

# HANDBOOK FOR JURORS

Serving in the  
13<sup>TH</sup> JUDICIAL CIRCUIT COURT  
OF THE STATE OF MICHIGAN

ANTRIM, GRAND TRAVERSE AND LEELANAU COUNTIES

Complimentary Copy



## State of Michigan



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**COUNTIES**  
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## HANDBOOK FOR JURORS IN THE ANTRIM, GRAND TRAVERSE AND LEELANAU COUNTY CIRCUIT COURT

### PURPOSE OF THIS HANDBOOK

The purpose of this handbook is to generally acquaint jurors with State Circuit Court procedures, to tell them about their duties and responsibilities, the nature of their work, its importance, and to define the meaning of language and terms used in court. Nothing in this handbook is to be regarded by jurors as instructions of law to be applied by them in any particular case. The Judge will instruct the jury in each separate case as to the law of that case. For example, in each criminal case, the Judge will tell the jury that a defendant charged with a crime is presumed to be innocent and the burden of proving guilt beyond a reasonable doubt is upon the prosecution. Jurors must follow the instructions of law given to them by the Judge in each particular case.

### IMPORTANCE OF JURY SERVICE

Jurors perform a vital role in the American justice system. The protection of our rights and liberties is achieved largely through the teamwork of Judge and jury who put into practice those principles of freedom which are our great heritage. The Judge determines the law to be applied in the case while the jury decides the facts. Thus, in a very important way, jurors become a part of the court itself.

Efficient jurors are men and women of sound judgment, absolute honesty and a complete sense of fairness. Jury service is a high duty of citizenship. The juror aids in the maintenance of law and order and upholds justice among our fellow citizens. His or her greatest reward is the knowledge that this duty was discharged faithfully, honorably and well.

In addition to determining and adjusting property rights, jurors may also be asked to decide questions involving a crime for which a person may be confined to prison. In a very real sense, therefore, the community must rely upon jurors for the protection of life, liberty and the pursuit of happiness.

## THE COURTS

In this country there are two court systems. They are the State Courts and the Federal Courts. This book is written for jurors chosen to serve in the Antrim, Grand Traverse and Leelanau County Circuit Court, which is a Michigan State Court. The types of cases which can be brought in this court have been determined by the Michigan Legislature in a manner consistent with the Michigan Constitution and the United States Constitution.

Cases in the Circuit Court are divided into two general classes. These classes are called civil and criminal.

Civil cases are suits in which persons who disagree over their rights and duties come into court to settle the matter. A typical civil case is one involving monetary damages. One party may claim that he should be paid under the terms of a contract. The other party disagrees and the court is then asked to decide who is right. The result depends on the law as described by the Judge and the facts as decided by the jury.

Criminal cases are those in which individuals are charged with breaking the criminal law. The charges are brought by the State of Michigan. Some examples of criminal charges in this court are those involving murder, armed robbery, larceny from a building, breaking and entering and criminal sexual conduct.

## COURTROOM ETIQUETTE

A court session begins when an Officer of the Court announces the opening of court.

Everyone in the court rises. The Judge then takes his or her place on the bench. When the court is adjourned, a similar procedure is used. Everyone will also rise as the jury enters and leaves the courtroom. Portable telephones of every type shall not be brought into the courthouse. No juror will carry on a conversation with another juror in the courtroom during the trial.

Jurors will be treated with consideration. Their comfort and convenience will be served whenever possible. They should bring to the attention of the Judge, through the Court Officer any matter affecting their service and should notify the court of any emergencies. In the event of a personal emergency, a juror may send word to the Judge through the Court Officer.

Jurors should not loiter in the corridors or vestibules. Embarrassing contacts may occur there with persons interested in the case which might cause the jury to disband and the parties to retry the case.

## THE CIVIL CASE

Here is an example of the kind of civil case jurors in the Circuit Court will help decide;

Let us call the case JOHN JONES v ROBERT SMITH. This means that John Jones has filed a case against Robert Smith.

John Jones is called the Plaintiff, which is the word used for the person who begins the case. Robert Smith is the Defendant. The Plaintiff and the Defendant are the parties.

The Plaintiff, John Jones, states his claim in a paper called the Complaint. The Defendant, Robert Smith, replies to the Complaint in a paper called the Answer. The Complaint and the Answer are the main pleadings in the case. The points in the pleadings upon which the parties disagree make up the issues of fact and law. The jury listens to the evidence, decides the facts, applies the facts to the law as described by the Judge and, in this way decides the case. A civil verdict is received when at least five out of six jurors agree upon it.

## THE CRIMINAL CASE

The person charged with a violation of the law is the Defendant. The charge against the Defendant is found within the written information. Each offense charged will usually be described in a separate count. The Prosecuting Attorney files these charges in court, usually after a citizen makes a complaint to the police.

After the information is filed, the Defendant appears in open court and the charge is read out loud. The Defendant is asked whether he or she pleads "guilty" or "not guilty." This procedure is called the Arraignment.

No trial is needed if the Defendant pleads "guilty" and admits to having committed the crime. But if the Defendant pleads "not guilty" or does not answer, a plea of "not guilty" is entered for the Defendant and the Defendant will proceed to trial.

The jury in a criminal case must determine the facts and the Judge instructs the jury as to the law. By applying the facts to the law the jury determines whether the Defendant is guilty or not guilty as to each charge or count. Possible punishment is not to be considered by the jury; that is the sole responsibility of the Judge.

The jury must consider separately each of the charges against the Defendant. It may find the Defendant not guilty of any of the charges, or guilty of all of the charges, or guilty of some of the charges and not guilty of others. Whatever verdict the jury reaches, it must be unanimous.

## THE VOIR DIRE EXAMINATION

A pool of prospective jurors is called an array and may contain from 25 to 75 persons. From this pool a jury will be selected. Six jurors will be selected to try a civil case, and 12 will be selected to try a criminal case. Alternate jurors may also be chosen but not named as alternate until the trial concludes.

The panel members are sworn to answer questions about their qualifications to sit as jurors in the case. This questioning process is called the voir dire. This is an examination conducted by the Judge and the lawyers. A deliberately untruthful answer to any fair question could result in serious punishment to the person making it.

The voir dire examination opens with a short statement about the case by the Judge. The Judge's purpose is to outline the case for the jurors and identify the parties, their lawyers and possible witnesses.

Questions are then asked to find out whether anyone on the panel has any personal interest in the case or knows of any reason why he or she cannot render an impartial verdict. The court also wants to know whether any member of the panel is related or personally acquainted with the parties, their lawyers or the witnesses. Other questions will determine whether any panel member has a prejudice or opinion that might be an improper influence. Any juror having knowledge of the case should disclose this to the Judge.

Parties on either side may ask that a member of the panel be excused. These requests, or demands, are called challenges.

A person may be challenged for cause if the examination shows he or she might be prejudiced. The Judge will excuse a juror from the panel if the cause given in the challenge is sufficient. There is no limit to the number of challenges for cause which either party may make.

The parties also have a right to a certain number of challenges for which no cause is necessary. These are called preemptory challenges. In a civil case, each side usually has three preemptory challenges. There are normally five such challenges available to each side in a criminal case. The preemptory challenge is a legal right that has been long recognized by law as a means of giving both sides some choice in the make-up of a jury. Jurors should clearly understand that being eliminated from the jury panel by a preemptory challenge is no reflection upon their ability or integrity.

All challenges are made in open court during the voir dire examination.

#### THE JUROR'S SOLEMN OATH

Once a jury is selected, it is their obligation to see that equal justice under law is rendered in the case to be tried. The Judge or the Clerk speaks:

“Members of the jury, will you please rise, raise your right hand, and be sworn?”

The jurors rise. Each holds up his or her right hand. The jurors face the Judge or the Clerk who is to administer the oath. That official slowly, solemnly, and clearly repeats the oath. Each juror indicates by an upraised hand that he or she takes this solemn oath.

Jurors not wishing to take an oath may request to affirm instead of swear.

#### CONDUCT OF THE JURY DURING THE TRIAL

Each juror should give close attention to the testimony and may take notes. Jurors are sworn to discharge their prejudices and follow the Court's instructions. A juror must render a verdict according to his or her best judgment.

Jurors should keep an open mind. They should not discuss the case before the testimony is complete and the case is submitted by the Judge. Human experience shows that once a person expresses his or her views they are reluctant to change them. Therefore, the law requires a juror not to express such views until the entire story has been told.

Throughout the trial, the jury may hear references to the rules of evidence. Some of these rules may appear strange to a person who is not an attorney. However, each rule has a purpose. The rules are the result of hundreds of years of experience in the trial of cases.

The mere fact that a lawsuit was started is not evidence in a case. The opening and closing statements of the lawyers are not evidence. A juror should disregard any statements made by a lawyer in argument that has not been proven by the evidence. A juror should also disregard any statement by a lawyer as to the law of the case if it is not in accord with the Judge's instructions.

Jurors are expected to use all the experience, common sense and common knowledge they possess. But they are not to rely on any private source of information. Thus, they should be careful, during the trial, not to discuss the case at home or elsewhere. A fact that a juror gets from a private source may be only half true. It may be a fact that can be explained or perhaps the law of evidence requires it should have no influence on the outcome. At any rate, it is only fair that the parties have a chance to know and explain or answer any facts that matter in the case.

If it develops during the trial that a juror learns elsewhere of some fact about the case, the juror should inform the court. The juror should not mention any such fact in the jury room. Individual jurors should never inspect the scene of an accident or perform experiments. If an inspection is necessary, the Judge will have the jurors go as a group to the scene. Demonstrations or experiments occur only in the courtroom.

Jurors must not talk about the case with others not on the jury and must not read about the case in the newspapers. They should avoid radio and television broadcasts that might mention the case. The jury's verdict must be based solely on the evidence and the Court's instructions as to the law.

If any outsider attempts to talk with a juror about a case while the trial is ongoing,

- 1) Tell the person it is improper for a juror discuss the case or receive any information except in the courtroom,
- 2) Refuse to listen if the outsider persists,
- 3) Report the incident at once to the Judge.

Jurors should refrain from discussing any subject with any attorney, witness, or party. Such contact may make a new trial necessary, and serious consequences may follow.

Some cases may generate public discussion. In that event the jury may be kept together, or sequestered, until the verdict is reached. This procedure is used to protect the jurors against outside influences, but it is an extremely rare circumstance that would require this procedure. Sequestration protects the jurors as well as the litigants and is not a sign that the Court does not trust the jury.

The jury elects their foreperson. The foreperson should be a person capable of presiding over the deliberations and giving every juror a fair opportunity to be heard.

Jurors must enter the discussion with open minds. They should freely exchange views. They should not hesitate to change their opinions if they are shown to be wrong.

In a criminal case, all jurors must agree on the verdict. In a civil case, unless the jury is otherwise instructed by the court, 5 out of 6 jurors must agree on the verdict.

The jurors have a duty to give full consideration to the opinion of their fellow jurors. They should try to reach a verdict whenever possible. However, no juror should give up an honest opinion which he or she is convinced is correct.

It would be dishonest for a Judge to decide a case by tossing a coin. It would be just as dishonest for a juror to do so.

The members of the jury are sworn to pass judgment on the facts in a particular case. They have no concern beyond that case. They violate their oath if they render their decision on the basis of the effect their verdict may have on other situations.

Ordinarily, jurors need not tell anyone how they arrived at a verdict. What occurs in the jury room may remain secret. Only if a Judge orders a juror to reveal such matters need there be a disclosure.

## SIX STAGES OF TRIAL

The trial proceeds when the jury has been sworn. There are usually six stages in any trial. They are:

- 1) The opening statements of the lawyers. Sometimes the opening statements are omitted,
- 2) Plaintiff, or the People, call witnesses and produce evidence to prove their claims,
- 3) Defendant may call witnesses and produce evidence to disprove the Plaintiff's case or, in a civil case, to prove the Defendant's affirmative claims,
- 4) Plaintiff may call witnesses to disprove what was said by the Defendant's witnesses,
- 5) Arguments are made by the lawyers on each side,
- 6) The Judge instructs the jury as to the law.



During the trial, witnesses called by either side may be cross-examined by the lawyers on the other side.

Throughout the trial, the Judge may be asked in the presence of the jury to decide questions of the law. Usually these questions concern objections to testimony that either side wants to present. The law requires that the Judge decide such questions.

A ruling by the Judge does not indicate he or she is taking sides. The Judge is merely saying, in effect, that the law does or does not permit that question to be asked.

It is possible that the Judge may decide every objection favorably to the Plaintiff or the Defendant. This would not mean the case should be decided by the jury for the Plaintiff or the Defendant. Even where the Judge decides every objection favorably to the Plaintiff or the Defendant, the jury may properly decide the case in favor of the opposite party.

The juror takes an oath to decide the case “upon the law and the evidence.” The Judge will instruct you about the law to be applied in this case. The evidence is the testimony given and exhibits introduced in the courtroom. Selection of evidence that is proper for the jury to consider is based upon the law of evidence.

#### THE ARGUMENTS OF COUNSEL

After all the evidence is admitted, the lawyers will discuss the evidence in their arguments. This helps jurors recall testimony that might have slipped their memory.

The chief purpose of the argument is to arrange the evidence in logical order. The lawyers fit the different parts of the testimony together and connect the facts.

It must be remembered that each attorney presents a view of the case that is most favorable to his or her own client. The attorney’s statements are usually balanced by the statements made by opposing counsel.

#### THE CHARGE TO THE JURY

The charge of a Judge to a jury in a Michigan Circuit Court is a statement of the rules of law. It is the jury’s duty to reach its own conclusion as to the facts. This is done by reviewing the evidence. The verdict is reached without regard to any perceived opinion of the Judge as to the facts. The Judge will never express any opinion as to how the jurors should decide the case.

## JURY VERDICTS

In both civil and criminal cases, it is the jury's duty to decide the facts and apply them to the principles of law described by the Judge in the final charge. The decision is made on the evidence introduced and the jury's decision on the facts is final. The jury's verdict is usually returned on a written form provided by the Judge and completed and signed by the Jury Foreperson. The verdict is read in open court and often the jurors are polled to make certain they agree upon the verdict.

## CONCLUSION

To decide cases correctly, jurors must be honest and intelligent. They must have both integrity and judgment. The jury system is based on these attributes and the efficiency of the jury system depends on them.

To meet their responsibility, jurors must decide the facts and apply the law impartially. They must not favor the rich or the poor. They must treat alike all men and women, corporations and individuals. Justice should be rendered to all persons without regard to race, color, creed, gender or economic condition.

The performance of jury service is the fulfillment of a civil obligation. Conscientious service brings its own reward in the satisfaction of an important task well done.

There is no more valuable work that the average citizen can perform in the fulfillment of one's citizenship than the full and honest discharge of jury duty. Follow these guidelines and the instructions of the Judge in a particular case in which you take part and you shall do justice.

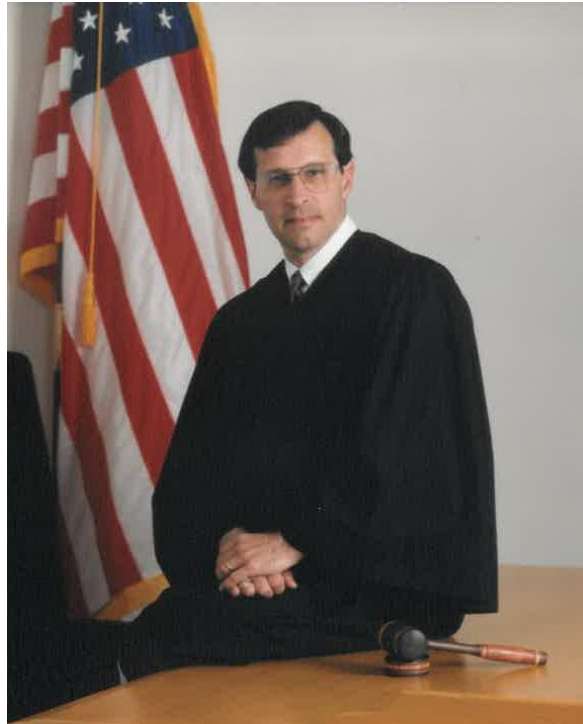
Sincerely,

Hon. Thomas G. Power  
Circuit Court Judge

Hon. Kevin A. Elsenheimer  
Circuit Court Judge

# JUDGES OF THE THIRTEENTH JUDICIAL CIRCUIT COURT

## HON. THOMAS G. POWER



Judge Power was elected to the bench in 1992 and re-elected in 1998, 2004, 2010, and 2016.

A Traverse City native, Judge Power attended Traverse City High School (now Traverse City Central) and received a degree in economics from Carlton College, Phi Beta Kappa. Judge Power attended the University of Michigan Law School and received a master's degree in taxation from New York University Law School before practicing law with the office of Elhart & Power. He represented Leelanau, Grand Traverse and Kalkaska Counties in the Michigan State Legislature for ten years and was a member of that body's Judiciary Committee. Judge Power previously served on the Grand Traverse-Leelanau Mental Health Board and was a member of the Traverse City School Board.

Judge Power is a member of the Traverse City Rotary Club and is a pilot for the U.S. Coast Guard Air Auxiliary. He is married and has two children.

## HON. KEVIN A. ELSENHEIMER



Judge Kevin Elsenheimer was appointed to the bench in 2017 to replace retired Judge Philip E. Rodgers, Jr.

Judge Elsenheimer is a native of Traverse City, and now owns the same East Bay Township farm where four generations of his family have lived. He attended Traverse City Senior High School (now Central) and received undergraduate degrees from Northwestern Michigan College and Michigan State University. He attended law school at Wayne State University. He served as an Assistant Prosecuting Attorney in Antrim County before forming the firm of Young, Graham, Elsenheimer & Wendling, P.C., based in Bellaire.

After five years as a trustee on the Bellaire School Board, the Judge served in the Michigan House of Representatives for six years, where he was elected Assistant Speaker Pro Tem, Assistant Minority leader, and Minority Leader. He chaired a Standing Committee on Tort Reform and served on the Judiciary Committee. He served in Gov. Rick Snyder's cabinet as Executive Director of the Michigan State Housing Development Authority (MSHDA). His prior service to the administration includes time as a Chief Deputy Director of the Department of Licensing and Regulatory Affairs (LARA), and as Executive Director of the Michigan Workers' Compensation Agency.

Judge Elsenheimer is married and has three children.

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