

TRYING TIMES

A Publication and Guide from The Vermont Judiciary

Trying Times is intended to answer frequently asked questions about jury service and to provide general information about Vermont courts.

General Vermont Court Information

The Vermont court system consists of seven State courts: the Supreme Court, the Superior Court, the District Court, the Family Court, the Probate Court, the Environmental Court and the Traffic and Judicial Bureau.

- The **Supreme Court**, the state's highest court, consists of a chief justice and four associate justices. For the most part, it hears appeals of cases that have been decided by the other courts. No evidence is presented during an appeal; the attorneys argue in writing and in the courtroom as to why they think the decision made in the lower court should be changed or remain the same. If the Supreme Court overrules the decision of the trial court, it is done solely on issues of law. The Supreme Court rarely reviews the jury's decision on the facts. The Supreme Court also has overall administrative control of the court system and makes administrative and procedural rules for all courts.
- The **Superior Court** hears predominantly civil cases in which people sue for over \$5,000 and small claims for \$5,000 or less. On occasion, it hears criminal cases. Each county has two assistant judges who sit with one of the Superior Court judges in most cases. The assistant judges (who need not be attorneys) are elected county officials who are responsible for county affairs in addition to their responsibilities in court.
- The **District Court** hears predominantly criminal cases. Assistant judges do not sit in the District Court.
- The **Family Court** hears divorces, juvenile, domestic abuse, and child support cases. The District and Superior Court judges as well as assistant judges are assigned to the Family Court.
- The **Probate Court** handles the probate of wills, the settlement of estates, adoptions, guardianships, name changes and uniform gifts to minors. There are 18 Probate Court judges who are elected for four-year terms. There is no requirement that the judges of probate be attorneys.
- The **Environmental Court** hears appeals of Act 250 enforcement orders issued by the executive branch and also hears appeals of zoning decisions made by cities and towns.
- The **Judicial Bureau** hears civil violation complaints cases, violations of municipal ordinances, some fish and wildlife offenses, and other matters including: hazing, and minors possessing alcohol.

There is trial by jury only in Superior and District Courts. Most jury work in Superior Court is civil. Most jury work in District Court is criminal.

WHY ME?

An editorial in The Burlington Free Press said the following about Jury Duty in Vermont:

"The jury system is based on the belief that every person has an innate sense of justice, and that presented with the facts, any random group of Americans will find the just answer to a case....every able Vermonter should take part and consider the effort part of the price of democracy. It's simple: Anyone who expects to receive justice in Vermont's Courts must be willing to provide it."

SELECTION OF THE JURY PANEL

The jury is one of the most important parts of our American legal system. The right to a trial by jury is written in the United States and Vermont Constitutions. It is a fundamental right guaranteed to every citizen.

For everyone to have the right to a trial by jury, it follows that citizens must be willing to accept the responsibility of jury service. Our system of justice depends on the willingness of private citizens to serve on juries and to make important decisions in the trial of cases. While being a juror is considered a duty of citizenship, it is really a service you are being asked to perform for your fellow citizens. It is your opportunity to participate directly in our legal system and to have an essential voice in the administration of justice.

HOW PROSPECTIVE JURORS ARE SELECTED

Since the whole community cannot serve at the same time, the courts must have a way to choose at random a group for each trial which represents the community. Jurors often wonder how this is done and how they happened to be chosen.

In Vermont, a list of prospective jurors is prepared at least once every two years in each county. To make this list, a questionnaire is sent by each county clerk to citizens randomly chosen from the voter registration checklists of each town or city and a list of licensed drivers. The questionnaire is used to find those people qualified to be jurors.

QUALIFICATIONS FOR JURY DUTY

To qualify to serve as a juror, one must:

1. be a citizen of the United States and 18 years of age;
2. reside within the county;
3. be able to read, write, understand and speak English;
4. be capable, by reason of mental or physical condition, to render satisfactory jury service; and
5. have not served a term of imprisonment in this state after conviction of a felony.

EXCUSES FROM SERVING ON JURY DUTY

A second random selection of people is made from the list of qualified jurors. These are the people the clerk actually calls to court. This number usually falls between 35 and 50. The judge may excuse persons who can prove undue hardship or delay their service.

It is suggested that a request to be excused from jury service or to have the date delayed be made in writing prior to the expected date of appearance.

While jury service may be inconvenient, this is not a reason to seek an excuse. A person who can get away from business for a vacation should be able to get away for jury service.

NO EMPLOYER MAY DISCHARGE AN EMPLOYEE BECAUSE OF JURY SERVICE.
21 VSA 499(a)

Whenever possible, temporary absences from jury service for dentist or doctor appointments, vacation plans and other personal commitments which are difficult to change will be granted.

LENGTH OF SERVICE

A person is summoned to appear before the court for voir dire (jury draw days) no more than three times. Those selected to serve on any trials then return for those trials. Jurors not selected to serve on any trials need not return until the next jury drawing day.

The number of days that a juror actually serves depends on many things such as the workload of the court and the length of any trial on which the juror serves. Most jurors come to the courthouse no more than 10 days.

JUROR PAY

Vermont law permits payment of jurors if the juror requests pay, unless the juror is otherwise compensated by their employer. Jurors who are eligible for pay receive no less than \$15 and no more than \$30 each day they are at the courthouse. While this may cause some financial hardship, you may find that the personal satisfaction from being a juror will outweigh the monetary impact which is usually fairly minor due to the limited amount of time you are asked to serve. The court will provide you with a request for payment form which must be completed and returned to the court on or before your first appearance as a juror. It is recommended that you check with your personnel department regarding your company's policy on jury service.

Believe it or not - Vermont pays much more for jury service than other States!

WHAT THE COURT EXPECTS OF YOU

Jury service may be the most serious obligation of citizenship. Because being a juror is such an important responsibility, jurors are expected to act in ways

which promote fair decisions. The following comments may assist and guide jurors:

- Jurors must be in court on time; a trial cannot go forward until all jurors are present.
- When the court is in session and the jurors are in the courtroom, a juror should not talk with fellow members of the jury or with anyone else.
- A juror should pay close attention to what the judge, attorneys and witnesses say. If a juror cannot hear, the juror should raise a hand and, when called on, tell the judge the problem.
- Jurors may not take notes without the permission of the judge. This is true even if the trial is long or involved and some jurors might feel it would helpful.
- A juror must keep an open mind throughout the trial. Jurors must not form any final opinion about the case being tried nor talk to fellow jurors about the case until all the evidence has been presented and the judge has given the instruction on the law. At that point, the jury goes to the jury room to discuss the evidence and decide the case.
- Jurors must not discuss the trial with anyone. Generally, juries in Vermont are not sequestered--that is, separated from friends and family--and jurors may return to their homes and business when the trial is not in session. While this is more convenient for jurors, it places a responsibility on them to avoid outside influences. Friends and family may naturally inquire about the trial, but jurors must not discuss with anyone until after the trial is over.
- Jurors must not read newspaper articles or listen to radio or television accounts of the trial. Even if they are accurate, these stories are only brief summaries which may stress some items and underplay others. More seriously, they may refer to matters which were not or cannot be admitted in the case as evidence.
- Jurors should ask the court officer to tell the judge if anyone tries to contact them about the trial.
- Any juror who discovers during the trial some personal knowledge or connection with the case should ask the court officer to tell the judge immediately. The judge will decide if the juror should be excused.
- The judge or the court officer should be told immediately of any emergency that could affect a juror's ability to carry out the juror's duty.
- Jurors should not try to learn from any source outside of the courtroom anything about the case being tried. Jurors should not, on their own, visit any place being discussed at the trial or undertake any investigation of the case. If the judge believes a visit to the site appropriate, arrangements will be made for the whole jury to visit.

WHAT YOU CAN EXPECT OF THE COURT

When you first arrive at many Vermont courthouses, you will have to pass

through a metal detector or undergo security screening. This is a routine procedure; no one is permitted to bring a weapon of any sort into a courthouse. Weapons are defined to include firearms, knives of any sort and personal protection sprays.

A court officer or staff person will direct you to the proper place within the courthouse. You will be asked to sign a jury roster.

Although the court will make every effort to avoid delays, you will, at times, be kept waiting. Jurors are encouraged to bring reading materials or other items with them to the courthouse for these periods.

On your first day, the presiding judge and the court clerk will explain your duties as a juror and give you additional information concerning what you are about to experience, what you'll need to know about local policies and procedures and what will be expected of you. This is the time for you to ask questions about jury service, or the operation of the court.

Jury selection process for individual trials may then begin immediately or the jurors may be asked to wait once again. While the jurors wait, the judge is usually reviewing cases with attorneys to determine which will go to trial. Very often, cases settle only at the last minute. Some cases do not settle until the jurors are in the courthouse; thus, the jurors are helping to resolve disputes simply by being there. The judges and court personnel understand the inconvenience and annoyance caused by long waiting periods. They try to keep this to a minimum.

Court officers will be assigned to assist jurors during the trial and jury selection to protect the jury from outside influences. Any questions that may arise during the trial should be addressed to a court officer who will take it to the judge.

The normal day for the jury begins at 9:00 AM and ends at 5:00 PM.

SELECTION OF THE TRIAL JURY

Jury selection begins when all jurors, the judge and the other parties are once again in the courtroom. A member of the staff will call the names of the jurors present in a random order. When your name is called you will be directed to take a seat in the jury box. After the jurors have been seated, the judge will tell you about the particular case for which you have been selected. The judge and the attorneys will then begin a process called "voir dire", which is simply an effort to get to know a little more about you and your beliefs.

There are no right or wrong answers. Answer as honestly and fully as you can. If you are asked a question that makes you uncomfortable, or that you do not want to answer in public, let the judge know. Your answer can be

made in the privacy of the judge's office and will be treated confidentially.

During this questioning, the attorneys may ask that certain panel members not serve on the jury in that particular case. This may be for a stated reason called a "challenge for cause," or for no stated reason, called a "peremptory challenge." There is no limit on the number of challenges for cause; there can be no more than six peremptory challenges by each party.

There are usually 14 jurors chosen for each trial, two of whom are alternates. Alternates hear all the evidence presented during the trial but do not take part in reaching the verdict.

Jurors excused from serving in a particular trial should not be offended. Those excused from one trial may be asked to serve on the next.

Court officers will be assigned to assist jurors during the trial and jury selection to protect the jury from outside influences. Any questions that may arise during the trial should be addressed to a court officer who will take it to the judge.

The jurors will be given an oath in which they swear to impartially hear and try the case on the evidence that will be presented. This oath should be taken very seriously. (See [juror oaths](#))

THE TRIAL

When the jury selection is complete the trial can proceed. Sometimes the trial begins the date the jury is drawn; often it begins a day or two after jury drawing and it might begin even later.

All trials follow an established order of events and the role of the jury is essentially the same in all of them.

It is the responsibility of the jury to hear the evidence, to decide what the facts are and then to make a final decision based upon those facts and upon the law which the judge explains.

The party which initiated the action - the plaintiff in a civil case or the prosecution in a criminal case - will present its side first. The defense may then present its evidence. Then, sometimes the plaintiff or prosecution will give additional evidence as a rebuttal. The defense may then do the same. This order of presentation is one reason the jurors are told to form no opinions until all of the evidence is in.

The trial will begin with opening statements by the attorneys. These statements are not evidence; they are what the attorneys intend to prove during the trial. In some instances the defense may choose to make no opening statement or it may delay opening remarks until after the plaintiff or

prosecution has presented its case.

The evidence is the sworn testimony of witnesses or physical exhibits such as documents, records, weapons or various other articles.

Most of the testimony will be given by witnesses answering the attorney's questions. The attorney calling a witness will question the witness first in what is called direct examination. The opposing attorney may then question the witness in what is called cross examination.

There are many complex rules about presenting or admitting evidence. These rules are applied in each case by the judge. It is the judge's responsibility to make all decisions about what testimony, documents or other matters the jury can legally consider as evidence. The jury must never consider any matter which has been ruled inadmissible by the judge.

Occasionally one attorney may "object" to an action or question by the opposing attorney, or to a statement by a witness. The judge will rule on the objection and the jurors must abide by the ruling. If the judge sustains the objection, the jury may be told to disregard the statement of the witness. In that case the statement must not be considered as evidence and jurors must not use it in reaching their decision in the case.

Sometimes the judge will rule on the objection without comment by the attorneys. Sometimes the attorneys and the judge will discuss it in front of the jury. On other occasions the discussion will be at the judge's bench out of the hearing of the jury. In some instances the jury will be asked to go temporarily to the jury room to allow full discussion in the courtroom on questions of law or procedure which must be decided by the judge.

Understandably, jurors can get upset by frequent or long waiting periods in the jury room. All that can be asked of jurors is that they be patient, for important issues of law or procedure are being resolved that are necessary to the proper presentation of evidence to the jury.

When all parties have finished presenting their evidence, the attorneys will make their final arguments to the jury.

The plaintiff or prosecution will make its arguments first. Then the defense will present its argument. The plaintiff or prosecution has the right to have the last word and may make a final closing argument. These arguments are not evidence; they are merely the attorneys' comments on the case.

After all of the evidence has been presented and the attorneys have given their final arguments, there remains one very important matter before the jury can begin its deliberations. This is the giving of the instructions by the judge, called "the jury charge."

This giving of the instructions by the judge is an explanation of the law as it applies to that particular case. It is an explanation to the jury of how to consider the evidence given during the trial. The jury must fully accept the judge's explanation of the law. The jurors may disagree about the facts of the case but not about the law.

The judge, at this point, will also appoint one of the jurors as a foreperson. It is up to the foreperson to keep order during the deliberations and to give all jurors a fair chance to express their views.

The case is now in the hands of the jury. All that has gone on before has been directed to this moment.

The jury must now try to reach a verdict for one or the other of the parties.

Even at this point jurors should keep an open mind and respectfully consider the opinions of others. The free exchange of all ideas among the jurors is essential.

If at first the jury is not unanimous, it must continue to discuss the case and try to reach a verdict. A juror should never be afraid to change his/her mind when it seems reasonable to do so. A juror should not change his/her mind, however, unless convinced that he/she should.

To reach a verdict the jurors must weigh and consider, according to the judge's instructions on the applicable law, the evidence that was presented. No other matters should be considered. Jurors must not be swayed by prejudice or sympathy.

If a question is raised about the instructions, or if further instructions seem necessary, the jury can ask the court officer to tell the judge that clarification is needed. If there is an important disagreement among the jurors over a particular part of the testimony they can ask that the court reporter read back that part. The judge decides whether such requests should be granted.

The jury must reach the final verdict by reason and careful deliberation. In all cases, the verdict must be unanimous - that is, all jurors must agree with the verdict. When a verdict has been reached, the court officer will tell the judge and court will called back into session. The verdict will be delivered according to the judge's instruction. At this point the jurors may be asked individually whether they agree with the verdict

After the verdict is reached, the jury will be discharged with the thanks of the court. The jurors may now return to their homes and personal affairs until they are next needed in court.

WHO'S WHO INSIDE THE BAR

MOST OF US HAVE HEARD ATTORNEYS REFERRED TO AS "THE BAR", BUT DO YOU KNOW WHY?

The bar is an architectural feature of most courtrooms. It is the railing which runs across the room to separate the general public from the space occupied by the judge, the jury, the lawyers and others involved in the trial of a cause. Thus, the "Bar" are those permitted to enter the barred off portion of a courtroom, or the attorneys.

INSIDE THE BAR, YOU WILL SEE...

- The presiding judge, seated on the bench (a raised platform) at one end of the courtroom. Tradition, and respect for the profession, dictates that the court officer (also called the Bailiff in some states), will ask that everyone in the courtroom stand when the judge enters or leaves the courtroom. In many Vermont courts there is also a tradition for everyone, including the judge, to stand for the jury when it comes into the courtroom as a sign of the respect in which juries are held.
- The court stenographer or recording equipment operator is usually seated in the front of the bench. It is the job of the stenographer or recorder to be sure that every word spoken in the courtroom during the trial is available for review in the future. As a juror you will be asked to speak so that your voice can be heard both by the parties and the stenographer or reporter.
- The attorneys representing each side in a trial are seated at tables directly inside the bar. Their clients sit with them. In criminal trials, the prosecutor's table has an empty chair representing the prosecutor's client, the People of Vermont.
- The jurors, who sit in the jury box consisting of two rows of chairs, usually slightly above ground level, on one side of the courtroom.

JURORS' OATH

CIVIL OATH

You solemnly swear that you will well and truly try each and every issue which may be given you in charge during the present term of this court, agreeably to the evidence given you in court, and the laws of this state, and true verdicts give; your own counsel and that of your fellows you will duly observe and keep; you will say nothing to any person about the business and matters you may at any time have in charge, but to your fellow jurors, nor will you suffer anyone to speak to you about the same but in court; and when you have agreed on a verdict, you will keep it secret until you deliver it in court. So help you God.

CRIMINAL OATH

you will well and truly try and true deliverance make, between the state of Vermont and the prisoner at the bar, whom you shall have in charge according to the evidence given you in court and the laws of the state. So help you God.

ORIGINS AND HISTORY OF THE JURY

Historians are unsure whether the jury system existed in England prior to 1066. It is well established that William the Conqueror brought to England from Normandy a system of having witnesses who knew about a matter to tell a court of law what they knew (to "swear" under oath). The English word juror comes from the Old French jurer which means to swear. However and wherever the jury system began, it has now spread from the British Isles to the United States, Africa and Asia.

In 12th Century England, juries were a tool for the king; the earliest recorded juries were employed to discover and present facts in answer to questions addressed to them directly by the king. The jury gave evidence, but only the king or his ministers made the final decision.

During the next two centuries, English juries moved from this advisory role to their current role as the decider of facts. By the end of the 15th century, the jury system had come to be regarded as the most valuable feature of English common law. Courts at that time began to allow parties to object to certain persons being seated on a jury, usually because they were personal enemies. It was not until the late 17th century that a jury could return a verdict of not guilty and not be in fear of fines and/or imprisonment for themselves. Hardly the impartial jury we now rely upon!

In the United States, the jury system became more important than ever after the Revolutionary War. The right to trial by a jury of one's peers became a symbol of the overthrown power of the king. From that time to this, the jury has become the central tenet of American law. Our ideal of equal justice for all probably could not have evolved without this strong belief in the wisdom of the jury.

The jury system combines together the rules of law with the common sense of the private citizen. Both the law and the community benefit from this interaction.

COMMON TERMS

alternate juror

a juror chosen to replace any juror excused during the trial. This juror will sit in on the trial, and if not needed, will be excused at the start of the jury deliberations. Jurors are usually only excused during the trial when there is an emergency.

appeal

a complaint to a higher court that an injustice was done or that a mistake was made in the trial of the case. The higher court is asked to correct or reverse the decision of the trial court. The higher court determines whether the trial court correctly applied the law to the facts.

approach the bench

a request by the judge or attorneys for a private discussion with the judge at the bench about an issue of law or procedure which is necessary to the proper presentation of evidence to the jury.

beyond a reasonable doubt

the standard of proof in criminal cases. A reasonable doubt does not mean any doubt, only a doubt based on reason after consideration of the evidence.

burden of proof

the degree to which a party must prove its case. The burden is different in criminal and civil cases.

civil case

a lawsuit between persons or other entities in their private capacity or relations; the plaintiff usually seeks money damages.

clear and convincing

a standard of proof used in civil cases. Clear and convincing evidence is a greater degree of proof than a preponderance, but a lesser degree of proof than required in criminal cases.

counsel

another term for an attorney, sometimes used to refer to all the attorneys collectively.

court

term often used in place of "judge", since the judge acts for the court system, not as an individual. In superior court and some family court matters the term includes the assistant judges.

criminal case

a case in which the State of Vermont charges a person or other entity with having committed a crime; the prosecutor usually seeks imprisonment, probation or a monetary fine.

cross-examination

the questioning of a witness by an attorney other than the one who called that witness to testify.

defendant

person or other entity against whom a lawsuit is brought in a civil case; a person charged with a crime in a criminal case.

deliberate

to weigh, consider, and discuss the evidence given in a trial in order to reach a verdict.

deposition

the sworn testimony of a witness taken outside of court, written down and used during the trial. A deposition is often used when a witness is not able to be in court personally.

direct examination

the questioning of a witness by the attorney for the party who called that witness to testify.

evidence

the sworn testimony of witnesses, physical exhibits, a view of the scene (such as a construction site), or other matters that the judge permits the jury to consider when reaching a verdict.

motion to strike

a formal request to the judge not to allow testimony to be considered as evidence after it has been spoken by a witness. The judge will instruct the jury to disregard what was said if the motion is granted.

objection overruled

the judge denies an objection. Sometimes the judge will overrule an objection by saying "we'll take the answer" or some similar phrase. The matter offered in evidence becomes evidence.

objection sustained

the judge grants an objection and the matter offered in evidence is not allowed into the case.

party

the State of Vermont in a criminal case, the plaintiff in a civil case and the defendant in a criminal or civil case.

plaintiff

person or group starting a lawsuit in a civil case.

preponderance of the evidence

a standard of proof used in civil cases. The preponderance of the evidence means that the fact is more likely than not to have happened.

presumption of innocence

a defendant is presumed to be innocent in a criminal case and may only be found guilty if the state presents enough evidence to overcome this presumption.

prosecutor

person who brings a charge on behalf of the state in a criminal case - usually a state's attorney.

sequester

to keep members of a jury together at all times and apart from their normal contacts so that there is no chance that they will see or hear anything about the case on trial until they have reached a verdict.

testimony

evidence given by a witness under oath.

verdict

the formal decision made by a jury on the questions given to the jury regarding the trial of a case. The verdict is always unanimous.

witness

a person whose testimony is received in the case. Usually this is a person who tells about what he or she has seen, heard or knows about the facts in the case.

JUROR TELEPHONE

There is a special telephone number in some courts which jurors must call before they are scheduled to come to court. A recorded message will explain whether the jurors are needed in court the next day as previously scheduled. In courts with the special telephone, jurors should call each time before they come in. A juror who does not call and appears in court when not needed will not be paid.

In those courts that have the special telephone, the court clerk will give the jurors the telephone number and written instructions about the use of the telephone.