South Dakota Unified Judicial System

Juror Handbook

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Summons

A person receiving a jury summons should keep in mind that they may be called upon to sit in the trial of a lawsuit and settle a dispute. It is important to remain as impartial as possible, for without an unbiased jury, our legal system cannot function properly.

Prospective jurors should not let anyone talk with them about any cases that may be coming up for trial. Such conversations may be friendly, but they could also be an attempt to discover a juror's feelings or to influence the juror.

During the trial, the judge will instruct the jurors to refrain from discussing the case among themselves until the case is completed. The judge will also instruct jurors not to let anyone talk with them about the case when court is in recess.

Failure to Appear

Any person who is summoned to appear as a juror and who fails to appear is guilty of contempt of court and may be fined, or imprisoned in the county jail, or both.

Jury List

In each county, public officials named in the statutes draw the names of jurors by lot from the current voter registration list, supplemented by a list of persons 18 years of age and over holding a valid driver license or state-issued nondriver Identification card. A new jury list is made each year.

Qualifications

All citizens of South Dakota are eligible to serve as jurors if they are:

1. County residents,
2. At least 18 years of age,
3. Of sound mind, and
4. Able to read, write, and understand the English language.

Convicted felons whose civil rights have not been restored and penitentiary employees are not eligible to serve as jurors. Clergy may be exempt from jury service when it conflicts with their religious beliefs.

Excuse from Jury Service

A person wishing to be excused from jury service must receive permission from the presiding judge of the court. Prospective jurors should remember that the system of jury trial is a right granted to all persons in the state by the constitution. Jury service is both a duty and a privilege.

Effective July 1, 2009, any person eighty years of age or older may request to be excused from jury duty by checking the Qualifying Age Reason check box on the Confidential Juror Qualification Form and returning that form and the Juror Questionnaire form to the Clerk of Court. The presiding judge of the court shall give substantial weight to the request but can deny it if the person is needed in order to impanel a jury. The Clerk of Court will notify any person who requested to be excused from jury duty of the presiding judge's decision to grant or deny the request by mail.

Employment Status

No employer may discharge or suspend any employee for serving as a juror; any employee serving as a juror shall retain and be entitled to the same job status, pay, and seniority as he/she had prior to serving as a juror. However, the employer has discretion as to whether absence for jury duty is with or without pay. Jurors may obtain a certificate of attendance from the Clerk's office in the courthouse.

Parties and Issues

Juries may be used in criminal and civil cases. Criminal cases involve violations of law for which a defendant may be fined or imprisoned. Civil cases are disputes between parties involving personal or property rights.

Parties in a civil case

In a civil case, the parties are called the Plaintiff (the one who began the lawsuit) and the Defendant. If, for example, the case is called John Jones vs. the Zero Company, or John Jones vs. Susan Smith, then John Jones is the plaintiff and the Zero Company, or Susan Smith, is the defendant.

Parties in a criminal case

The parties in a criminal case are the Prosecution and the Accused or Defendant. If the case is called the State of South Dakota vs. John Jones, or the City of Aberdeen vs. John Jones, the state or the city is the prosecution and John Jones is the accused or defendant.

Issues in a civil case

A civil case involves the claim of a plaintiff against a defendant...and the defense of the defendant against that claim. It can also involve the claim of a defendant against a plaintiff, and

this is called the Counterclaim. There may also be Crossclaims between defendants or by defendants against third parties.

Issues in a criminal case

At issue in a criminal case is whether the accused is guilty of the offense. Generally, the jury is charged only with deciding if the accused is guilty or not guilty.

Pleadings

The law requires that pleadings (the claims of all parties) in a civil lawsuit be in writing. Everything the jury needs to know in connection with the pleadings will be presented in court.

Civil Case Pleadings

A lawsuit is started with a Summons and Complaint "served" upon the defendant -- personally delivered to the defendant, left at the defendant's dwelling, or published in the newspaper.

The defendant then serves a written Answer to the claim made by the plaintiff.

If the defendant has a claim against the plaintiff which the law permits bringing to trial at the same time the plaintiff's case is tried, this claim is put into writing. It is called a Counterclaim.

If the defendant makes a counterclaim, the plaintiff submits a written pleading called a Reply, the plaintiff's answer to the defendant's counterclaim.

After a series of pre-trial procedures, one party serves a Certificate of Readiness for Trial and the lawsuit is placed on the calendar of cases to be tried to the court or to a jury.

Criminal Case Pleadings

In criminal proceedings, the complaint of the State of South Dakota or of a city is in writing. The answer of the defendant is made orally in court and is generally a simple statement of "guilty" or "not guilty." A counterclaim does not exist in a criminal action.

Stages of the Trial

A trial generally proceeds as follows.

1. **Opening Statement of the lawyers**
    a. In a civil case, the lawyer (or in complicated cases, several lawyers) for the plaintiff begins by giving the jury a preview of what they expect to prove and to recover.
    b. In a criminal case, the state's attorney or attorney general will make the opening statement, explaining the charge and the case against the defendant. The lawyer

for the defendant (or accused) may either give an opening statement or reserve it until the state rests its case against the accused.

2. **Plaintiff's Evidence**
    a. After the opening statements, the plaintiff's lawyer (or in a criminal case, the state's or city attorney or attorney general) will call witnesses, each of whom will take an oath and give testimony. During the examination (questioning of witnesses), exhibits (such as writings, photographs, plans) may be offered as evidence in the trial. If the judge rules the exhibits are to be received into evidence, jurors may examine them and they will be taken into the jury room during deliberation. Under certain circumstances, jurors may, under court supervision, leave the courtroom to look at a particular site or object.
    b. When examining a witness, the plaintiff's lawyer asks the questions first, and this is called Direct Examination. The defendant's lawyer then Cross-Examines the witness. Generally, cross-examination is limited to questions concerning matters brought up in direct examination.
    c. After cross-examination, the plaintiff's lawyer may again question the witness (this is called Redirect), and this may be followed by recross examination.
    d. This process of examining and cross-examining witnesses and receiving exhibits continues until the plaintiff's evidence is before the jury. At this time, the plaintiff's lawyer will state to the court, "Plaintiff rests." In criminal case, the state's or city attorney or attorney general says, "The state (or city) rests."
3. **Defendant's Evidence**
    a. After the plaintiff has rested, the defendant calls witnesses to defend against the claim of the plaintiff. If there is a counterclaim, witnesses proving the counterclaim may also be called.
    b. The defendant's lawyer examines the witnesses first on direct examination, then the plaintiff's lawyer cross-examines. The defendant's case continues in essentially the same manner as the plaintiff's until the defendant's lawyer states to the court, "Defendant rests."
    c. According to federal and state constitutions, the defendant in a criminal case is not required to testify or offer any evidence in defense of the charge against the defense.
4. **Plaintiff's Rebuttal Evidence**
    a. The plaintiff may call witnesses to respond to testimony given in the defendant's case. This is called Rebuttal.
5. **Preparation for Instructions**
    a. After both parties have rested, there is usually a recess while the judge, with assistance of the lawyers involved, prepares instructions for the jury.
6. **Charge to the Jury**
    a. After the instructions have been prepared, the judge, jurors, lawyers and parties reassemble in the courtroom for the charge to the jury, in which the judge reads the instructions to the jury.

b. These instructions tell the jury what the law is concerning this particular case. The Jury is responsible for determining the facts of the case. The Court at all times determines the law.

7. **Argument**
    a. The case is then argued by lawyers for the parties. In this argument, the lawyers review the testimony and usually state their respective theories of the case to the jury. The plaintiff's lawyer begins the argument and is followed by the lawyer for the defendant. Each side is entitled to the same amount of time (set by the judge) to argue, although the plaintiff has the privilege of dividing the time and making a Concluding Argument.
8. **Deliberation**
    a. Court bailiffs are sworn to take charge of the jury which withdraws to a private place to decide the issues. Jurors take with them their recollection of the testimony of the witnesses, the exhibits introduced at the trial and a copy of the court's instructions. The jury returns to the courtroom after having reached a verdict.
9. **Decision**
    a. The court's instructions tell the jury how many of them must agree to reach a decision. After a decision has been reached, or if agreement is impossible, the jury returns to court.
    b. In a criminal case, the judge will ask the jury if a verdict has been reached. The foreperson will state orally that the defendant was found guilty or not guilty of the various charges, or that the jury cannot agree on a verdict.
    c. In a civil case, the foreperson will have completed and signed a written form stating the verdict, unless agreement was not reached. The foreperson hands it to the clerk who reads it in open court.
    d. Either side may then request that the jury be Polled. This means that each juror must state orally whether they voted for or against the majority decision.

Evidence

Evidence submitted for consideration by the jury includes oral testimony, exhibits and a view of anything outside the courtroom as allowed by the court. Over the course of many centuries, certain rules have been established as to what evidence may be admitted in a trial and there are laws dealing with evidence to be considered by a jury.

The purpose of these rules and this procedure is to discover and present proper evidence to the jury so that it may determine the truth and fair trial and proper result be assured.

During the course of a trial, Objections to the evidence may be made by lawyers. The judge must decide if the objection is proper and if so, the judge will Sustain the objection and exclude the evidence. If the objection is improper, the judge will Overrule the objection and the evidence will be submitted for consideration by the jury. If the objection involves something that should not be discussed in front of the jury until the judge reaches a decision, the jury will

be excused from the courtroom or the lawyers and the judge may retire to the judge's chambers to discuss the matter. When the judge reaches a decision, the trial resumes.

The mere fact that a lawsuit has been started is not in itself evidence in the case, nor should the statements and arguments of the lawyers be considered as evidence. The jury should disregard anything the judge orders or directs to be disregarded.

Court Officers

The court reporter makes a record of the entire proceedings using a system of shorthand or a mechanical device. The clerk of court keeps a brief record of the proceedings, and the bailiff keeps order in the court.

Courtroom Etiquette

While each court is conducted as the presiding judge thinks best, a court session generally begins when the bailiff raps a gavel and everyone in the courtroom rises. The judge is seated behind a table called a bench, and the clerk or judge announces the name of the case to be tried.

Common courtesy and politeness are guides to the actions of jurors. No juror should read or talk in the jury box.

Jurors will be treated with every consideration and their comfort and convenience will be served whenever possible. Jurors should bring any matter affecting their service, including personal emergencies, to the attention of the judge. A juror may send word to the judge through any court officer that they wish to see the judge privately.

Conduct of the Jury in the Jury Room

When in doubt concerning any aspect of a case, a juror should ask the judge. Jurors must not talk about the case to other members of the jury, lawyers or parties involved, or with any other person until the trial is over and a decision is reached.

Jurors should avoid any situation which might give the appearance that they are discussing any subject with the lawyers or parties involved in the case.

Jurors should avoid radio and television broadcasts and newspaper accounts of the case.

The jury's verdict must be based only on the evidence presented in court and the individual juror's evaluation of it.

If any person tries to talk to a juror about a case the jury is hearing, the juror should:

1. Tell the person it is improper for a juror to discuss a case or receive any information about it except during the course of a trial.
2. Refuse to listen if the person persists.
3. Report the incident to the Judge at once.

Improper conduct by a member of the jury during the course of a trial may make a new trial necessary.

If, during the trial, a juror learns elsewhere of a fact about the case, the judge should be informed although it should not be mentioned in the courtroom.

Individual jurors should never inspect the scene of an accident or other event in a case. If the judge decides it is necessary, an inspection will take place under court supervision.

There are some cases which may draw much public discussion or attention. In such cases, the jury may be Sequestered (kept together) until a verdict is reached. This is done to protect the jurors from outside influence.

During the trial, each juror should give close attention to the testimony. Jury members are sworn to keep an open mind, disregard personal prejudices, follow the instructions of the court and to come to a verdict according to their best judgement.

Jurors are expected to use their experience, common sense and common knowledge. They are not to rely on any private source of information in deciding a case.

Grand Jury

The **Grand Jury** is made up of six to ten citizens selected from the county master jury list. It has broad investigatory powers and is empowered to:

1. inquire into misdemeanors and felonies which are committed and triable in its county;
2. investigate and inspect jails and inquire into their management; and,
3. investigate alleged misconduct of public officials within its county.

The grand jury may call witnesses, require sworn testimony, and demand that records and other evidence be produced in addition to whatever evidence or information is provided by the state's attorney. The grand jury may call on either the state's attorney or the judge to seek advice concerning law and legal procedure.

Because grand jury proceedings are not open to public, the only person permitted to attend its sessions is a witness called to testify. Even the state's attorney and judge may not be present while the grand jury is discussing or voting on a case.

After its investigation, the grand jury can return an indictment (a statement charging that a crime has been committed) or determine that no crime has been committed. Under an indictment, the defendant is brought before a circuit judge for arraignment and trial.

Traditionally in state courts, the grand jury has been used for alleged crimes in public office and criminal events requiring a special investigation by a judicial body before charges are brought.

Juror Fees

Each juror will be paid $10.00 for each day they report to the courthouse for jury service, or $50.00 for each day they are selected to hear a case, plus $0.76 per mile, round trip mileage from their residence to the courthouse.