers “yes” to any of the questions, you should call the juror to the bench and conduct further questioning outside of the hearing of the other jury panel members. Any jurors failing to qualify should be excused.³

11. EXEMPTIONS FROM JURY SERVICE

(Gov't Code §§ 62.106 - 62.109)

Explain that the following persons may claim an exemption from jury service:

- Persons over 70 years of age;⁴
- Persons with legal custody of a child younger than 15 years of age, if jury service would mean leaving the child inadequately supervised;
- Students of public or private secondary schools;

³A person who is blind, or deaf or hard of hearing, is not disqualified to serve as a juror solely because of that disability, except as provided by law. (Gov't Code, §§ 62.104-.1041)

⁴Persons over 70 years of age are entitled to establish a permanent exemption on that basis by filing with the county tax assessor-collector. (Gov't Code, § 62.108)

- Persons enrolled and in actual attendance at an institution of higher education;
- Officers or employees of the Texas senate, house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- Persons who are primary caretakers of an invalid unable to care for himself/herself;
- Persons who can show a physical or mental impairment or an inability to comprehend or to communicate in English;⁵
- Persons who are summoned for service in a county with a population of at least 250,000 and who have served on a petit jury in the county during the preceding three years.
- Persons who are members of the United States military forces serving on active duty and deployed to a location away from the home station and out of the county of residence.

Ask the members of the panel if any of them qualify for an exemption that they want to claim at this time.

⁵The judge of a district court by order may permanently, or for a specified period, exempt a person from service as a juror in all the county and district courts in the county, if the person is over 70 years of age or has a physical or mental impairment or an inability to comprehend or communicate in the English language that makes it impossible or very difficult for the person to serve on a jury. **(Gov't Code, § 62.108 and § 62.109)**

12. JUDICIAL EXCUSE OF JUROR

(Gov't Code § 62.110)

After testing the members of the panel on their legal qualifications and deciding exemptions, you should hear any excuses offered for not serving and determine whether or not to excuse a prospective juror. If you decide that an excuse is sufficient, you may excuse the person. The court may not excuse a prospective juror for an economic reason, unless each party is present and approves release of the juror for that reason. If either the defense or the prosecution objects, you must hear their argument before excusing a prospective juror.

13. SEATING A PANEL

(Tex.R.Civ.P. 225)

After qualifications, exemptions, and excuses have been considered and determinations made, the remaining jurors should be seated. The panel at this stage should have at least 12 people to allow for both parties to exercise their three strikes (peremptory challenges) and still have at least six available to serve on the jury.

Now announce:

“The attorneys (parties) will now proceed with their examination of the jury panel.”

14. EXAMINING JURORS (VOIR DIRE)

(Tex.R.Civ.P. 227)

Attorneys for both sides (or the parties) may question the jurors about possible bias or prejudice that would prevent impartial service on this case. A

challenge to a particular juror is either a challenge for cause or a peremptory challenge, which may be made orally. The court shall decide any challenge without delay and, if sustained, shall discharge the juror from the particular case.

15. CHALLENGES FOR CAUSE

(TEX.R.CIV.P. 228, 549)

After or during the questioning, consider motions from the parties to excuse jurors for cause. There is no limit to the number of challenges for cause.

16. PEREMPTORY (WITHOUT CAUSE) CHALLENGES

(TEX.R.CIV.P. 232, 235, 550-552)

The parties may each make no more than three strikes (that is, ask that a potential juror be excused) without having to explain why the strikes were made, unless a *Batson* motion is made.⁶ Each side actually takes the jury list supplied by the court and marks through as many as three names. If the jury is left incomplete following the peremptory strikes, the court shall direct the sheriff or constable to summon others to complete the jury. Those so summoned are subject to the same selection procedures.

The two sides' lists are returned to the judge (or clerk), who reads the **first six names** that have not been marked through. Those six persons then

⁶*Batson v. Kentucky*, 476 U.S. 79 (9186) (holding that the Equal Protection Clause forbids prosecutor from challenging potential jurors solely on account of their race); *and see, Powers vs. Palacios*, 813 S.W. 2d 490 (Tex. 1991) (holding that exclusion of a juror on account of race is a denial of equal protection in a civil case).

take their positions in the jury box. The judge (or clerk) delivers a copy of the list of six jurors to both parties or their attorneys.

17. SWEARING JURORS

(TEX.R.CIV.P. 553)

After the jurors have been selected and have taken their places in the jury box, you should administer the following oath:

“You, and each of you, do solemnly swear (or affirm) that in all cases between parties which shall be to you submitted you will a true verdict render, according to the law and the evidence, so help you God.”

18. ADDITIONAL INSTRUCTIONS TO THE JURY

(TEX.R.CIV.P. 226a, PartII)

Immediately after a jury has been selected, the court **shall** give the following oral and written instructions.

Oral Instructions

“Ladies and Gentlemen:

“By the oath which you take as jurors, you become officials of this court and active participants in the public administration of justice. I now give you further instructions which you must obey throughout this trial.

*"It is your duty to listen to and consider the evidence and to determine fact issues later submitted to you. **(Have a copy of the written instructions set out below handed out to each juror.)** You will now receive written instructions, which you will observe during this trial together with such other instructions as I may hereafter give, or as heretofore I have given to you. The instructions previously given to the entire jury panel still apply and you will continue to observe them throughout the trial. These and the other instructions just handed to you are as follows:"*

Written Instructions

"1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.

"2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.

"3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband, nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.

"4. Do not even discuss this case among yourselves until after you have heard all of the evidence, the attorneys' arguments and until I have sent you to the jury room to consider your verdict.

"5. Do not make any investigation about the facts of this case. Occasionally we have a juror who privately seeks out information about a case on trial. This is improper. All evidence must be presented in open court so that each side may question the witnesses and make proper objection. This avoids a trial based upon secret evidence. These rules apply to jurors the same as they apply to the parties and to me.

If you know of, or learn anything about, this case except from the evidence admitted during the course of this trial, you should tell me about it at once. You have just taken an oath that you will render a verdict on the evidence submitted to you under my rulings.

"6. Do not make personal inspections, observations, investigations, or experiments nor personally view premises, things or articles not produced in court. Do not let anyone else do any of these things for you.

"7. Do not tell other jurors your own personal experience nor those of other persons, nor relate any special information. A juror may have special knowledge of matters such as business, technical or professional matters or a juror may have expert

knowledge or opinions, or may know what happened in this or some other lawsuit. To tell the other jurors any of this information is a violation of these instructions.

"8. Do not discuss or consider attorneys' fees unless evidence about attorney's fees is admitted.

"9. Do not consider, discuss, nor speculate whether or not any party is or is not protected in whole or in part by insurance of any kind.

"10. Do not seek information contained in law books, dictionaries, public or private records or elsewhere, which is not admitted in evidence.

"You will not be asked, and you should not consider, whether one party or the other should win. Since you will need to consider all of the evidence admitted by me, it is important that you pay close attention to the evidence as it is presented.

"Texas law permits proof of any violation of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I have given you as well as others which you later receive while this case is on trial.

"You may keep these instructions and review them as the case proceeds. A violation of these instructions should be reported to me."

19. PLACING WITNESSES UNDER “The Rule”

(TEX.R.CIV.P. 267; TEX.R.EVID. 603, 614)

To place witnesses under “the Rule”, on motion of either party, or on your own motion, you should ask all possible witnesses to stand (or come forward) by announcing:

“All those of you who may be witnesses in this case who are now in the courtroom, please stand (come forward); I will swear you in at this time. Please raise your right hand.”

Administer the following oath:

“You, and each of you, do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”

Then explain “the Rule”:

“Ladies and gentlemen, the Rule has been invoked. This means that the witnesses who are not parties to this case must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed. Do not discuss this case with each other or anyone else, except with the permission of the court. Do not read, listen to, or watch any report of or comment about the testimony in the case while you are under the Rule. Failure to observe this is

punishable by contempt. Please remain outside until called.”

If either side asks you to make an exception for a particular witness, you may grant the exception. However, you must determine that the witness' testimony will not be tainted or influenced by remaining in the courtroom during the trial and by hearing the testimony of other witnesses in the case.

After all pre-trial matters have been addressed, you should announce: “Counsel, (or _____) you may proceed.”

20. OPENING STATEMENTS

(TEX.R.CIV.P. 265, 266)

- Plaintiff makes opening statement.
- Defendant may make opening statement at this time, or may reserve the opening statement until after presentation of plaintiff's case in chief.

21. PRESENTATION OF EVIDENCE

(TEX.R.CIV.P. 265, 267; TEX.R.EVID .603 and 614)

After opening statements, the trial will proceed with presentation of witnesses and evidence. All evidence must be presented under oath. You should make certain that all potential witnesses have been sworn and have heard the instruction about “the Rule” as each is called.

Administer the oath to witnesses who have not been removed already from the courtroom:

“You do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”

If there are new witnesses present who need to be excluded from the courtroom, restate “the Rule” (see previous pages).

22. ORDER OF PROCEEDING (EXAMINING WITNESSES)

(TEX.R.CIV.P. 265, 266)

The Examination of the witnesses called by each party should proceed as follows:

Plaintiff's Case

(NOTE: as each phase of the questioning is completed, you may call upon the opposing side, for example, “*Counsel, you may proceed.*”)

- Direct examination of all witnesses for plaintiff by the plaintiff or plaintiff’s counsel.
- Cross-examination of each of plaintiff’s witnesses by the defendant or defense counsel.
- Redirect examination by the plaintiff (if the plaintiff chooses).
- Recross-examination by the defense (if the defense chooses).
- Plaintiff rests.

Directed Verdict⁷

(Tex.R.Civ.P. 268)

At this point, either party is permitted to move for, or the court on its own motion may grant a directed verdict. A party may make the motion orally or in writing after one's opponent rests or closes or either party may make the motion after both parties close. (See NOTE.)

Defendant's Case

- Direct examination of all of defendant's witnesses by the defense.
- Cross-examination of each of defendant's witnesses by the plaintiff.
- Redirect examination by the defense (if defense chooses).
- Recross-examination by the plaintiff (if plaintiff chooses).
- Defense rests.

⁷Also known as "instructed verdict" or "judgment as a matter of law" in civil cases. This is a procedural motion used to assert a party's contention that there are no controverted fact issues for the fact finder's determination and that said party is entitled to a favorable "judgment as a matter of law." It is not unusual for a party to make the motion at more than one stage of trial.

NOTE: This is a procedural device and it is not a mistake if you deny the motion and proceed with a full trial. However, denial at one stage does not preclude granting the motion at another stage, if you determine that one party has not met the required burden of proof. (For more discussion of a directed verdict, see the Justice Court Deskbook, Civil Volume, pg. 261.)

You may inquire at this time whether there is any rebuttal evidence, or counsel for the plaintiff or defense may request to put on rebuttal evidence.

23. REBUTTAL EVIDENCE

(TEX.R.CIV.P. 265, 266)

- The plaintiff presents rebuttal evidence in the same manner as in the plaintiff's "case in chief."
- Plaintiff closes.
- If the plaintiff presents rebuttal evidence, the defense may also present rebuttal evidence.
- Defense closes.

24. CLOSING ARGUMENTS

(TEX.R.CIV.P. 269)

After all evidence is concluded, the parties may argue the case to the jury. The party having the burden of proof on the whole case (usually the plaintiff) shall be entitled to open and conclude the argument.

- Plaintiff presents closing argument.
- Defense makes its argument (may waive).
- Plaintiff may present rebuttal argument (if defense argument raises the need for it).

25. SUBMITTING THE CASE TO THE JURY

(TEX.R.CIV.P. 280, 283, 284, 285, 286, 554)

“Ladies and gentlemen of the jury, the evidentiary phase of this trial is completed. Now it is time for you to make your decision, and to find in favor of either the plaintiff or the defendant.”

You should instruct the jury as shown below:

“No less than five of you must agree on the verdict. If only five can agree, then all five must sign the verdict. If you all agree, then only the presiding juror must sign the verdict.”⁸

“If you find for the plaintiff, you should make an award of damages in the amount asked for or less, or in the amount that you believe was proved by plaintiff.

[OPTIONAL, if defendant filed counterclaim: *“If defendant has proved damages, you should make an award of damages in the amount you believe was proved by defendant, if any.”***]**

“If you have any questions about the evidence, or need further instructions from the court, tell the bailiff. (S)He will advise me, and you will be brought back to the courtroom for further instructions.”

A JP **does not** charge the jury in a civil case.

⁸This applies to civil trials only. **TEX.R.CIV.P. 292, 293.**

26. JURY RETURNS THE VERDICT - RENDERING JUDGMENT IN OPEN COURT

(TEX.R.CIV.P. 556, 558)

You should see that the verdict is in the proper form and **read it in open court.**

Enter the verdict on your docket, and **render the proper judgment in open court.**

27. DISCHARGING A DEADLOCKED JURY

(TEX.R.CIV.P. 289)

In the event that the jury cannot agree on a verdict and the parties consent to a discharge, or if the jury is kept together for such a period of time that it is improbable they can agree, you may discharge the jury and reset the case for trial on your docket.

Likewise, if a juror becomes ill or if there is some emergency or calamity, the jury may be discharged when their number falls below that required for justice court juries. If this happens, you may discharge the jury and reset the case for trial as soon as practicable. (Civ.Prac. & Rem. Code, § 30.009)

28. RULING ON A MOTION FOR A NEW TRIAL *

(TEX.R.CIV.P. 567-570)

Within 10 days after rendition of a judgment in open court, the judge may grant a new trial on motion in writing showing that justice has not been done in the trial of the case.⁹

⁹Movant for new trial must file motion for new trial within five days after the rendition of judgment and one day's notice thereof shall be given the opposite party or attorney. **TEX.R.CIV.P. 569.**

***See DEFAULT JUDGMENTS, at Civil Trials -
Page 31 of this Handbook.**

29. APPEAL

(TEX.R.CIV.P. 571-574b)

The party appealing shall file with your court an appeal bond in double the amount of the judgment within 10 days from the date a judgment or order overruling a motion for new trial is signed. When such bond has been filed with the justice, the appeal shall be held to be perfected, and all parties shall make their appearance at the next term of the court to which appeal is made. The appealing party shall give notice of the filing of bond to all parties to the suit within five days following filing of the bond.

30. APPEAL FROM SMALL CLAIMS COURT

Except to the extent of any conflict with Chapter 28, Texas Gov't. Code, appeal is in the manner provided from justice courts.

CIVIL TRIALS

Part II. Bench Trials

1. OPENING CEREMONY

Opening announcement given by judge, bailiff or court clerk as follows:

“All rise! The Justice Court of ___ County, Precinct ___, is now in session. The Honorable ___, Judge, presiding.” (If judge announces, simply state the name of the court and introduce yourself.)

2. JUDGE’S OPENING REMARKS

Explain court procedures and identify participants (judge, clerk, and bailiff).

3. CALLING CASE FOR TRIAL *

(TEX.R.CIV.P. 542)

Open the proceedings by stating:

“I call the Case of (plaintiff’s name) versus (defendant’s name).”

Both sides announce ready for trial or present motions for continuance. If a motion for continuance is offered, you should grant or deny based on any applicable statute.**

*You may prefer to read or have the clerk read (call) the lists of all cases on the day’s docket so the parties to each case can state an estimate of the time they will need to try their case (this method is very useful if one or both of the parties are represented by counsel).

**§§ 23.002, 30.003 and .005, Civil Prac. & Rem. Code.

4. PLACING WITNESSES UNDER “the Rule”

(TEX.R.CIV.P. 267; TEX.R.EVID. 603 and 614)

To place witnesses under “the Rule”, on motion of either party, or on your own motion, you should ask that all possible witnesses stand (or come forward) by announcing:

“All those of you who may be witnesses in this case who are now in the courtroom, please stand (come forward) and raise your right hand.”

Administer the following oath:

“You do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”

Then explain “the Rule”:

“Ladies and gentlemen, the rule has been invoked. This means that the witnesses who are not parties to this case must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed. Do not discuss this case with each other or anyone else, except with the permission of the court. Do not read, listen to, or watch any report of

or comment about the testimony in the case while you are under the rule. Failure to observe this is punishable by contempt. Please remain outside until called.”

If either side asks you to make an exception for a particular witness, you may grant the exception. However, you must determine that the witness' testimony will not be tainted or influenced if that person is allowed to remain in the courtroom during the trial and to hear the testimony of the other witnesses in the case.

After all pre-trial matters have been addressed, you should announce: *“Counsel, you may proceed.”*

5. OPENING STATEMENTS

(TEX.R.CIV.P. 265, 266)

- Plaintiff makes opening statement.
- Defendant may make opening statement at this time, or may reserve the opening statement until after presentation of plaintiff's case in chief.

6. PRESENTATION OF EVIDENCE

(TEX.R.CIV.P. 265, 267; TEX.R.EVID. 603 and 614)

After opening statements, the trial will proceed with presentation of witnesses and evidence. All evidence must be presented under oath. You should make certain that all potential witnesses

have been sworn and have heard the instruction about “the Rule” as each is called.

Administer the oath to witnesses who have not been removed already from the courtroom:

“You do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”

If there are new witnesses present who need to be excluded from the courtroom, restate “the Rule” (see previous pages).

7. ORDER OF PROCEEDING (EXAMINING WITNESSES)

(TEX.R.CIV.P. 265, 266)

The examination of the witnesses called by each party should proceed as follows:

Plaintiff’s Case

(NOTE: as each phase of the questioning is completed, you may “call upon” the opposing side, for example, “Counsel, you may proceed.”)

- Direct examination of all witnesses for plaintiff by the plaintiff.
- Cross-examination by the defense of each of plaintiff’s witnesses.
- Redirect examination by the plaintiff (if plaintiff chooses).
- Recross-examination by the defense (if defendant chooses).

- Plaintiff rests.

Directed Verdict¹⁰
(TEX.R.CIV.P. 268)

At this point either party is permitted to move, or the court on its own motion may grant, a directed verdict. A party may make the motion orally or in writing after one's opponent rests or closes or either party may make the motion after both parties close. (See NOTE.)

Defendant's Case

- Direct examination of all witnesses for the defendant by the defense.
- Cross-examination of each of defendant's witnesses by the plaintiff.
- Redirect examination by the defense (if defendant chooses).
- Recross-examination by the plaintiff (if plaintiff chooses).
- Defense rests.

¹⁰Also known as "instructed verdict" or "judgment as a matter of law" in civil cases. This is a procedural motion used to assert a party's contention that there are no controverted fact issues for the fact finder's determination and that said party is entitled to a favorable "judgment as a matter of law." It is not unusual for a party to make the motion at more than one stage of trial.

NOTE: This is a procedural device and it is not a mistake if you deny the motion and proceed with a full trial. However, denial at one stage does not preclude granting the motion at another stage, if you determine that one party has not met the required burden of proof. (For more discussion of a directed verdict, see the Justice Court Deskbook, Civil Volume, pg. 261.

You may inquire at this time whether there is any rebuttal evidence, or counsel for the plaintiff or defense may request to put on rebuttal evidence.

8. REBUTTAL EVIDENCE

(TEX.R.CIV.P. 265, 266)

- The plaintiff presents rebuttal evidence in the same manner as in the plaintiff's case in chief.
- Plaintiff closes.
- If the plaintiff presents rebuttal evidence, the defense may also present rebuttal evidence.
- Defense closes.

9. CLOSING ARGUMENTS

(TEX.R.CIV.P. 268)

After all evidence is concluded, the parties may argue the case to the bench. The party having the burden of proof on the whole case (usually the plaintiff) shall be entitled to open and conclude the argument.

- Plaintiff presents closing argument.
- Defense makes its argument (may waive).
- Plaintiff may present rebuttal argument (if defense argument raises the need for it).

10. RENDERING JUDGMENT IN OPEN COURT

(TEX.R.CIV.P. 268)

You should announce your decision, **render the proper judgment** in open court, and enter the judgment on the docket.

11. RULING ON MOTION FOR A NEW TRIAL *

(TEX.R.CIV.P. 567—570)

Within 10 days after rendition of a judgment in open court, the judge may grant a new trial on motion in writing.¹¹

*See DEFAULT JUDGMENTS at Civil Trials - page 31.

Rule 566, T.R.C.P., provides that “[a] justice may within ten days after a judgment by default or dismissal is signed, set aside such judgment on motion in writing, for good cause shown supported by affidavit.” (See #12. Appeal below regarding the time for filing an appeal bond.) Thus, when the judge signs the order overruling the motion for new trial the ten-day period to file an appeal begins to run.

12. APPEAL

(TEX.R.CIV.P. 571 - 574b)

The party appealing shall file with your court an **appeal bond in double the amount of the judgment within 10 days from the date a judgment**

¹¹Movant for new trial must file a motion for new trial within five days after the rendition of judgment and one day’s notice thereof shall be given the opposite party or attorney. **TEX.R.CIV.P. 569.**

or order overruling a motion for new trial is signed. When such bond has been filed with the justice, the appeal shall be held to be perfected, and all parties shall make their appearance at the next term of the court to which appeal is made. The appealing party shall give notice of the filing of bond to all parties to the suit within five days following filing of the bond.

13. APPEAL FROM SMALL CLAIMS COURT

Except to the extent of any conflict with Chapter 28, Texas Gov't. Code, appeal is in the manner provided from justice courts.

CIVIL TRIALS

Oaths

INTERPRETER - Deaf Person and Non-English Speaking Person

“You do solemnly swear (or affirm) that in the case now on trial you will make a true translation to the person accused (or being examined), which person is deaf (or non-English speaking), of all the proceedings of the case in a language that the person understands, and that you will repeat said person’s answer to counsel, court or jury, in the English language with your best skill and judgment, so help you God.” (TEX.R.EVID. 604)

JURY PANEL

“You, and each of you, do solemnly swear (or affirm) that you make will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God.” (TEX.R.EVID. 226)

SIX JURORS

(Petit Jury)

“You, and each of you, do solemnly swear (or affirm) that, in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law and the evidence so help you God.” (TEX.R.EVID. 553)

WITNESSES

“You do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.” (TEX.R.EVID. 603)

CIVIL TRIALS

Default Judgments

Justice Court - Liquidated Claims¹² and Sworn Accounts

(Tex.R.Civ.P. 538(a))

When defendant, who has been duly served, totally fails to appear, whether plaintiff appears or not to present evidence of damages, you should:

- Verify service of process;
- Confirm that you have jurisdiction over the cause of action;
- Look to the **written** pleadings to see if they are sufficient to prove plaintiff's damages, Rule 536a—return must be on file with court 3 days before it is granted; and
- If plaintiff's evidence proves damages, **render judgment in open court** in plaintiff's favor against defendant for the amount of the written obligation or sworn account after deducting all credits and offsets,
- Rule 536a—return must be on file with court 3 days before it is granted.

Justice Court - Unliquidated Claims

(Tex.R.Civ.P. 538(b))

When a defendant, who has been duly served, totally fails to appear, and plaintiff appears in person or by

¹²Liquidated claims are those for which the amounts have been agreed to by the parties in a prior agreement (as in a contract or lease) or which are fixed by operation of law (as a rate of interest or a set fee).

attorney, you should:

- Verify service of process;
- Confirm that you have jurisdiction over the cause of action;
- Proceed to hear sworn testimony;
- If it appears plaintiff is entitled to recover, **render judgment in open court** for the amount proved by plaintiff's sworn evidence; or
- If plaintiff's sworn evidence fails to prove the damages claimed, **render judgment in open court** for defendant.

Justice Court - Forcible Entry and Detainer and Forcible Detainer

(TEX. PROP. CODE §§ 24.0051, 24.011; TEX. R. CIV. P. 743, 747a)

When defendant, who has been duly served, totally fails to appear or file answer before the case is called for trial, and the plaintiff appears in person or by authorized agent, you should:

- Verify service of citation;
- Confirm that you have jurisdiction over the cause of action;
- Admit the allegations of the complaint; and
- Render default judgment in open court as provided by plaintiff's evidence.

A prevailing landlord is entitled to a judgment for possession of the premises and for unpaid rent if requested in the suit; however, a writ of possession shall not issue before the sixth day after the date on which judgment is rendered unless a possession bond has been filed. Defendant's time limit for filing an appeal is within five days after the judgment is signed.

(Property Code § 24.0061; TEX.R.Civ.P. 749)

Small Claims - Liquidated Claims¹³

(TEX.GOV'T CODE § 28.031(a))

When a defendant, who has been duly served, totally fails to appear, and plaintiff appears* in person or by attorney, you should:

- Verify service of process;
- Confirm that you have jurisdiction over the cause of action;
- Look to the written pleadings to see if they are sufficient to prove plaintiff's damages;
- **Render default judgment in open court** in plaintiff's favor against defendant for the amount of the written obligation or sworn account after deducting all credits and offsets.

You may set aside the default judgment if, not later than the 10th day after the default judgment is signed, defendant files a motion to set aside for

¹³Liquidated claims are those for which the amounts have been agreed to by the parties in a prior agreement (as in a contract or lease) or which are fixed by operation of law. (as a rate of interest or a set fee).

good cause shown. (Gov't Code § 28.031)

*If plaintiff does not appear, you may enter an order dismissing the action without prejudice. You may set the case for trial if, not later than the 10th day after the case is dismissed, the plaintiff files a written motion showing good cause to set aside the dismissal.

Small Claims Court - Unliquidated Claims

[§ 28.031(b), V.A.G.C.]

When a plaintiff fails to appear, on written motion of defendant you may:

- Enter an order dismissing the action without prejudice.

You may set the case for trial if, not later than the 10th day after you dismissed the action, the plaintiff files a motion to set aside the dismissal for good cause shown.

NOTE: You may grant a postponement or continuance only for good cause shown.

ALL TRIALS

Voter Qualifications

(Elect. Code § 11.002)

Qualified voter means a person who:

- is 18 years of age or older;
- is a United States citizen;
- has not been determined by a final judgment of a court exercising probate jurisdiction to be:
 - a. totally mentally incapacitated; or
 - b. partially mentally incapacitated without the right to vote;
- has not been finally convicted of a felony or, if so convicted, has:
 - a. fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or
 - b. been pardoned or otherwise released from the resulting disability to vote;
- is a resident of this state; and
- is a registered voter.

END of CIVIL SECTION

CRIMINAL TRIALS

Part I. Jury Trials

1. OPENING CEREMONY

Opening announcement given by judge, bailiff or court clerk as follows:

“All rise! The Justice Court of ___ County, Precinct ___, is now in session. The Honorable ___, Judge, presiding.” (If judge announces, simply state the name of the court and introduce yourself.)

2. JUDGE’S OPENING REMARKS

Explain court procedures and identify participants (judge, clerk, and bailiff).

3. WAIVERS BY DEFENDANT

You should make inquiry as to defendant’s understanding of certain guaranteed rights and privileges.

- Explain defendant’s right to demand a speedy, public jury trial, and to waive this right in writing. Take notice that defendant has invoked the right to a jury trial, if applicable. (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05, 1.12, and 45.025)
- Explain defendant’s right to counsel. Ask the defendant to waive in writing the right to an attorney, if no defense counsel is present. (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.051(a) and (f), 1.14, and 45.020)
- Explain defendant’s privilege against self-incrimination. For example: *“You are not re-*

quired to testify and no one may make you testify. If you decide not to testify, I will instruct the jury not to use the fact that you did not testify as evidence against you. Choosing to remain silent cannot be used against you.” (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05 and 38.08)

Then ask if the defendant understands the rights you just explained. (CODE CRIM. PROC. arts. 1.13, 1.14, 45.025 and 45.020)

4. CALLING CASE FOR TRIAL *

Open the proceedings by stating:

“I call the Case of State of Texas (prosecution) versus (defendant’s name).”

Both sides announce ready for trial or present motions for continuance. (CODE CRIM. PROC. CH. 29)

If the defendant objects to venue and seeks to transfer the case, venue facts are subject to the “preponderance of the evidence” standard of proof as in civil cases. (CODE CRIM. PROC. art. 13.17)

*You may prefer to read or have the clerk read (call) the list of all cases on the day’s docket so the parties to each case can state an estimate of the time they will need to try their case (this method may not work unless both sides are represented by counsel).

The correct way to raise the new issues is by “motion for instructed verdict.” (See #24)¹⁴

5. CALLING THE ROLL OF THE JURY PANEL

(GOV'T CODE, CH. 62)

Jury panels for the trial of criminal cases shall be selected and summoned (with return on summons) in the same manner as the selection of panels for the trial of Civil cases except as otherwise provided in the Code of Criminal Procedure. (CODE CRIM. PROC. art. 33.09)

Before calling the roll, you should announce to all present:

“This is a jury trial and the next order of business is to select a jury.”

If there is to be a jury in a criminal trial, you will need to “call the roll” to ascertain whether all jurors who were summoned have actually appeared for jury duty. After roll call, you should ask if each member of the jury panel has received a copy of the State Bar of Texas’ *Uniform Jury Handbook*. If necessary, distribute copies to any members of the panel who did not receive one.

Those not present nor properly excused may be fined a maximum of \$100 for contempt. (CODE CRIM. PROC. art. 45.027)

In addition, you can order a writ of attachment

¹⁴*Thomas v. State*, 699 S.W. 2d 845, (Tex. Crim. App. 1985) (citations omitted).

issued on request of either party directing a peace officer to pick up any absent juror who was summoned but did not appear and to bring that person to COURT. (CODE CRIM. PROC. art. 35.01)

6. SWEARING PROSPECTIVE JURORS

(CODE CRIM. PROC. art. 35.02)

Administer the following oath to the jury panel:

“You, and each of you, do solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching on your service and qualification as a juror, so help you God.”

7. CHALLENGING THE ARRAY (MEMBERSHIP OF JURY PANEL)

(CODE CRIM. PROC. arts. 35.07 and 35.08)

The only challenge to the membership of the jury panel that can be made is that the officer who summoned the panel summoned jurors with a view to securing a conviction or an acquittal. All challenges must be made by written motion stating the specific grounds of the challenge. Either side may challenge the mix of people on the panel, and defendant’s challenge, if any, must be supported by written affidavit.

Following a challenge to the array, you shall hear evidence and decide whether or not to sustain the challenge. If there is no challenge or if it is overruled, the court should have a list made of the panel members in the order in which they are seated.

8. CHALLENGE IS SUSTAINED

(CODE CRIM. PROC. art. 35.08)

If the challenge to the array is sustained, the array of jurors shall be discharged, and the court shall order jurors summoned. The court shall direct that the officer who summoned the persons discharged, and on account of whose misconduct the challenge was sustained, shall not summon any other jurors in the case.

9. SELECTION OF JURORS (SHUFFLING) AND PREPARATION OF JURY LIST

(CODE CRIM. PROC. art. 35.11)

The trial judge, on demand of counsel for either side or the defendant, shall cause random selection of a sufficient number of jurors from the general panel to try the case. The clerk shall randomly select (shuffle) the jurors and make a list of their names. The clerk shall then deliver a copy of the list of jurors to State's counsel and to the defendant or defense counsel.

10. DETERMINING QUALIFICATIONS OF JURORS

(CODE CRIM. PROC. arts. 35.10, 35.12, 35.19, and 35.21)

Ask the following questions of the jury panel as a whole:

“Are any of you younger than 18 years of age?”

“Are you a citizen of this state and of this county?”

“Can you read and write?”¹⁵

“Are you now or are you eligible to become, a qualified voter in this county and state under the Constitution and laws of this state? This does not mean you must be registered to vote but only means your privilege to vote has not been lost.*

“Have you ever been convicted of a misdemeanor theft or a felony?”

“Are you under indictment or legal accusation for a misdemeanor theft or any felony?”

If any member of the panel answers “yes” to any of the questions, you should call the juror to the bench and conduct further questioning outside of the hearing of the other jury panel members. Any jurors failing to qualify should be excused.¹⁶

***See Voter Qualifications on page 71.**

¹⁵If it appears to the court that the requisite numbers of jurors able to read and write cannot be found in the county, you may suspend this qualification. Likewise, you may suspend the qualification regarding prior service, if it appears that the county’s sparse population makes enforcement seriously inconvenient. **(Gov’t CODE. § 62.103)**

¹⁶A person who is blind, or deaf or hard of hearing, is not disqualified to serve as a juror solely because of that disability, except as provided by law. **(Gov’t CODE. § 62.104 - .1041)**

11. EXEMPTIONS FROM JURY SERVICE

(Gov'T CODE §§ 62.106—62.109)

Explain that the following persons may claim an exemption from jury service:

- Persons over 70 year of age;¹⁷
- Persons with legal custody of a child younger than 15 years of age, if jury service would mean leaving the child inadequately supervised;
- Students of public or private secondary schools;
- Persons enrolled and in actual attendance at an institution of higher education;
- Officers or employees of the Texas senate, house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- Persons who are primary caretakers of an invalid unable to care for himself/herself.
- Can show a physical or mental impairment or an inability to comprehend or to communicate in English.¹⁸

¹⁷Person over 70 years of age are entitled to establish a permanent exemption on that basis by filing with the county tax assessor-collector. (Gov'T CODE. § 62.108)

¹⁸The judge of a district court by order may permanently, or for a specified period, exempt a person from service as a juror in all the county and district courts in the county, if the person is over 70 years of age or has a physical or mental impairment or an inability to comprehend or communicate in the English language that makes it impossible or very difficult for the person to serve on a jury. (Gov'T CODE. § 62.108 & § 62.109)

- Persons who are summoned for service in a county with a population of at least 250,000 and who have served on a petit jury in the county during the preceding three years;
- Persons who are members of the United States military forces serving on active duty and deployed to a location away from the home station and out of the county of residence.

Ask the members of the panel if any of them qualify for an exemption that they want to claim at this time.

12. EXCUSES FROM JURY SERVICE

(Gov'T CODE §§ 62.106—62.109)

After testing the members of the panel on their legal qualifications, and after deciding exemptions, you should hear any excuses offered for not serving and determine whether or not to excuse the person. If you decide that an excuse is sufficient, you may excuse the person. A prospective juror may not be excused for an economic reason unless each party is present and approves the release of the juror for that reason. If either the defense or the prosecution objects, you must consider their argument before excusing a prospective juror.

13. SEATING A PANEL

(Tex.R.Civ.P. 231)

After qualifications, exemptions, and excuses

have been considered and determinations made, the remaining jurors should be seated. The panel at this stage should have at least 12 people to allow for both parties to exercise their three strikes (peremptory challenges) and still have at least six available to serve on the jury after voir dire.

14. INSTRUCTIONS TO JURY PANEL

(TEX.R.CIV.P. 226a, Part I)

“Ladies and gentlemen of the Jury Panel:

“The case that is now on trial is ___ vs. ___. This is a criminal action, which will be tried before a jury. Your duty as jurors will be to decide the disputed facts. It is the duty of the judge to see that the case is tried in accordance with the rules of law. In this case, as in all cases, the actions of the judge, parties, witnesses, attorneys and jurors must be according to law. Jury conduct is a critical part of a fair trial. Misconduct may be grounds for a motion for new trial, and jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I am now going to give you, as well as others which you will receive while this case is on trial. If you do not obey the instructions I am about to give you, it may become necessary for another jury to re-try this case with all of the attendant waste of your time here and the expense to the taxpayers of this county for another trial. These instructions are as follows:

“1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who

might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.

“2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.

“3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband, nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.

“4. The parties through their attorneys have the right to direct questions to each of you concerning your qualifications, background, experiences and attitudes. In questioning you, they are not meddling in your personal affairs, but are trying to select fair and impartial jurors who are free from any bias or prejudice in this particular case.

“a. Do not conceal information or give answers which are not true. Listen to the questions and give full and complete answers.

“b. If attorneys ask some questions directed to you as a group which require an answer on your part individually, hold up your hand until you have answered the questions.

“Do you understand these instructions? If not, please let me know now.

“Whether you are selected as a juror for this case or not, you are performing a significant service which only free people can perform. We shall try the case as fast as possible consistent with justice, which requires a careful and correct trial.”

Then announce:

“The attorneys will now proceed with their examination of the jury panel.”

15. EXAMINING JURORS (VOIR DIRE)

(CODE CRIM. PROC. art. 35.17)

Attorneys for both sides (the prosecutor and defendant or defense counsel) may question the jurors about possible bias or prejudice that would prevent impartial service on this case. A challenge to a particular juror is either for cause or a peremptory challenge, which may be made orally. The court shall decide any challenge without delay and, if sustained, shall discharge the juror from the particular case.

16. CHALLENGES FOR CAUSE

(CODE CRIM. PROC. arts. 35.16, 35.18, 35.19, and 45.030)

After or during the questioning, consider motions from the parties to excuse jurors for cause. There is no limit to the number of challenges for cause.

17. PEREMPTORY (WITHOUT CAUSE) CHALLENGES

(CODE CRIM. PROC. arts. 35.15, 35.25, 45.028—.029; TEX.R.CIV.P. 235 and 552)

Both parties may each make no more than three strikes (that is, ask that a potential juror be excused) without having to explain why the strikes were made unless a Batson motion is made.¹⁹ Each side actually takes the jury list supplied by the court and marks through as many as three names. If the jury is left in complete following the peremptory strikes, the court shall direct the sheriff or constable to summon others to complete the jury. Those so summoned are subject to the same selection procedures.

The two lists are returned to the judge (or clerk), who reads **the first six names** that have not been marked through. Those six persons then take their positions in the jury box. The judge (or clerk) delivers a copy of the list of six jurors to both parties or their attorneys.

18. OATH TO THE JURY

(CODE CRIM. PROC. arts. 35.22, 45.30)

After the jurors have been selected and have taken their places in the jury box, you should administer the following oath:

“You and each of you do solemnly swear that in

¹⁹*Batson v. Kentucky*, 476 U.S. 79 (1986), prohibits peremptory challenges which are made to exclude jurors because of their race. This motion will be made by the defendant on the theory that the State’s attorney made challenges for reasons based on race, and the burden of proof is on the defendant.

the case of the State of Texas against the defendant you will a true verdict render according to the law and the evidence, so help you God.”

19. ADDITIONAL INSTRUCTIONS TO THE JURY

(TEX.R.CIV.P. 266a, Part II)

Oral Instructions

“Ladies and Gentlemen:

*“By the oath which you take as jurors, you become officials of this court and active participants in the public administration of justice. I now give you further instructions which you must obey throughout this trial. It is your duty to listen to and consider the evidence and to determine fact issues later submitted to you. **(Have a copy of the written instructions set out below handed out to each juror.)** You will now receive written instructions, which you will observe during this trial together with such other instructions I may hereafter give, or as heretofore I have given to you. The instructions previously given to the entire jury panel still apply and you will continue to observe them throughout the trial. Those and the other instructions just handed to you are as follows:”*

Written Instructions

“1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case,

except for casual greetings. They have to follow these same instructions and you will understand it when they do.

“2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.

“3. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case, report it to me at once.

“4. Do not even discuss this case among yourselves until after you have heard all of the evidence, the attorney’s arguments and until I have sent you to the jury room to consider your verdict.

“5. Do not make any investigation about the facts of this case. Occasionally we have a juror who privately seeks out information about a case on trial. This is improper. All evidence must be presented in open court so that each side may question the witnesses and make proper objection. This avoids a trial based upon secret evidence. These rules apply to jurors the same as they apply to the parties and to me. If you know of, or learn anything about, this case except from the evidence admitted during the course of this trial, you should tell me about it at once. You have just taken an oath that you will render a verdict on the

evidence submitted to you under my rulings.

“6. Do not make personal inspections, observations, investigation, or experiments nor personally view premises, things or articles not produced in court. Do not let anyone else do any of these things for you.

“7. Do not tell other jurors your own personal experience nor those of other persons, nor relate any special information. A juror may have special knowledge of matters such as business, technical or professional matters or a juror may have expert knowledge or opinions, or may know what happened in this or some other case. To tell the other jurors any of this information is a violation of these instructions.

“8. Do not seek information contained in law books, dictionaries, public or private records or elsewhere, which is not admitted in evidence.

“You will not be asked, and you should not consider, whether one side or the other should win. Since you will need to consider all of the evidence admitted by me, it is important that you pay close attention to the evidence as it is presented.

“Texas law permits proof of any violation of the rules of proper juror conduct. By this I mean that jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions

which I have given you as well as others which you later receive while this case is on trial.

“You may keep these instructions and review them as the case proceeds. A violation of these instructions should be reported to me.”

Then announce to the State’s attorney:

“Counsel you may proceed with the reading of the complaint.”

20. READING THE COMPLAINT

(CODE CRIM. PROC. art. 36.01)

The prosecutor shall read the complaint to the defendant and the jury, and the defense is allowed to inspect it.

21. DEFENDANT ENTERS A PLEA

(CODE CRIM. PROC. arts. 27.05, 36.01, 45.023—024)

Ask if the defendant understand the charge and how defendant pleads. The defendant then enters a plea of:

- Guilty;
- *Nolo contendere* (no contest);
- Not guilty; or
- Special plea (which shall be verified by affidavit).

If the defendant refuses to enter a plea, you must

enter a plea of **not guilty** for the defendant.
If the defendant pleads guilty or *nolo contendere*,
the jury is excused and the court determines the
punishment.

22. PLACING WITNESSES UNDER “THE RULE”

(CODE CRIM. PROC. art. 36.05; TEX.R.EVID. 613)

To place witnesses under “the Rule” on motion of
either party, or on your own motion, you should
ask that all possible witnesses stand (or come for-
ward) by announcing:

*“All those of you who may be witnesses in this
case who are now in the courtroom, please stand
(or come forward) and raise your right hand.”*

Administer the following oath:

*“Each of you do solemnly swear (or affirm) that
the testimony which you are about to give in the
case now on trial is the truth, the whole truth and
nothing but the truth, so help you God.”*

Then explain “the Rule.”

*“Ladies and gentlemen, the Rule has been in-
voked. This means that the witnesses who are not
parties to this case must remain outside the hear-
ing of the courtroom at all times while testimony is
being heard, except when testifying or until dis-
charged. If you are a witness, you must stay
close enough so that you may be reached when
needed. Do no discuss this case with each other*

or anyone else, except with the permission of the court. Do not read, listen to, or watch any report of or comment about the testimony in the case while you are under the rule. Failure to observe this is punishable by contempt. Please remain outside until called.”

If either side asks you to make an exception for a particular witness, you may grant the exception if you determine that the witness' testimony will not be tainted or influenced by remaining in the courtroom during the trial and by hearing the testimony of other witnesses in the case.

23. OPENING STATEMENTS

(CODE CRIM.PROC. art. 36.01(b))

- Prosecution makes an opening statement of the nature of the accusation and the facts the prosecution expects to prove.
- Defense may make an opening statement at this time only if the State first makes one.²⁰

24. PRESENTATION OF EVIDENCE

(CODE CRIM.PROC. art. 45.011; TEX.R.EVID. 603, 614)

All evidence must be presented under oath. You should confirm that all potential witnesses have been sworn and have heard the instruction about “the Rule” at this time.

Administer the oath to witnesses who have not already been removed from the courtroom:

²⁰*Penry v. State*, 903 S.W. 2d 715, 760 (Tex. Crim. App. 1995).

“Each of you do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth, so help you God.”

Then, restate “the Rule” (see previous page).

25. ORDER OF PROCEEDING (EXAMING WITNESSES)

(CODE OF CRIM. PROC. art. 36.01(a))

The examination of each witness called by each party should proceed as follows:

Prosecution’s Case

(NOTE: as each phase of the questioning is completed, you may “call upon” the opposing side, for example, “Counsel, you may proceed.”)

- Direct examination by the prosecution.
- Cross-examination by the defendant or the defense counsel.
- Redirect examination by the prosecution.
- Recross-examination by the defendant or defense counsel.
- After the prosecution has called and examined all its witnesses and the defense has had the opportunity to cross-examine each, the prosecution rests.

Directed Verdict²¹
(CODE CRIM. PROC. arts. 36.11 and 45.032)

At this point, the defense may move for, or the court on its own motion may grant, a directed verdict of acquittal. If you believe that the defense motion is correct, then you should instruct the jury to return a verdict of “not guilty” of the charge.

Granting the motion has the practical effect of ending the trial in an acquittal. Overruling the motion results in a continuation of the trial, and the defense then presents its case (see NOTE below).

Defendant’s Case

- Directed examination by the defendant or the defense counsel.
- Cross-examination by the prosecution.
- Redirect examination by the defendant or defense.

²¹Also known as “motion for instructed verdict” or “motion for judgment of acquittal” in criminal cases. This procedure “is commonly defined as action taken by the judge in a jury trial to decide issues in the case without allowing them to be submitted to the jury because, as a matter of law, the party with the burden of proof has failed to make a *prima facie* case.” *State v. Lewallen*, 927 S.W. 737, 739 (Tex. App. - Ft. Worth 1996, no pet.)

NOTE: A motion for directed verdict of acquittal may be made after the prosecution rests, after the defense rests, or before the case is submitted to the jury.

- Recross-examination by the prosecution.
- After the defense has called and examined all its witnesses and the State has had an opportunity to cross-examine each the defense rests.

26. REBUTTAL EVIDENCE

(CODE CRIM. PROC. art. 36.01)

- The prosecution may present rebuttal evidence in the same manner as the prosecution's "case in chief."
- Prosecution closes.
- If the prosecution presents more evidence, the defense may present more rebuttal evidence.
- Defense closes.

27. JUDGE CHARGES THE JURY

(CODE CRIM. PROC. arts. 36.14 and 45.033)

A charge may be given orally or in writing. The charge should distinctly set forth the law applicable to the case; not express any opinion as to the weight of the evidence; not sum up the testimony or discuss the facts; and not use any argument calculated to arouse the sympathy or excite the passions of the jury. The defendant or defense counsel shall have reasonable time to examine the charge and to object in writing distinctly specifying each ground of objection. Each side may submit written instructions and ask that they be

given to the jury. The court shall give or refuse these charges.

28. CLOSING ARGUMENTS

(CODE CRIM. PROC. arts. 36.07 and 36.08)

- Prosecution presents closing argument.
- Defense makes its argument (may waive).
- Prosecution presents rebuttal argument.

29. SUBMITTING THE CASE TO THE JURY

(CODE CRIM. PROC. arts. 36.14 and 45.036)

You should instruct the jury as shown below:

“You will now retire to the jury room to deliberate on your verdict.

“You must appoint a presiding juror.

“The verdict must be unanimous.”²²

“If you find the defendant guilty, you should set a fine within the limits prescribed for punishment of this offense.

“Or if you find the State did not prove each element of its case and the guilt of the defendant be-

²²This applies to **Criminal** trials only.

yond a reasonable doubt, you must return a verdict of not guilty.”

Also advise the jury:

“If you cannot reach a verdict within a reasonable time, notify the bailiff of your difficulty or problem. It may be necessary to declare a mistrial if you cannot agree on a verdict. (CODE CRIM. PROC. art. 36.27)

Explain that the jury may communicate with the court through the presiding juror by notifying the officer in charge in writing:

“If you have any questions about the evidence or need further instructions from the court, notify the bailiff and the bailiff will advise me. Any communications between the jury and court must be in writing, prepared by the presiding juror, and transmitted to me by the bailiff.” (CODE CRIM. PROC. art 36.27)

30. JURY RETURNS THE VERDICT—RENDERING JUDGMENT IN OPEN COURT

(CODE CRIM. PROC. arts. 37.10, 37.12, and 45.036)

You should see that the verdict is in the proper form, enter it upon your docket, and read it in **open court**.

In **open court**, you shall:

- **Render the proper judgment and punish-**

ment if defendant is found guilty and enter the verdict,²³ judgment, and punishment on your docket; or

- Discharge defendant from all further liability for the charge, if defendant is acquitted.

31. DISCHARGING A DEADLOCKED JURY

(CODE CRIM. PROC. art. 45.035)

In the event that the jury cannot agree on a verdict, or if the jury is kept together for such a period of time that it is improbable they can agree,²⁴ you may declare a mistrial, discharge the jury and impanel another jury as soon as practical.

32. RULING ON A MOTION FOR A NEW TRIAL

(CODE CRIM. PROC. art. 45.037-.040)

If the defendant is convicted, the defense has one day after rendition of judgment and sentence in which to move for a new trial. Not later than the 10th day after the date judgment is entered, you may grant the defendant's motion for a new trial. If you grant the motion for a new trial, then you should reset the case for trial as quickly as possible and conduct it as though the first trial never

²³On a guilty verdict it is within the court's discretionary power, in certain circumstances, to defer final disposition and to place the defendant on probation for a period not to exceed 180 days. (CODE CRIM. PROC. art. 45.051-.0511).

²⁴One method of breaking a deadlock is known as an *Allen* or "dynamite" charge. It is a "supplemental" charge that the court may use, with care, to encourage **all** members of the jury to examine their viewpoints. *Allen v. U.S.* 492, 17 S. Ct. 154, 41L Ed. 528 (1896); *and see* TEX. JUST. CT. DESKBOOK, Vol. II, App. VI.

occurred. If the motion is not granted before the 11th day after judgment is entered, it shall be considered denied.*

33. APPEAL

(CODE CRIM. PROC. arts. 45.042-.043)

If the defendant is found guilty, you should inform the defendant of the right to appeal. The defendant is not required to give notice of appeal in open court; however, the appeal and appeal bond must be filed within 10 days of rendition of judgment or the overruling of a motion for new trial, with some limited exception.

*The State is not entitled to a new trial.

CRIMINAL TRIALS

Part II. Bench Trials

1. OPENING CEREMONY

Opening announcement given by judge, bailiff or court clerk as follows:

“All rise! The Justice Court of ___ County, Precinct ___, is now in session. The Honorable ___, Judge, presiding.” (If judge announces, simply state the name of the court and introduce yourself.)

2. JUDGE’S OPENING REMARKS

Explain court procedures and identify participants.

3. WAIVER BY DEFENDANT

You should make inquiry as to defendant’s understanding of certain guaranteed rights and privileges.

- Explain defendant’s right to demand a speedy, public jury trial, and that defendant may waive this right. (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05, 1.12, and 45.025).²⁵

Explain defendant’s right to counsel. Ask the defendant to waive in writing the right to an attorney, if no defense counsel is present. (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05(a) and (f), 1.14, and 45.020).

²⁵A defendant who demands a jury trial but fails to appear may be ordered to pay the costs of impaneling the jury. The court’s order may be enforced by contempt. (CODE CRIM. PROC. art. 45.026)

- Explain defendant's privilege against self-incrimination. For example: "*You are not required to testify and no one may make you testify. If you decide not to testify, I will not use the fact that you did not testify as evidence against you. Choosing to remain silent cannot be used against you.*" (TEX. CONST. art. 1, § 10; CODE CRIM. PROC. arts. 1.05 and 38.08).

Ask if the defendant understands the rights you explained, and ask if defendant is waiving the right to a jury trial. (CODE CRIM. PROC. arts. 1.13, 1.14, 45.020 and 45.025).

4. CALLING CASE FOR TRIAL*

Open the proceedings by stating:

"I call the case of State of Texas (prosecution) versus (defendant's name)."

Both sides announce ready for trial or present motions for continuance. (CODE CRIM. PROC., CH. 29).

If the defendant objects to venue and seeks to transfer the case, venue facts are subject to the "preponderance of the evidence" standard of proof as in Civil cases. (CODE CRIM. PROC. art. 13.17).

*You may prefer to read (call) the list of all cases on the day's docket so the parties to each case can state an estimate of the time they will need to try their case (this method may not work - unless one or both of the parties are represented by counsel).

The correct way to raise the venue issue is by “motion for judgment of acquittal” (see #10).²⁶

5. READING THE COMPLAINT

(CODE CRIM. PROC. art. 36.01)

The prosecutor shall read the complaint to the defendant and allow the defense to inspect it.

6. DEFENDANT ENTERS PLEA

(CODE CRIM. PROC. arts. 27.05, 36.01, 45.023-.0224)

Ask if the defendant understands the charge and how defendant pleads. The defendant then enters a plea of:

- Guilty;
- Nolo contendere (no contest);
- Not guilty; or
- Special plea (which shall be verified by affidavit).

If the defendant refuses to enter a plea, you must enter a plea of not **guilty** for the defendant.

7. PLACING WITNESSES UNDER “THE RULE”

(CODE CRIM. PROC. art 36.05; TEX.R.EVID. 613)

To place witness under “the Rule” on motion of either party, or on your own motion, you should ask that all possible witnesses stand (or come forward) and be sworn by announcing:

“All those of you who may be witnesses in this

²⁶*Thomas v. State*, 699 S.W. 2d 845, 854 (Tex. Crim. App. 1985) (citing *Black v. State*, 645 S.W. 2d 789, 793 (Tex. Crim. App. 1983)).

case who are now in the courtroom, please stand (or come forward) and raise your right hand.”

Administer the following oath:

“Each of you do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God.”

The explain “the Rule”:

“Ladies and gentlemen, the rule has been invoked. This means that the witnesses who are not parties to this case must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed. Do not discuss this case with each other or anyone else, except with the permission of the court. Do not read, listen to, or watch any report of or comment about the testimony in the case while you are under the rule. Failure to observe this is punishable by contempt. Please remain outside until called.”

If either side asks you to make an exception for a particular witness, you may grant the exception. However, you must determine that the witness’ testimony will not be tainted or influenced if that person is allowed to remain in the courtroom during the trial and to hear the testimony of the other witnesses in the case.

8. OPENING STATEMENTS

(CODE CRIM. PROC. art. 36.01(b))

- Prosecution makes an opening statement of the nature of the accusation and the facts the prosecution expects to prove.
- Defense may make an opening statement at this time only if the State first makes one.²⁷

9. PRESENTATION OF EVIDENCE

(CODE CRIM. PROC. art 45.011; TEX.R.EVID. 603, 614)

All evidence must be presented under oath. You should confirm that all potential witnesses have been sworn and have heard the instruction about “the Rule” at this time.

Administer the oath to witnesses who have not already been removed from the courtroom:

“Each of you do solemnly swear that the testimony which you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth, so help you God.”

Then, restate “the Rule” (see previous page).

10. ORDER OF PROCEEDING (EXAMINING WITNESS)

(CODE CRIM. PROC. art. 36.01(a))

The examination of each witness called by each party should proceed as follows:

²⁷*Penry v. State*, 903 S.W. 2d 715, 760 (Tex. Crim. App. 1995).

Prosecution's Case

(NOTE: as each phase of the questioning is completed, you may "call upon" the opposing side, for example, "Counsel, you may proceed.")

- Direct examination by the prosecution.
- Cross-examination by the defendant or the defense counsel.
- Redirect examination by the prosecution.
- Recross-examination by the defendant or the defense counsel.

After the prosecution has called and examined all of the witnesses and the defense has had the opportunity to cross-examine each, the prosecution rests.

Motion for Judgment of Acquittal²⁸ (CODE CRIM. PROC. arts. 36.11 and 45.032)

At this point, the defense may move for, or the court on its own motion may grant a judgment of acquittal. If you believe that the defense motion is correct, then you should render a verdict of not guilty of the charge.

²⁸Also known as "motion for instructed verdict" or "motion for directed verdict" in criminal cases. This procedure is commonly defined as an action taken by the judge... because, as a matter of law, the party with the burden of proof has failed to make *prima facie* case. *State v. Lewallen*, 927 S.W. 2d 737, 739 (Tex. App. - Ft. Worth, 1996, no pet.)

Granting the motion has the practical effect of ending the trial in an acquittal. Overruling the motion results in a continuation of the trial, and the defense then presents its case (see NOTE below).

Defendant's Case

- Direct examination by the defendant or defense counsel.
- Cross-examination by the prosecution.
- Redirect examination by the defendant or defense counsel.
- Recross-examination by the prosecution.

After the defense has called and examined all of its witnesses and the state has had the opportunity to cross-examine each one, the defense rests.

11. REBUTTAL EVIDENCE

(CODE CRIM. PROC. art. 36.01)

- The prosecution may present rebuttal evidence in the same manner as the prosecution's case in chief.
- Prosecution closes.

NOTE: A motion for directed verdict of acquittal may be made after prosecution rests or after defense rests.

- If the prosecution presents rebuttal evidence, the defense may present rebuttal evidence.
- Defense closes.

12. CLOSING ARGUMENTS

(CODE CRIM. PROC. arts. 36.07 and 36.08)

- Prosecution presents closing argument.
- Defense makes its argument (may waive).
- Prosecution presents rebuttal argument.

13. RENDERING JUDGMENT IN OPEN COURT

(CODE CRIM. PROC. art. 45.036)

All persons are presumed to be innocent and no person may be convicted for an offense unless each element of the offense is proven beyond a reasonable doubt.

If you find defendant guilty, render the proper judgment and punishment in open court, and enter the verdict, judgment, and punishment on your docket;²⁹

If you find defendant not guilty, discharge defendant from all further liability for the charge.

²⁹On a guilty verdict, it is within the court's discretionary power, in certain circumstances, to defer a final disposition and to place the defendant on probation for a period not to exceed 180 days. (CODE CRIM. PROC. art. 45.051-.0511)

14. RULING ON A MOTION FOR NEW TRIAL

(CODE CRIM. PROC. arts. 45.037-.040)

If the defendant is convicted, the defense has one day after rendition of judgment and sentence in which to move for a new trial. Not later than the 10th day after the date judgment is entered, you may grant the defendant's motion for a new trial. If you grant the motion for a new trial, then you should reset the case for trial as quickly as possible and conduct it as though the first trial never occurred. If the motion is not granted before the 11th day after judgment is entered, it shall be considered denied.*

15. APPEAL

(CODE CRIM. PROC. arts. 45.043-.043)

If the defendant is found guilty, you should inform the defendant of the right to appeal. The defendant is not required to give notice of appeal in open court; however, the appeal and appeal bond must be filed within 10 days of rendition of judgment or the overruling of a motion for new trial, with some limited exceptions.

*The State is not entitled to a new trial.

CRIMINAL TRIALS

Oaths

INTERPRETER - Deaf Person and Non-English Speaking Person

"You do solemnly swear (or affirm) that in the case now of trial you will make a true translation to the person accused (or being examined), which person is deaf (or non-English speaking), of all the proceedings of the case in a language that the person understands, and that you will repeat said person's answer to counsel, court, or jury, in the English language with your best skill and judgment, so help you God. (TEX.R.EVID. 604)

JURY PANEL

"You, and each of you, solemnly swear (or affirm) that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching on your service and qualifications as a juror, so help you God." (CODE CRIM. PROC. art. 35.02)

SIX JURORS

(Petit Jury)

"You, and each of you, do solemnly swear (or affirm) that in the case of the State of Texas against the defendant, you will a true verdict render, according to the law and the evidence, so help you God." (CODE CRIM. PROC. art.35.22)

WITNESSES

"You do solemnly swear (or affirm) that the testimony which you are about to give in the case now on trial is the truth, the whole truth and nothing but the truth, so help you God." (TEX.R.EVID. 603)

ALL TRIALS

Voter Qualifications

(Elect. Code § 11.002)

Qualified voter means a person who:

- is 18 years of age or older;
- is a United States citizen;
- has not been determined by a final judgment of a court exercising probate jurisdiction to be:
 - a. totally mentally incapacitated; or
 - b. partially mentally incapacitated without the right to vote;
- has not been finally convicted of a felony or, if so convicted, has:
 - a. fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or
 - b. been pardoned or otherwise released from the resulting disability to vote;
- is a resident of this state; and
- is a registered voter.

END of CRIMINAL SECTION

HELPFUL TELEPHONE NUMBERS & WEBSITES

Attorney General's Office(800) 252-5476
 AG Opinion Committee(512) 462-2110
www.oag.state.tx.us

Office of Court Administration(512) 463-1625
www.courts.state.tx.us

Secretary of State (800) 252-VOTE (8683)
 (Elections Division)
www.sos.state.tx.us

State Bar of Texas (MCLE Section).....(800) 204-2222
www.texasbar.com Ext. 2106

State Commission on Judicial Conduct(512) 463-5533

Texas Commission for the Deaf(512) 407-3250
 (Interpreters)
www.tcdhh.state.tx.us

Texas Comptroller of Public Accounts(800) 531-5441
 Local Government Assistance Ext. 5-1090
www.window.state.tx.us

Texas Justice Court Training Center(512) 347-9927
 Toll Free(800) 687-8528
www.tjctc.org

Texas Juvenile Probation Commission.....(512) 424-6700
www.tjpc.state.tx.us

Texas Parks & Wildlife(512) 4389-4584
 Boyd Kennedy, Att'y, Law Enforcement Div. –Direct Line
 D.P.S. (local).....() _____
 Juvenile Probation (local)() _____
 Parks & Wildlife (local)() _____
 T.A.B.C. (local).....() _____

Texas Justice Court Training Center Quick Reference Trial Handbook Order Form

To order additional Handbooks or to provide copies to your county or district attorney, please use this form.

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