

Jury Trial Checklist¹

This checklist is adapted from *Benchbook for U.S. District Court Judges, Sixth Edition (March 2013)*.

- Call the case for trial.
- Before beginning the jury selection process, give the prospective jurors appropriate preliminary instructions and have them sworn. [MCR 6.412\(B\)](#).
- Note:** The scope of voir dire examination of prospective jurors is within the discretion of the court, and should be conducted for the purposes of discovering grounds for challenges for cause and of gaining knowledge to facilitate an intelligent exercise of peremptory challenges. Confine the examination to these purposes and prevent abuse of the examination process. [MCR 6.412\(C\)\(1\)](#).
- Voir dire the prospective jurors or permit the attorneys for the parties to do so. If conducting the examination, permit the attorneys for the parties to ask or submit further questions that the court considers proper. [MCR 2.511\(C\)\(1\)-\(2\)](#).
- Note:** On its own initiative or on the motion of a party, it is permissible to provide for a prospective juror or jurors to be questioned out of the presence of the other jurors. [MCR 6.412\(C\)\(2\)](#).
- Examples of possible voir dire questions:
 - Do you know anything about the case?
 - Do you have any personal concerns, commitments, or problems that would interfere with your ability to serve on the jury?
 - Do you have prior jury service? What type of case was it, and what was the result?
 - Have you ever been a witness in a case?
 - Have you ever been a party in a case?
 - Have you or a close relative or friend ever been the victim of a crime?

¹ For more detailed information on this topic, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*.

- Have you or a close relative or friend ever been accused of a crime?
- Are you, or family or friends involved in law enforcement?
- Are you, or family or friends involved in criminal defense?
- Do you have possible bias because of race, gender, or other reasons?
- Are you the member of any advocacy groups?
- Are you able to sit in judgment of another person or persons?
- Can you be fair and impartial?
- Elaborate on burden of proof, any special claims or defenses, and right to remain silent.
- After the jury is selected and before trial begins, have the jurors sworn with the following oath: "You shall well and truly try, and true deliverance make, between the people of this state and the prisoner at bar, whom you shall have in charge, according to the evidence and the laws of this state; so help you God/ "This you do under the pains and penalties of perjury." [MCL 768.14](#); [MCL 768.15](#); [MCR 6.412\(F\)](#).
- Both orally and in writing, provide the jury with pretrial instructions that are reasonably likely to assist in its consideration of the case. [MCR 2.513\(A\)](#).
- At the request of a party or on the court's own motion, determine whether to exclude any witnesses from the courtroom so that they cannot hear the testimony of other witnesses. [MRE 615](#).
- Allow prosecutor to make opening statement. [MCR 2.513\(C\)](#).
- Allow defense counsel to make opening statement (unless reserved). [MCR 2.513\(C\)](#).
- Allow prosecutor to call witnesses/defense counsel cross-examines witnesses.
- After the prosecutor has rested the prosecutor's case-in-chief, determine whether a directed verdict of acquittal is appropriate (on the defendant's motion or on the court's own initiative). If a motion for a judgment of acquittal is denied at the close of the government's evidence, permit the defendant to offer evidence even if the right to do so was not reserved. [MCR](#)

- [6.419\(A\)](#). State orally on the record or in a written ruling made a part of the record the reasons for granting or denying a motion for a directed verdict of acquittal. [MCR 6.419\(F\)](#). Alternatively, reserve a decision on a motion for directed verdict of acquittal and proceed with trial. [MCR 6.419\(B\)](#).
- Defense counsel makes opening statement if he/she has been permitted to reserve. [MCR 2.513\(C\)](#).
 - Allow defense counsel to call witnesses/prosecutor cross-examines witnesses.
 - After defense rests, allow prosecutor rebuttal.
 - After the close of all the evidence, determine whether a directed verdict of acquittal is appropriate (on the defendant's motion or on the court's own initiative). [MCR 6.419\(A\)](#). State orally on the record or in a written ruling made a part of the record the reasons for granting or denying a motion for a directed verdict of acquittal. [MCR 6.419\(F\)](#).
 - Outside the hearing of the jury, rule on counsel's requests for instructions and inform counsel of proposed action on the requests before their closing arguments. [MCR 2.512\(A\)](#); [MCR 2.513\(N\)\(1\)](#).
 - After the close of all the evidence, permit parties to make closing arguments, and impose reasonable time limits if warranted. The prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the prosecutor may offer a rebuttal limited to the issues raised in the defendant's argument. [MCR 2.513\(L\)](#).
 - Fairly and impartially sum up the evidence without commenting on the credibility of witnesses and without stating a conclusion on the ultimate issue of fact; instruct the jury that it is to determine for itself the weight of the evidence and the credit to be given to the witnesses and that jurors are not bound by the court's summation. [MCR 2.513\(M\)](#).
 - Orally give final instructions to the jury as to the law applicable to the case and comment on the evidence and the testimony and character of any witnesses, as the interest of justice may require. [MCL 768.29](#); [MCR 2.513\(A\)](#).
 - Advise the jury that it may submit any written questions about the jury instructions that arise during deliberations in a sealed envelope given to the bailiff; invite the jurors to ask any questions in order to clarify the instructions before they retire

to deliberate; provide a written copy of the final jury instructions to take into the jury room for deliberation, and provide the jury with a copy of electronically recorded instructions, if appropriate. [MCR 2.513\(N\)](#).

- If more than the number of jurors required to decide the case are left on the jury before deliberations are to begin, the names of the jurors must be placed in a container and names drawn from it to reduce the number of jurors to the number required to decide the case. Determine whether to retain the alternate jurors during deliberations; if alternate jurors are retained, instruct them not to discuss the case with any other person until the jury completes its deliberations and is discharged. If an alternate juror replaces a juror after the jury retires to consider its verdict, instruct the jury to begin its deliberations anew. [MCL 768.18](#); [MCR 6.411](#).
- Swear bailiff with the following oath: “You do solemnly swear that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial from separating from each other; that you will not suffer any communication to be made to them, or any of them, orally or otherwise; that you will not communicate with them, or any of them, orally or otherwise, except by the order of this court, or to ask them if they have agreed on their verdict, until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of their deliberations or the verdict they have agreed upon, so help you God.” [MCL 768.16](#).
- On retiring to deliberate, permit the jurors to take into the jury room their notes and final instructions, as well as the reference document, if one has been prepared, and any exhibits and writings admitted into evidence. [MCR 2.513\(O\)](#).
- As applicable, have the clerk give the reference document, exhibits, and verdict forms to the jury.
- Recess court during the jury deliberations.
- If questions arise during jury deliberations, convene with the parties, in the courtroom or by other agreed-upon means; read the question into the record, and ensure attorneys offer comments on an appropriate response; if warranted, provide the jury with a specific response to its question. Respond to all questions asked, even if the response consists of a directive for the jury to continue its deliberations. [MCR 2.513\(N\)](#).
- If the jury fails to arrive at a verdict before the conclusion of the first day’s deliberations, provide either for their overnight

sequestration or permit them to separate after admonishing them as to their conduct and fixing the time for their return to resume deliberations. Provide for safekeeping of exhibits.

- If a decision on a motion for a directed verdict of acquittal was reserved, decide the motion before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict; if the decision was reserved, decide the motion on the basis of the evidence at the time the ruling was reserved. [MCR 6.419\(B\)](#). State orally on the record or in a written ruling made a part of the record the reasons for granting or denying a motion for a directed verdict of acquittal. [MCR 6.419\(F\)](#).
- Have the jury return its verdict in open court. [MCR 6.420\(A\)](#).
- Before the jury is discharged, the court on its own initiative may (or on the motion of a party must) poll each juror in open court as to whether the verdict announced is his/her verdict. If polling discloses the jurors are not in agreement, discontinue the poll and order the jury to retire for further deliberations, or either (1) with the defendant's consent, or (2) after determining that the jury is deadlocked or that some other manifest necessity exists, declare a mistrial² and discharge the jury. [MCR 6.420\(D\)](#). Cut off polling as soon as disagreement is disclosed due to its potentially coercive effect. Do not question the jury to determine where it stands numerically.
- Accept verdict.
- Thank and discharge the jury. Direct the parties to retrieve the exhibits submitted by them as provided in [MCR 2.518\(B\)](#).
- If the verdict is "not guilty," discharge the defendant.
- If the defendant has been found guilty, determine whether he/she should be committed to custody and schedule sentencing hearing.
- Adjourn or recess court.

² Before declaring a mistrial, the court must give each defendant and the prosecutor an opportunity (on the record) to comment on the propriety of the order, and to state whether that party consents, objects, or has alternative suggestions. [MCR 6.417](#).

