

INSTRUCTION NO.

This is the case of State of Idaho v. [Defendant(s)].
Are the parties ready to proceed?

In a moment the Clerk will call the roll of the jury. When your name is called you will also be identified with a number. Please remember your number as we will be using it later in the jury selection process.

The Clerk will now call the roll of the jury.

Ladies and Gentlemen, you have been summoned as prospective jurors in the lawsuit now before us. The first thing we do in a trial is to select [12] [6] jurors [and, perhaps, one or two alternate] jurors from among you.

I am [Insert name of Judge], the judge in charge of the courtroom and this trial. The deputy clerk of court, [Insert name of Clerk], marks the trial exhibits and administers oaths to you jurors and to the witnesses. The bailiff, [Insert name of Bailiff], will assist me in maintaining courtroom order and working with the jury. The Court reporter, [Insert name of Reporter], will keep a verbatim account of all matters of record during the trial.

Each of you is qualified to serve as a juror of this court. This call upon your time does not frequently come to you, but is part of your obligation for your citizenship in this state and country. No one should avoid fulfilling this obligation except under the most pressing circumstances.

Service on a jury is a civic and patriotic obligation which all good citizens should perform.

Service on a jury affords you an opportunity to be a part of the judicial process, by which the legal affairs and liberties of your fellow men and women are determined and protected under our form of government. You are being asked to perform one of the highest duties of citizenship, that is, to sit in judgment on facts which will determine the guilt or innocence of persons charged with a crime.

To assist you with the process of selection of a jury, I will introduce you to the parties and their lawyers and tell you in summary what this action is about. When I introduce an individual would you please stand and briefly face the jury panel and then retake your seat.

The state of Idaho is the plaintiff in this action. The lawyer representing the state is [Insert name of Prosecuting Attorney], a member of the county prosecuting attorney's staff. [The prosecuting attorney will be assisted by [Insert name of Officer assisting Prosecutor], a law enforcement officer.]

The defendant[s] in this action [is] [are] [Insert name or names of defendants]. [The lawyer representing [Insert name of Defendant 1] is [Insert name of Defendant 1's Lawyer]. [The lawyer representing (Insert name of Defendant 2) is (Insert name of Defendant 2's Lawyer).] [Repeat for each additional Defendant.]] I will now read you the pertinent portion of the [information] [indictment] [complaint] which sets forth the charges against [the]

[each] defendant. The [information] [indictment] [complaint] is not to be considered as evidence but is a mere formal charge against the defendant[s]. You must not consider it as evidence of guilt and you must not be influenced by the fact that [a charge has] [charges have] been filed.

With regard to [Insert name of Defendant 1], the [information] [indictment] [complaint] charges [in Count I] that [Insert name of Defendant 1], on or about the [Insert charging language against Defendant 1, Count I].

[The (information) (indictment) (complaint) in Count II charges that defendant, (Insert name of Defendant 1), on or about the (Insert charging language against Defendant 1, Count II).] [Repeat for each additional charge against Defendant 1.]

To these charges [Insert Mr./Mrs./Ms.] [Insert Defendant 1's Surname] has pled not guilty.

[With regard to (Insert name of Defendant 2), the (information) (complaint) charges that ([Insert name of Defendant 2), on or about the (Insert charging language against Defendant 2: Count I.).

[The (information) (complaint) in Count II charges that defendant, (Insert name of Defendant 2), on or about the (Insert charging language against Defendant 2, Count II).] [Repeat for each additional charge against Defendant 2.]

[To these charges [Insert Mr./Mrs./Ms.] [Insert Defendant 2's Surname] has pled not guilty.]

[It is your duty to give separate personal consideration to the case of each defendant.]

Under our law and system of justice, every defendant is presumed to be innocent. This means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove [his] [her] innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

As the judge in charge of this courtroom, it is my duty, at various times during the course of this trial, to instruct you as to the law that applies to this case.

The duty of the jury is to determine the facts; to apply the law set forth in the instructions to those facts, and in this way to decide the case. In applying the Court's instructions as to the controlling law, you must follow

those instructions regardless of your opinion of what the law is or what the law should be, or what any lawyer may state the law to be.

During the course of this trial, including the jury selection process, you are instructed that you are not to discuss this case among yourselves or with anyone else, nor to form any opinion as to the merits of the case until after the case has been submitted to you for your determination.

We will now call an initial selection of [Insert the number of jurors to be called] jurors. As your name is called please take a seat as directed by the bailiff. The clerk will please draw the initial jurors' names.

* * ** The clerk calls the jurors * * **

In this part of the jury selection, you will be asked questions touching on your qualifications to serve as jurors in this particular case. This part of the case is known as the voir dire examination.

Voir dire examination is for the purpose of determining if your decision in this case would in any way be influenced by opinions which you now hold or by some personal experience or special knowledge which you may have concerning the subject matter to be tried. The object is to obtain twelve persons who will impartially try the issues of this case upon the evidence presented in this courtroom without being influenced by any other factors.

Please understand that this questioning is not for the purpose of prying into your affairs for personal reasons but is only for the purpose of obtaining an impartial jury.

Each question has an important bearing upon your qualifications as a juror and each question is based upon a requirement of the law with respect to such qualifications. Each question is asked each of you, as though each of you were being questioned separately.

If your answer to any question is yes, please raise your hand. You will then be asked to identify yourself both by name and juror number.

At this time I would instruct both sides to avoid repeating any question during this voir dire process which has already been asked. I would ask counsel to note, however, that you certainly have the right to ask follow-up questions of any individual juror based upon that juror's response to any previous question.

The jury should be aware that during and following the voir dire examination one or more of you may be challenged.

Each side has a certain number of "peremptory challenges", by which I mean each side can challenge a juror and ask that he or she be excused without giving a reason therefor. In addition each side has challenges "for cause", by which I mean that each side can ask that a juror be excused for a specific reason. If you are excused by either side please do not feel offended or feel that your honesty or integrity is being questioned. It is not.

The clerk will now swear the entire jury panel for the voir dire examination.

Comment

While introductory comments are not actually instructions to the jury, the committee believes that it is appropriate to provide some suggested opening comments. Because of the scope of voir dire examination, the committee believes that the trial court should offer at least minimal guidance on the issues of presumption of innocence, burden of proof, functions of court and jury, and that charges are not evidence of guilt.

Although the suggested comments contemplate the use of a struck jury, with slight modification they can be used in any jury selection method.

The committee has also prepared suggested voir dire questions to be asked by the judge. See ICJI 003.

If there is a pro se defendant, this instruction will have to be modified accordingly.

ICJI 002 RECESS INSTRUCTION

INSTRUCTION NO.

During the course of this trial, [including the jury selection process,] you are instructed that you are not to discuss this case among yourselves or with anyone else, including any use of email, text messaging, tweeting, blogging, electronic bulletin boards, or any other form of communication, electronic or otherwise. Do not conduct any personal investigation or look up any information from any source, including the Internet. Do not form an opinion as to the merits of the case until after the case has been submitted to you for your determination.

Comment

I.C. § 19-2127. This is a short form instruction for use at recesses during jury voir dire and during trial *after* the court has given ICJI 108.

ICJI 003 SUGGESTED VOIR DIRE QUESTIONS

INSTRUCTION NO.

1. You have heard the charge made in the information against the defendant.

Other than what I have told you, do any of you know anything about this case, either through your own personal knowledge, by discussion with anyone else or from radio, television or newspapers?

SUGGESTED FOLLOW UP QUESTIONS WHERE THERE IS KNOWLEDGE OF THE CHARGE:

Do you have a state of mind with reference to the charges against this defendant which would in any way prevent you from acting with impartiality?

Do you feel that you can eliminate and disregard everything that you have heard or read pertaining to this case and render an impartial verdict based solely upon the evidence presented in this courtroom?

2. Are any of you related by blood or marriage to [defendant's name] or do you know [him] [her] from any business or social relationship?

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF DEFENDANT:

In which of those capacities have you known [defendant's name]?

Would your knowledge prevent you from acting with impartiality in this case?

Would your knowledge cause you to give greater or lesser weight to any statement that [he] [she] might make in this case by reason of such knowledge?

3. The individual who signed the complaint in this matter is [complainant]. Are any of you related by blood or marriage to [complainant], or do you know [him] [her] from any business or social relationship?

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF COMPLAINANT:

In which of those capacities have you known [him] [her]?

Would your knowledge prevent you from acting with impartiality in this case?

Would your knowledge cause you to give greater or lesser weight to any statement that [he] [she] might make in this case by reason of such knowledge?

4. The alleged victim in this matter is [name of victim]. Are any of you [related by blood or marriage to (victim), or do you know [him] [her] from any business or social relationship?] [employed by, own stock in, or have any business relationship with (victim)?]

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF VICTIM:

In which of those capacities have you known [victim]?

Would your knowledge prevent you from acting with impartiality in this case?

5. Does the relationship of guardian and ward, attorney and client, master and servant, landlord and tenant, boarder or lodger exist between any of you and [defendant's name] or [complainant]?

6. Are any of you a party in any civil action against [defendant's name]?

7. Have any of you ever complained against [defendant's name] or been accused by [complainant] in a criminal prosecution?

8. Have any of you ever formed or expressed an unqualified opinion that the defendant, [defendant's name], is guilty or not guilty of the offense charged?

9. I have introduced you to the lawyers representing the parties. Are any of you related by blood or marriage to any of the lawyers or do any of you know the any of the lawyers from any professional, business or social relationship?

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF COUNSEL:

Who do you know and how do you know them?

Would your knowledge of [name of lawyer] prevent you from acting with impartiality in this case?

Would your knowledge of [name of lawyer] cause you to give greater or lesser weight to the evidence presented by [him] [her]?

10. Do any of you have a religious or moral position that would make it impossible to render judgment?

11. Do any of you have any bias or prejudice either for or against [defendant's name]?

12. I will now read to you the names of those who may possibly testify in this cause. I will read their names slowly and I ask that if you know any of them in any capacity that you immediately advise me of this fact.

WITNESS LIST

1. [name of 1st witness]

SUGGESTED FOLLOW UP QUESTIONS WHERE THERE IS KNOWLEDGE OF POSSIBLE WITNESSES:

In what capacity have you known [name of witness]?

Do you feel you have a state of mind with reference to your knowledge of in the event of [his] [her] testifying in this cause which would prevent you from acting with impartiality?

Would your relationship or knowledge of [name of witness] cause you to give greater or lesser weight to [his] [her] testimony by reason of such knowledge?

[Repeat as necessary for each witness]

13. Are there any of you who are unwilling to follow my instructions to you, the jury, as to the law that you must apply in determining this case?

14. Are there any of you, if selected as a juror in this case, who is unwilling or unable to render a fair and impartial verdict based upon the evidence presented in this courtroom and the law as instructed by the Court?

15. Do any of you have any other reason why you cannot give this case your undivided attention and render a fair and impartial verdict?

Comment

The questions will need to be modified to cover the questions of multiple charges, defendants, and victims.

The usual areas of actual bias and implied bias are covered by the suggested questions. See I.C. ss 19-2019 and 19-2020. The trial judge should modify the questions to ensure that the relevant concepts are understood by the prospective jurors.

The scope and conduct of voir dire are controlled by ICR 24 and IRCP 47(i).