

## CRIMINAL JURY TRIAL

State of Georgia

vs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_,  
Defendant(s)

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

Case No. \_\_\_\_\_

Prosecuting Attorney(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defense Attorney(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_

Charges: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **CRIMINAL JURY TRIAL OUTLINE**

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

1. Call case.
2. State ready? \_\_\_\_\_ Defense ready? \_\_\_\_\_ Is the Defendant present? \_\_\_\_\_
3. If accusation in felony case, determine that there is a written waiver of indictment [O.C.G.A. § 17-7-70].
4. Issue joined? [Either signed plea of "not guilty" or Defendant stands mute]
5. Other matters?
  - Identification of victim for jury qualification
  - Other
6. Requests to charge – in duplicate [USCR 10.3]
7. Jury matters:
  - Juror information forms are in alphabetical order.
  - Misdemeanor:
    - Six-person jury [O.C.G.A. § 15-12-125].
    - State & defense each has 3 peremptory strikes.
    - [Note that O.C.G.A. § 17-8-4 applies only in felony cases. So where there are multiple defendants in a misdemeanor case, is the old rule which existed prior to this code section still in effect so that each such defendant is entitled to the same number of peremptories as if he had been tried separately? Nobles v. State, 12 Ga. App. 355

(1913). Suggestion: unless there is an objection in a misdemeanor case, apply O.C.G.A. § 17-8-4]

--Ask for 14 jurors. Put panel of 12 [O.C.G.A. § 15-12-125] in jury box in order. Have next 2 seated under clock. [Note: If alternate is needed, ask for 3 additional prospective jurors].

--Alternate: Of the 3 prospective jurors per alternate, State and defense each has 1 peremptory strike.

--Parties are to address each juror one at a time in the order in which they appear on the list.

--Felony:

--Twelve-person jury

--Basic venire is 30 jurors.

--State and defense each have 6 peremptory strikes.

--Call for 34 or 38 jurors [3 additional prospective jurors per alternate plus 4 extras in event of strikes for cause.

Alternate: State & Defense each has 1 peremptory strike].

--first panel in box.

--second panel in first pew.

--final six in second pew.

--remainder [for alternates and extras] in third pew.

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

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

--Ask if there are any objections to voir dire of the entire array at the same time instead of voir dire as to each panel at a time [in felony cases, see O.C.G.A. § 15-12-131].

--Tell attorneys that selection of 12 [or 6] person jury will be from first 30 [or 12].

--Tell attorneys that they are to ask general questions of the panel [or array] as a whole and then as many individual follow-up questions as they 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 defendants to share [or alternate] strikes under O.C.G.A. § 17-8-4 [Allen v. State, 235 Ga. 709 (1975)], but court does have discretion under this code section to allow up to "5 additional strikes per defendant" [Albert v. State, 235 Ga. 718 (1975)], but if court does so, then State is entitled to half the additional number which is allocated to defense [Gerald v. State, 189 Ga. App. 155 (1988)].

--Utilize silent method of striking in the event there are Batson issues.

--Parties are to address each juror one at a time in the order in which they appear on the list.

#### 8. Invoke Rule of Sequestration:

--[Optional: Swear in witnesses and sequester them in presence of jury just before opening statements.]

9. 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.”

10. Call for jurors.

--Courtroom Clerk should call Jury Administrator [Wendy Portwood - 528-2628] and ask for jurors.

--Bailiff will bring jurors and jury lists for judge, clerk and each attorney.

11. Note: Challenge to the array must be in writing and made before the jury is “put upon” the defendant [i.e., when jury seated and voir dire commences][O.C.G.A. § 15-12-162].

## II. JURY SELECTION

1. Jurors seated in order.

2. Introduction.

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

--"This morning we will begin the trial of the case of the State of Georgia vs. \_\_\_\_\_ , case number \_\_\_\_\_ ."

--Introduce prosecuting attorney and defense attorney.

--"The first thing that will be done is the selectio n 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 criminal justice system that everyone accused of crime is entitled to a trial by jurors who are impartial as between the state and the accused and who enter upon the trial of the case without having previously formed any fixed or definite opinion as to the guilt or innocence of the accused."

--"The law gives the attorneys, both the prosecuting attorney and the defense attorney, the right to question you, the prospective jurors, concerning your qualifications to serve as the trial jurors in this case, including any matte r 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 t o 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 the case of the State vs. \_\_\_\_\_?”

### 4. Join Issue before jury if not already done.

5. Qualifying questions to jurors by judge [O.C.G.A. §§ 15-12-135; 15-12-163; 15-12-133]:

--“Ladies and gentlemen, this is the case of The State of Georgia vs. \_\_\_\_\_. The defendant is charged with the offense(s) of \_\_\_\_\_.

--“The charges are set out in a document called an accusation which is filed in this court by the or on behalf of the Solicitor General of Cobb County. The accusation [indictment] alleges as follows [here, read the accusation or indictment].”

Or

--“At this time I am going to ask the prosecuting attorney, \_\_\_\_\_, to read the pertinent portions of the accusation [indictment] which sets forth the charge(s) against the defendant. You are not to consider this accusation [indictment] as constituting evidence in the case.” [It is proper to ask the prosecuting attorney to read the charges. Robertson v. State, 268 Ga. 772 (1997)]

--“To this the defendant has entered a plea of Not Guilty. This forms the issue for you to try.”

1. “Are any of you related by blood or marriage to any party interested in the result of this case, namely \_\_\_\_\_ [prosecuting attorney(s)] [e.g., Mr. Barry Morgan, Solicitor General of Cobb County, or anyone on his staff], \_\_\_\_\_ [defendant(s)], \_\_\_\_\_ [defendant’s attorney(s)], or \_\_\_\_\_ [victim(s)]?” [O.C.G. A. § 15-12-135]

--[All trial jurors in the courts of this state shall be disqualified to act or serve in any case or matter when such jurors are related by consanguinity or affinity to any party interested in the result of the case or matter within



the sixth degree as computed according to the civil law. Relationship more remote shall not be a disqualification. –O.C.G.A. § 15-12-135][Apparently, this would be third cousins]

--[The determination is made by counting from one of the persons up to the common ancestor, and then down again to the other person or party. Williams v. State, 206 Ga. 107 (1949)]

--[A criminal defendant is considered related by marriage to blood relatives of his or her spouse, but not to people that his or her spouse is related to only by marriage. Alexander v. State, 260 Ga. 870 (1991)]

--[The relationship which disqualifies the juror from serving is relationship by consanguinity; the relationship by affinity extends only to the husband or wife of such blood kin. Pope v. State, 52 Ga. App. 411 (1936)]

2. "Have any of you, for any reason, formed or expressed an opinion in regard to the guilt or innocence of the accused?"
3. "Have you any prejudice or bias resting on your mind either for or against the accused?"
4. "Is your mind perfectly impartial between the state and the accused?"

--[Questions 2, 3, & 4 are mandatory in felony case, discretionary in misdemeanor cases. Jones v. State, 221 Ga. App. 374 (1) (1996).

--[If a prospective juror does indicate some such 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, generally, Kim v. Walls, 275 Ga. 177 (2002); Canon

v. State, 250 Ga. App. 777 (1) (2001); Nichols v. State,  
221 Ga. App. 600 (1996)]

5. "The jury is qualified."

6. Individual Information

--If jurors are already in the box, then they are simply to stand when Clerk calls name and then give the individual information while standing.

--If jurors are in audience, then each juror is to go into the box as the Clerk calls his or her name.

--"At this time, the Clerk will call each of you one at a time into the jury box. As you get to your seat in the box, please answer the questions which are listed on the board. You may then be seated"

--Name?

--Occupation?

--Spouse's occupation?

--Number of children?

--Area of county where you reside?

--How long lived in Cobb County?

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

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

--State's general questions.

--Defense's general questions.

--If there is a challenge for cause during voir dire, try to take the matter up at sidebar or dismiss jurors to lobby or the Jury

Assembly Room. Possibly call subject juror back in for individual questions.

--If there is a successful challenge for cause, then ask that juror to take a seat in the back of the courtroom. Ask the clerk to call an extra into the disqualified juror's place. Or simply tell the clerk and the attorneys that the first extra juror will now be number 12 and do not tell the juror that he or she is being disqualified for cause. If no extras, call the Jury Administrator and ask for an additional juror and go through the entire process with him or her.

8. Strike jury [USCR 11].

--Jurors remain in courtroom.

--15 minutes to prepare.

--Use this time to introduce Bailiffs, Clerk, and Court Reporter.

--Strike jury.

--Silent strike [in case there is a successful Batson challenge]

--Address each juror one at a time beginning at top of list.

--1 strike per minute.

9. Attorneys finish selection. Then:

--Ask all jurors to return to the audience.

10. Batson Challenge

--If there is a Batson challenge, dismiss the venire to the jury assembly room or take up the challenge by way of a bench conference outside the hearing of the jurors.

--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 and call the now selected petit jury into the box.

11. Call selected petit jury into box.

--“As your name is called, please return to the jury box in the order in which your name is called.”

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

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

--“State, please view the jurors in the box. Is this the jury you have selected?

--“Defense, please view the jurors in the box. Is this the jury you have selected?

13. Instructions to those not chosen.

--Thank you.

--Critical to the process.

--Not personal.

--Return to Jury Assembly Room with Bailiff.

14. Jurors' Oath [By Judge or Clerk]

--"Do you swear or affirm that you shall well and truly try the issue formed upon this accusation [bill of indictment] between the State of Georgia and \_\_\_\_\_, defendant, who is charged with [state the crime or offense], and a true verdict give according to the evidence?"

15. General preliminary instructions.

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

**III. JURY OUT – PRELIMINARY MATTERS [Optional]**

--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 (1987); Blalock v. State, 250 Ga. 441 (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)]

--judge has discretion to not enforce the rule of sequestration until the presentation of evidence has begun. [Chastain v. State, 244 Ga. App. 84 (2000); Blakenship v. State, 258 Ga. 43 (1988)]

--Violation of Rule may affect the credibility of the witness and jury is to be so instructed, but violation does not result in bar of witness from testifying [Johnson v. State, 258 Ga. 856 (1989); Holmes v. State, 272 Ga. 517 (2000)].

## 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.”

--State’s opening statement.

--Defense’s opening statement.

## **VI. STATE’S CASE IN CHIEF**

--Witnesses

--Exhibits tendered

--State rests

--Motions

## **VII. DEFENSE CASE IN CHIEF**

--Witnesses

--Exhibits tendered

--Defense rests

## **VIII. STATE’S REBUTTAL**

--Witnesses

--Exhibits tendered

--State rests

## **IX. DEFENSE SUREBUTTAL**

--Witnesses

--Exhibits tendered

--Defense rests

## **X. EVIDENCE CLOSED**

## **XI. JURY OUT**

--Motions

## **XII. CHARGE CONFERENCE**

--State's requests to charge.

--Defense's requests to charge.

--Verdict form.

--Ask both counsel if there are any charges which the court is required to give in this case even in the absence of a request to charge.

## **XIII. JURY BACK**

## **XIV. CLOSING ARGUMENTS**

--"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 [felony case; USCR 13.1]

--30 minutes each side [misdemeanor case; USCR 13.1]

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

--If no defendant introduces any evidence other than his own testimony, then defendant(s) have the right to open and close. But right is lost if one co-defendant cross-examines another co-defendant.

1. Opening argument.
2. Argument.
3. Concluding argument.

## **XV. CHARGE JURY**

## **XVI. JURY OUT**

1. Exhibits in evidence to jury.
2. Verdict form to jury.
3. Accusation/indictment to jury.

--Call to Jury Administrator to see if he/she will need jurors to return to the Jury Assembly Room after the verdict. If not, ask her to prepare certificates and checks and ask Bailiff to get them.

## **XVII. EXCEPTIONS TO CHARGE?**

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

1. Get writing from jury. Have it marked as a court's exhibit.
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. Verify on record the presence of defendant, defense attorney , and prosecutor. Ask if they are ready to receive to receive the verdict.
2. Ask the Foreperson to rise and state name.
3. Ask Foreperson:
  - "Has jury agreed upon a verdict?"
  - "Is the verdict in writing?"
  - "Has the Foreperson signed it?"
  - "Dated?"
  - "Is it unanimous?"
4. Ask Foreperson to hand verdict to Bailiff.
5. Ask Bailiff to hand verdict to Judge.
6. 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.
7. Ask Clerk to publish the verdict.
8. "Mr(s). Foreperson, as read, is this the verdict of the jury?"
9. Ask if attorneys wish to review the verdict form.
10. Ask if either attorney wishes to poll the jury.

## **XXI. POLL JURY**

1. "\_\_\_\_\_ requests that the jury be polled with regard to the verdict. This requires that I ask each of you certain questions. Please rise as the Clerk calls your name."
2. As to each juror:
  - "Have you heard the verdict as 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?"
3. Accept verdict or return jury to jury room.

## **XXII. DISMISS JURY**

- Thank jury for time and 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.
- Go back to jury room and hand out certificates and checks or have jurors return to Jury Assembly Room with Bailiff for further instructions.

### **XXIII. DISCHARGE OF DEFENDANT [NOT GUILTY VERDICT]**

--“Will the defendant please rise? \_\_\_\_\_, upon the verdict of the jury you have been found not guilty of the charge(s) filed against you in the indictment. The court now adjudges you not guilty of the offense(s) charged and orders that you be released [unless defendant is being held on other charges].”

### **XXIV. SENTENCE**

--Sentence defendant after jury has been dismissed [see O.C.G.A. §17-10-2].

--No right to a formal presentence hearing in a misdemeanor case, but there is such a right in a felony case [O.C.G.A. § 17-10-2].

--Inquire if parties are ready to take up the matter of the sentence.

--Confirm on the record the presence of defendant and defense attorney.

--“\_\_\_\_\_, you have been charged by indictment/accusation with the crime(s) of \_\_\_\_\_. To this charge you pleaded not guilty and were tried by a jury which returned a verdict of guilty.”

--To defense attorney: “Is there any legal cause why sentence should not be imposed at this time?”

--To defendant: “Do you have any legal cause or reason why sentence should not be imposed at this time?”

--To prosecuting attorney: “Does the State wish to be heard on the matter of the sentence?”

--To defense attorney: "Do you wish to be heard at this time on behalf of the defendant?"

--To defendant: "Do you wish to make a statement on your behalf at this time?"

--OCGA \_\_\_\_\_, relating to the crime of \_\_\_\_\_, of which you have been found guilty, provides that the penalty for such crime is \_\_\_\_\_.

--The Court now imposes the following sentence:  
\_\_\_\_\_.

## **XXV. NOTICE OF SENTENCE REVIEW [FELONY]**

--"You are hereby notified by the court that you have a right to have your sentence reviewed by the Superior Courts Sentence Review Panel of Georgia. Sentences of twelve (12) years or more may be reviewed for excessiveness by this panel. An application form, or a letter requesting review, must be filed with the clerk of this court. You have thirty (30) days from this date on which your sentence is imposed in which to file for your sentence review, or, if you appeal your case, then within thirty (30) days of the date the judgment of the appellate court is made the judgment of this court."

## **XXVI. NOTIFICATION OF RIGHT TO APPEAL**

--"Mr(s). \_\_\_\_\_, you have the right to appeal your conviction and sentence to the Supreme Court of Georgia or to the Court of Appeals of Georgia by filing a written notice of appeal with the Clerk of this trial court within 30 days from today. If you are not able to pay the costs of an appeal, the law provides for appeal without such payment. If you are not able to hire a lawyer to represent you because of lack of money, the court will appoint appeal counsel for you upon appropriate request to do so."