

CHAPTER 6 – Trials in CLJ

Art. II, Sec. 26, Mont. Const. Trial by jury. The right to trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

I. Trial *in Absentia*

MCA 46-16-122. Absence of Defendant from Trial. (1) in a misdemeanor case, if the defendant fails to appear in person, either at the time set for the trial or at any time during the court of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless good cause for continuance exists.

II. Judge Trial

- In a bench trial the judge decides both the issues of law and the issues of fact. MCA 25-31-803.
- A bench trial can occur, in criminal matters, only after the defendant has made a knowledgeable waiver of the right to a jury. MCA 46-17-201.
- After closing arguments the court may recess for deliberation or announce judgment immediately.
- The time for appeal starts to run the day following the oral pronouncement of judgment and sentence; and appeal time is calculated from that point.

III. Jury Trial

- The jury venire must be made up of people from the jurisdiction of the court in which the case is being heard.
- The veniremen will be given written or oral notice of the summons by the court or the acting officer of the court.
- The number of jurors in a CLJ case is 6 or another number agreed upon by the prosecutor and the defense before trial. MCA 3-15-107.
- Jurors are selected by putting the names of double the number needed at trial into a box to be pulled out.
- The first six will make up the jury.

Note: In some cases/courts a JP may limit your voir dire to a shorter time period. (i.e. 15 minutes for a DUI trial)

**** Be sure to discuss with your client that if he chooses a jury trial he/she may be required to pay for the additional costs of empanelling a jury. ****

Be aware of the *Cranford* confrontation rule and the constitutional magnitude of it

- don't allow yourself to be pushed around by a judge

- distinguish from objections for hearsay and Crawford objection to right to confrontation

IV. Basic Trial Proceedings

Please review the discussion regarding trial conduct contained in OPD's Criminal Practice manual at Chapters 7-11.

V. Rules of Evidence

Be aware of deadlines imposed by your local CLJ for submitting witness lists and documents.

Be aware also of the Child Hearsay Exception for criminal proceedings contained in MCA 46-16-220.