

## CIVIL JURY TRIAL

Plaintiff(s)

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Date: \_\_\_\_\_

Civil Action File No. \_\_\_\_\_

vs.

Defendant(s)

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vs.

Third Party Defendant(s)

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Plaintiff's Attorneys:

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Bailiffs: \_\_\_\_\_

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Clerk: \_\_\_\_\_

Defendant's Attorneys:

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Court Reporter: \_\_\_\_\_

Third Party Defendant Attorneys:

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Type of case: \_\_\_\_\_

## **CIVIL JURY TRIAL OUTLINE**

### **I. CALL OF CASE FOR TRIAL**

1. Call case.
2. Plaintiff ready? \_\_\_\_\_ Defendant ready? \_\_\_\_\_
3. Time of trial? \_\_\_\_\_ [Note: This will be in the pretrial order.]
4. Want reported? -- Plaintiff? \_\_\_\_\_ Defendant? \_\_\_\_\_  
Omit: none \_\_\_\_\_ voir dire \_\_\_\_\_ opening \_\_\_\_\_ closing \_\_\_\_\_  
[Note: Usually the attorneys will have already worked this out with the court reporter prior to judge taking bench.]
5. Qualifying questions for jury?

--Contingent fee?

--Names of plaintiff's attorney's partners.

[Note: If too many partners, just qualify as to members of the plaintiff's attorney's firm.]

[Note: In most cases, court will qualify jury only as to plaintiff's attorneys because usually they are the only ones with a contingent interest in the outcome of the case. Sometimes a defense attorney might have a contingent interest in a counterclaim or cross-claim. Qualify only as to attorneys with a contingent interest in the outcome.]

--Insurance involved?

--Mutual insurance company? If so, qualify as to policyholders. [Note: Usually the only mutual company we see is State Farm.]

--Stock company? If so, qualify as to stockholders.

[Note: Plaintiff has the right to have the jury qualified as to

--(1) the defendant's liability carrier and

--(2) plaintiff's own uninsured motorist carrier – against whom plaintiff made or may make an underinsured claim --whether or not it is a party. See Arp v. Payne, 230 Ga. App. 840 (1998).]

#### 6. Prequalification as to Insurance

--The parties are entitled to qualification of prospective jurors concerning their insurance interests and relationships in open court. See Arp v. Payne, 230 Ga. App. 840 (1998). However, this does not preclude prequalification of the jury by the jury administrator in the jury assembly room. Ask the clerk to call the jury administrator and have the jury prequalified as to the particular insurance company involved [usually only State Farm]. They will then send in only those jurors who are not insured by that carrier. Then qualify all jurors in open court just as though they had not been prequalified. [Note: Sometimes a juror will have a State Farm homeowners policy but not a State Farm automobile policy. This would not disqualify the juror from sitting on a case involving an automobile policy.]

#### 7. Reference to insurance prohibited.

--Advise the attorneys and parties to make no reference to insurance either in voir dire or in their testimony. They are to advise all their witnesses of this prohibition. Gonzalez v. Wells, 213 Ga. App. 494 (1994); Worthy v. Kendall, 232 Ga. App. 528 (1) (1998). Generally speaking, however, on voir dire attorneys may ask only if any juror has had any claims experience or employment in the claims adjusting field.

## 8. Jury matters

--Juror information forms are in alphabetical order whereas the jury list is not.

--If case to last no longer than one day, consider seating one alternate. If so, request 3 extra jurors per alternate.

--6 person jury in State Court unless 12 person jury is demanded prior to the trial term and "the claim for damages is greater than \$25,000" [O.C.G.A. § 15-12-122(a)(2) & § 15-12-123].

--If 12 person jury, ask for 27 jurors [24 plus 3 for possible challenges for cause]. If State Farm is involved, ask for 30 jurors, but if the jury is prequalified as to State Farm, then just ask for 27. Explain to attorneys that first 12 go in first pew from left to right; second 12 in second pew from left to right; extras in third pew.

--If 6 person jury, ask for 14 jurors [12 plus 2 for possible challenges for cause]. Put 12 in box and extras seated under the clock. Jurors 1 through 6 in first row, and 7 through 12 in back row.

--Explain to attorneys the order in which jurors will be seated.

--Ask attorneys if they will agree to a 5 [11] person jury. If so, they to sign a written stipulation. O.C.G.A. § 9-11-47.

--Tell attorneys that they may have up to 15 minutes before striking and one minute per strike.

--Voir dire will be of the entire array at the same time instead of voir dire separately as to each panel.

--Tell attorneys that selection will only be from first 24 jurors who are qualified [or from first 12 if a 6-person jury].



--Explain that there will be general questions of the array as a whole with as many individual follow-up questions as they may need at the same time. Follow-up questions may follow up on the responses to the general questions or to the information given in the juror biographical forms. The parties no longer have the right to ask general questions of each individual juror [State v. Hutter, 251 Ga. 615 (1983)].

--Multiple plaintiffs or multiple defendants to share [or alternate] strikes. See II(7) below.

9. Rule of Sequestration invoked?

--If so, advise attorneys that they need to police the rule as to their own witnesses as they come into the courtroom.

10. Motions in limine?

11. Stipulations?

12. Requests to charge from attorneys – in duplicate [USCR 10.3]

--Any affirmative defenses or counterclaims? [for purposes of preliminary instructions on preponderance of evidence]

13. Other matters?

--Video depositions?

--Verdict form. Judge's office should prepare the verdict form and ask attorneys during the charge conference to look at it to see if there are objections or suggestions.

--Other.

14. Swear in bailiffs

"You shall take all juries committed to your charge during the present term to the jury room, or some other private and convenient place, where you shall keep them without meat or drink (water excepted), unless otherwise directed by the court. You shall make no communication

with them yourself, nor permit anyone to communicate with them, except by leave of the court. You shall discharge all other duties which may devolve upon you as bailiff, to the best of your skill and power. So help you God."

15. Call for jurors

--Courtroom Clerk should call Jury Administrator and ask for 14, 27, or \_\_\_ jurors.

--Bailiff will go to Jury Assembly Room to get the jurors and will bring jury lists for judge, clerk and each attorney.

## II. BRING IN JURORS

1. Jurors are seated in order.

2. Introduction:

--Good morning, ladies and gentlemen. My name is \_\_\_\_\_. I will be the trial judge in this case.

--This morning we will begin the trial of the case of \_\_\_\_\_ vs. \_\_\_\_\_. This is a civil case. It involves a suit for [personal injuries, breach of contract, on account, etc.]

--Introduce attorneys, courtroom deputy clerk, court reporter and bailiffs.

--"The first thing that is done is the selection of the jury. This case will be tried by a jury composed of 6 [12] persons. We will begin in just a moment the process of reducing your number down to the 6 [12] person jury which will actually try the case.

--“It is a foundation of our justice system that every party who is involved in a law suit is entitled to a trial by jurors who are totally impartial and who enter upon the trial of the case without having previously formed any fixed opinion as to the outcome of the case.

--“The law gives the attorneys on both [all] sides the right to question you, the prospective jurors, concerning your qualifications to serve as the trial jurors in this case, including any matter which would illustrate any interest in the case, any opinion as to which party ought to prevail, any relationship or acquaintance with the parties or attorneys, any fact or circumstance which might indicate an inclination, leaning, or bias with respect to the subject matter of the case or the attorneys or parties, and any religious, social, or fraternal connections of the jurors. O.C.G.A. § 15-12-133.

--“This process of questioning the prospective jurors is called voir dire.

--“Some questions are required by law, and I will be asking these.

--“Other questions may be asked by the attorneys for each side to assist them in selecting a jury most appropriate to try this particular case.

--“In asking these questions the attorneys are carrying out their legal responsibilities and are not attempting to pry into your personal affairs in any unwarranted manner.

--“You will need to answer any question put to you unless I provide to the contrary.

--“Before we begin the jury selection process, will you please stand and raise your right hand for the preliminary oath or affirmation.”



3. Jurors' Oath – Voir Dire

“Do you swear or affirm that you shall give true answers to all questions as may be asked by the court or its authority, including all questions asked by the parties or their attorneys concerning your qualification as jurors in this case?”

4. Qualifying questions to jurors [O.C.G.A. § 15-12-134 & § 15-12-135]

--“Are any of you related by blood or marriage to either of the parties?” [read names of parties] [to 6<sup>th</sup> degree by affinity or consanguinity, O.C.G.A. § 15-12-135]

--[In corporation, bank, etc., cases] “Are any of you a stockholder, director, employee or officer of \_\_\_\_\_?” “Are any of you related by blood or marriage to . . . .?”

--[In insurance company cases] “Are any of you an officer, employee, agent, director or [stockholder/policyholder] of \_\_\_\_\_ Insurance Company?” “Are any of you related by blood or marriage to . . . . ?” Smith v. Crump, 223 Ga. App. 52(1)(1996).

--[In case where a lawyer is retained on a contingent fee basis, qualify as to lawyer and partners in firm]. “Are you related by blood or marriage to \_\_\_\_\_, or to any of the following partners in the firm of \_\_\_\_\_: \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_?”

--“Have you formed or expressed any opinion as to which of the parties ought to prevail in this case?” [Usually not asked]

--“Do you have any wish or desire as to which party ought to succeed in this case?” [Usually not asked]

--“Do you have any interest in the outcome of this case, or any interest arising out of business relations with either party to this case?” [Usually not asked]

--[Divorce case: “Are any of you conscientiously opposed to the granting of a divorce by virtue of religious or other reasons?” O.C.G.A. § 19-5-9]

--Other questions, if any.

--If a prospective juror does indicate some opinion, bias or partiality, then judge to inquire: “Is your opinion so fixed and definite that you will be unable to set it aside and decide the case based upon the evidence and the court’s instructions to you concerning the law?” --See, e.g., Nichols v. State, 221 Ga. App. 600 (1996); but see Walls v. Kim, 275 Ga. 177 (2002); Canon v. State, 250 Ga. App. 777 (2001)[make sure each side has full opportunity to examine the juror as to same].

## 5. Individual Information

--In order to assist the attorneys in orienting themselves to the jurors, put the following questions on the board for the jurors to answer before the attorneys begin voir dire. Jurors are to stand when Clerk calls name and then give the individual information while standing.

- Name?
- Area of county where you reside?
- Occupation?
- Spouse’s occupation?
- Number of children?
- How long lived in Cobb County?

--No voir dire is done yet until after each juror has given the above information.

6. General voir dire questions to array by attorneys  
[O.C.G.A. § 15-12-133; USCR 10.1] --with individual follow-up questions.

--Plaintiff's questions.

--Defendant's questions.

--If there is a challenge for cause during voir dire, play it by ear. Try to take the matter up at sidebar or dismiss jurors to lobby or to Jury Assembly Room. Possibly call subject juror back in for individual questions.

--If there is a successful challenge for cause, just have the clerk strike through the name and the first extra juror will now be eligible for selection. The juror need not know that he or she has been struck for cause. If there are no extras, call the Jury Administrator and ask for an additional juror and go through the entire process with him or her.

7. Strike Jury [USCR 11]

--Jurors remain in courtroom.

--15 minutes to prepare. Advise jurors that we will be at ease while attorneys are going through their notes. This might be good time for jurors to use the restroom facilities if they wish. If they do, they should return immediately and take the same seat in courtroom.

--Strike jury.

--Silent strike [in case of successful Batson challenge]

--One strike per minute.

--In civil cases, co-plaintiffs and co-defendants must join in exercising their strikes. They do not get extra strikes.

See Mercer v. Braswell, 140 Ga. App. 624 (1) (1976).  
See also O.C.G.A. § 15-12-122 & § 123 & Annos. As to whether third party defendants get additional strikes and in cases where claims are severable, see Sheffield v. Lewis, 246 Ga. 19 (1980).

8. Attorneys finish selection. Then:

--Ask all jurors to return to the audience.

9. Batson challenge.

--If there is a Batson challenge, dismiss the venire to the Jury Assembly room.

--Hear Batson challenge.

--If there is a successful challenge, unstrike and reseal that juror and have losing attorney strike a different juror.

--Then call venire back into the audience.

10. Call selected petit jury into box.

--“As your name is called, please return to the jury box.” [If a 6-person jury: “Please have a seat on the first row of the jury box.”]

--Clerk to call each selected juror by name back into the box.

11. Verify with attorneys that this is the jury they selected.

--To Plaintiff’s attorney: “Is this the jury you have selected?”

--To Defendant’s attorney: “Is this the jury you have selected?”

12. Instructions to those not chosen.

--Thank you.

--Please return to Jury Assembly Room with Bailiff or call the Jury Administrator's number sometime after 6:00 p.m. [Note: Courtroom Deputy Clerk should check with Jury Administrator to determine which instruction to give them.]

13. Jurors's Oath

--Note: this is discretionary. The jury gave a general oath when initially qualified by presiding judge – see O.C.G.A. § 15-12-138. This is as an adaptation of that same oath.

--“Do you swear or affirm that you will try this case according to the law as given you in the charge of the court and according to the opinions you entertain of the evidence produced to you, to the best of your skill and knowledge, without favor or affection to either party?”

14. General preliminary instructions.

15. Recess. Optional at this time. [15 minutes?]

### **III. JURY OUT – PRELIMINARY MATTERS**

--Other matters?

### **IV. SEQUESTRATION OF WITNESSES**

--Witnesses sworn in presence of jury.

--Sequester witnesses [O.C.G.A. § 24-9-61]

--You are required to remain outside the courtroom until you are called in to testify.

--You are not to discuss among yourselves or with any other witness any testimony which you have given or which you will give in the trial of this matter.

--You are permitted to discuss your testimony only with the attorneys in this case.

--Counsel are required to instruct their witnesses of the requirements of the Rule of Sequestration in this case.

--Discretionary with court to:

--permit victim to remain in the courtroom. [O.C.G.A. § 24-9-61.1(a); Sheperd v. State, 245 Ga. App. 386 (2000)].

--permit one or more witnesses who are needed to assist a party to remain in the courtroom [e.g., the “prosecuting witness”][Childs v. State, 257 Ga. 243 (11) (1987); Blalock v. State, 250 Ga. 441 (1) (1983)].

-- the general rule requires an excepted witness to testify first [Pless v. State, 142 Ga. App. 594 (1977); Simonton v. State, 151 Ga. App. 431 (1979)].

-exception to this rule: the orderly presentation of evidence is a proper reason for permitting an unsequestered witness who is assisting the prosecutor, to testify after other witnesses. [Croom v. State, 165 Ga. App. 676 (1983); Denny v. State, 210 Ga. App. 406 (1993)]

--If any party is to be excused under the Rule, he or she should also be excused during opening statements.

--Violation of Rule may affect the credibility of the witness, and the jury is to be so instructed, but violation does not result in bar of witness from testifying [Johnson v. State, 258 Ga. 856 (4) (1989);

Stephen W. Brown Radiology Associates v. Gowers, 157 Ga. App. 770 (1981)].

## **V. OPENING STATEMENTS**

--The attorneys at this time will be making their opening statements. These statements are not evidence. Instead, they represent the parties' opportunities to outline what they anticipate the evidence in the case will show.

--Please give the attorneys your close attention.

1. Plaintiff.
2. Defendant.

--Ask bailiff to distribute notepads.

## **VI. PLAINTIFF'S CASE IN CHIEF**

1. Witnesses
2. Documents tendered
3. Plaintiff rests
4. Motions

## **VII. DEFENDANT'S CASE IN CHIEF**

1. Witnesses
2. Documents tendered
3. Defendant rests

4. Motions

## **VIII. PLAINTIFF'S REBUTTAL**

1. Witnesses
2. Documents tendered
3. Plaintiff rests

## **IX. DEFENDANT'S SURREBUTTAL**

1. Witnesses
2. Documents tendered
3. Plaintiff rests

## **X. EVIDENCE CLOSED**

## **XI. JURY OUT**

1. Motions

## **XII. CHARGE CONFERENCE**

1. Pleadings not out with jury
2. Plaintiff's requests to charge
3. Defendant's requests to charge
4. Special verdict form



### **XIII. JURY BACK**

### **XIV. CLOSING ARGUMENT**

--The attorneys at this time will make their closing arguments to you in an order which is predetermined by Georgia law. In making these arguments the attorneys will be commenting upon the testimony and evidence which has been presented to you in this case. They, as you, will be recalling the evidence that has been presented. These final arguments are not to be construed by you as evidence in this case or as instructions concerning the law. They are, however, intended to help you better understand the contentions of each side and the issues which you are to decide. You should give the attorneys your close attention. After the closing arguments have been concluded, I will give you instructions concerning the law which you are to apply in this case.

--1 hour each side [USCR 13.1]. However, if prior to argument a party requests 2 hours for argument, then under OCGA § 9-10-180, the party is entitled to 2 hours. See McIntyre v. Pope, 215 Ga. App. 600 (1994); Rouse v. Polott, 274 Ga. App. 226 (1) (2005).

--No more than 2 attorneys per party; only one attorney per party in concluding argument [USCR 13.3]

--If defendant introduces no evidence or admits a prima facie case, then defendant may open and conclude [USCR 13.4][In civil case defendant waives this right if he gives his own testimony].

--Order is the same even if there is a counterclaim.

1. Plaintiff's opening argument
2. Defendant's argument
3. Plaintiff's concluding argument

## **XV. CHARGE JURY**

## **XVI. JURY OUT**

1. Exhibits in evidence
2. Verdict form to jury
3. Call Jury Administrator to see if she will need jurors to return to Jury Assembly Room after verdict. If not, ask her to prepare certificates and checks and ask Bailiff to get them.

## **XVII. EXCEPTIONS TO CHARGE**

## **XVIII. RECHARGE OR QUESTION FROM JURY**

1. Get writing from jury
2. Confer with attorneys on record
3. Agreed response?
4. If not, advise attorneys of proposed response.
5. Receive objections to proposed response.
6. Jury back.
7. Respond.

--“A trial court is duty-bound to recharge on any part of the charge when the jury so requests...” Sinkfield v. State, 266 Ga 726 (1996).

--If the court does recharge on a particular point of law, it should not overly emphasize the recharged portions and should say something to the effect:

“It is necessary that you take the charge of the court as a whole, and these sections are no more or less important than all the other code sections and law that I charged you on previously. I do not want to unduly emphasize these charges over the other charges just because you have heard them twice, or just because you heard them more recently than you did the other charges. You need to take this law as a whole and deal with it in that way.”

8. Excuse jury.

9. Exceptions.

## **XIX. ALLEN CHARGE**

--See charge book.

## **XX. JURY VERDICT**

1. Ask the Foreperson to rise and state name.

2. Ask Foreperson:

--Has the jury agreed upon a verdict?

--Is the verdict in writing:

--Has the Foreperson signed it?

--Dated?

3. Ask Foreperson to hand verdict to Bailiff.

4. Ask Bailiff to hand verdict to Judge.

5. “Mr(s). Foreperson, is this the verdict of the jury?”

6. “Mr(s). Foreperson, is the verdict unanimous?”

7. Determine if verdict is in proper form.

--If incorrect, do not say what it is, but tell jury to return to jury room and add, correct, etc.

8. Ask Clerk to publish the verdict.

9. "Mr(s). Foreperson, as read, is this the verdict of the jury?"

10. Ask attorneys to review the verdict.

11. Ask if there is any objection to the verdict.

12. Prevailing attorney to prepare judgment.

## **XXI. POLL JURY**

--Poll jury if requested to do so by either party.

--Ask clerk to call the name of juror one at a time.

--As to each juror:

--Have you heard the verdict read?

--Was this your verdict when it was reached in the jury room?

--Was it freely and voluntarily made by you?

--Is it still your verdict?

-- Accept verdict or return jury to jury room. If a juror answers no to any of the polling questions, then have the jurors return to the jury room to continue their deliberations. Overstreet v. State, 250 Ga. App. 336 (5) (2001).

-- Prevailing attorney to prepare judgment.

## **XXII. DISMISS JURY**

--I would like to thank you for your service. You have performed one of your highest civic duties. By service on a jury, a citizen has a direct hand in the administration of justice. Jury service is a privilege as well as a responsibility which you have accepted. You should take pride in your service.

--You may discuss this case with the attorneys if you would like. They may like to ask you questions about the case. However, you are certainly under no obligation to discuss the case with anyone, including the attorneys.

--You should return to the jury room to pick up any belongings you may have there.

--Hand out certificates and checks or have jurors return to Jury Assembly Room with Bailiff for further instructions.