

Admonitory Instruction Subcommittee
PJC Oversight Committee

Report to Supreme Court Advisory Committee
On Plain Language Rewrite of Admonitory Instructions

Draft of June 28, 2007

For discussion at SCAC at October 18, 2007 meeting

Proposed Texas Rule of Civil Procedure 226a(I) (PJC 100.1)
Instructions to the panel before jury selection

Members of the Jury Panel [*or* Ladies and Gentlemen]: We are about to begin selecting a jury. Right now, you are members of what we call a panel. After the lawyers ask you some questions, 12 of you will be chosen for the jury. But before we start asking questions and choosing jurors, I will give you some information and then go over the instructions.

First of all, we thank you for being here. Even if you are not chosen for the jury, you are performing a valuable service that is your right and duty as a citizen of a free country.

Now I will give you some background about this case. This is a civil trial, which means it is a lawsuit that is not a criminal case. The parties are as follows: The plaintiff is _____, and the defendant is _____.

[description of the current case]

Jurors sometimes ask what it means when I say we want jurors who do not have any bias or prejudice. The word “prejudice” comes from “pre-judge” or judging something before you have all the information. We want jurors who will not pre-judge the case and who will decide the case based only on the evidence presented in court and the law that I explain.

If you are chosen for the jury, you will listen to the evidence and decide the facts of the case. I, as the judge, will manage the process and make sure the law is applied correctly. I assure you we will handle this case as fast as we can, but we cannot rush things. We have to do it fairly and we have to follow the law.

Every juror must obey the instructions that I am about to give you. If you do not follow these instructions, I may have to order a new trial and start this process over again. That would be a waste of time and money. It is also possible that you may be held in contempt or punished in some other way, so please listen carefully to these instructions.

These are the instructions:

1. Remember that you took an oath that you will tell the truth, so be honest when the lawyers ask you questions, and always give complete answers. Sometimes a lawyer will ask a question of the whole panel instead of just one person. If the question applies to you, raise your hand and keep it raised until you are called on.
2. Do not mingle or talk with the lawyers, the witnesses, the parties, or anyone involved in the case. You can exchange casual greetings like “hello” and “good morning.” Other than that, do not talk with them at all. They have to follow these instructions too, so they will not be offended. Also, do not accept any favors from the lawyers, the witnesses, the parties, or anyone involved in the case, and do not

do any favors for them. This includes favors such as giving rides and food. We ask you not to mingle or accept favors to avoid looking like you are friendly with one side of the case.

3. Do not discuss this case with anyone, even your spouse or friend. Do not allow anyone to discuss the case with you or in front of you. If anyone tries to discuss the case with you, tell me. We ask you not to discuss the case with others because we do not want you to be influenced by something other than the evidence presented in court.

Do you understand these instructions? If you do not, please tell me now.

The lawyers will now begin asking questions.

Proposed Texas Rule of Civil Procedure 226a(II) (PJC 100.2)
Instructions for the jury after it has been selected

Members of the Jury [*or* Ladies and Gentlemen]: You have now been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become officials of this court and active participants in our justice system.

[hand out the written instructions]

What you are receiving is a set of written instructions, and I am going to discuss them with you now. Some of them you have heard before, and some are new.

1. It is your duty to listen to and consider the evidence and to determine fact issues later submitted to you.
2. Please turn off all cell phones and electronic devices. Do not record or photograph any part of these court proceedings.
3. Please remember what I said about not mingling with those involved in this case, not accepting favors from those involved with this case, and not discussing the case with anyone. We ask you not to mingle or accept favors to avoid looking like you are friendly with one side of the case. We ask you not to discuss the case with others because we do not want you to be influenced by something other than the evidence presented in court.
4. Please discuss this case only with other jurors and only after I have given you the final instructions and sent you to the jury room to reach a verdict. This will be after you have heard all the evidence, all my instructions, and all the lawyers' arguments. We ask you not to discuss the case with your fellow jurors until the end of the case so that you do not form opinions about the case before you have heard everything.
5. Do not investigate this case on your own. Do not inspect places or items from this case unless they are presented as evidence in court. Do not let anyone do those things for you. This rule is very important because we cannot have a trial based on evidence not presented in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom. All the evidence must be presented in open court so the parties and their lawyers can test it and object to it. For example:
 - Do not try to get information about the case from outside this courtroom.
 - Do not go to places mentioned in the case to inspect the places for yourself.

- Do not look things up in law books, dictionaries, public records, or on the Internet.

These rules are very important. If a juror does any of these, tell that person to stop and report it to me immediately.

6. Do not tell other jurors your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another case. But keep it to yourself. Telling other jurors about it is wrong because it means the jury will be considering things that were not presented in court.
7. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.
8. Do not consider insurance or who might be covered by insurance unless I tell you to. Do not guess about who might or might not be covered by insurance.

Do you understand these instructions? If you do not, please tell me now.

After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked which side should win, so do not be concerned about that. Instead, you will need to answer the specific questions I give you.

As I have said before, if you do not follow these instructions, I may have to order a new trial and start this process over again.

Keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

Proposed Texas Rule of Civil Procedure 226a(III) (PJC 100.3)
General Instructions to the jury before answering the questions and reaching a verdict

Members of the Jury [*or Ladies & Gentlemen*]: You are about to go to the jury room to reach a verdict. This means you will apply the law and answer the questions I will give you.

Remember: You are to make up your own minds about the facts. You are the only judges of the credibility of the witnesses and the weight to give their testimony. But on matters of the law, you must follow the instructions I have given you before and those I will give you now. Please remember what I said about not discussing the case until you are in the jury room.

In just a moment I will be giving you a set of questions. Here are the instructions for answering the questions:

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on what was presented in court and on the law I explain to you. Please remember what I have said about not sharing your own special knowledge or experiences. This case must be decided only on the facts presented in court and on the law I give you.
3. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
4. All the questions and answers are important. No one should say that any question or answer is not important.
5. A yes answer must be based on a preponderance of the evidence unless you are told otherwise.
 - The term “preponderance of the evidence” is a legal phrase that means the greater weight and degree of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a yes answer, then answer no.

***Note:** Testing revealed a lack of comprehension of this term, but the Committee recommends no change.*

- Whenever a question requires an answer other than yes or no, your answer must be based on a preponderance of the evidence unless you are told otherwise.

6. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win.
7. Do not answer questions by drawing straws or by any method of chance.
8. Some questions might ask you for a dollar amount. Do not decide on a dollar amount by adding up each juror's amount and then figuring the average.
9. Do not trade your answers. For example, do not say "I will answer this question your way if you answer another question my way."
10. The answers to the questions must be based on the decision of at least 10 of the 12 jurors unless otherwise instructed. The same 10 jurors must agree on all the answers and then to the entire verdict. Specifically—
 - Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.
 - If all 12 jurors agree, the presiding juror, or the elected foreperson, signs the verdict certificate for the entire jury.
 - If all 12 jurors do not agree, the 10 or more jurors who agree each sign the verdict certificate.

As I have said before, if you do not follow these instructions, I may have to order a new trial and start this process over again. That would be a waste of time and money. It is also possible that you may be held in contempt or punished in some other way. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

[Definitions, questions and special instructions given to the jury will be transcribed here.]

When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

The presiding juror has these duties:

- The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

[Note: The Committee felt that this instruction was not necessary if each juror receives a copy of the charge.]

- To preside over your deliberations. This means the presiding juror will take the lead in discussions, write down the answers that 10 or more of you agree on, and see that you follow the instructions.
- To give written questions or comments to the judge. The presiding juror should give them to the bailiff, who will give them to me.
- To vote on the answers to questions, just as all jurors do.
- To sign the verdict if all 12 jurors agree or to get the signatures of all those who agree if the verdict is not by all 12.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Once you have reached a verdict, the presiding juror must notify the bailiff. Do not notify the bailiff that you have reached a verdict until—

1. you have answered all the questions,
2. the presiding juror has written down the answers, and
3. the presiding juror has signed the verdict certificate if all 12 jurors agree, or had all those who agree sign the verdict certificate if it is not signed by all 12.

Proposed Texas Rule of Civil Procedure 226a(III)/Proposed New PJC 100.3A
Exemplary Damages

If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

Preceding question (ii):

Answer Question (ii) for D1 only if all of you answered "Yes" to Question[s] (i) regarding D1. Otherwise, do not answer Question (ii) for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question (ii), you must unanimously agree (all of you) to your answer. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

Answer Question (iii) for D1 only if you answered "Yes" to Question (ii) of D1. Otherwise, do not answer Question (iii) for D1. [Repeat for D2.]

You are instructed that you must unanimously agree (all of you) on the amount of any award of exemplary damages.

These examples are given by way of illustration.]

Proposed Texas Rule of Civil Procedure 226a(III)/PJC 100.3B Certificates

Certificate: Regular Verdict

We, the jury, have answered the questions as indicated and now submit them as our verdict.

If all jurors agree, the presiding juror signs here:

Presiding Juror

Printed name

If all jurors do not agree, those ten who do agree on all the answers and to the entire verdict, sign here:

	Signature	Printed name
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

[Or]

Certificate: Mixed Unanimous and non-unanimous Verdict

[If some of the jury's answers must be unanimous and others need not be, the court should prepare the required certificate in a clear and simple manner, which will depend on the nature of the charge. The court may consider using the following certificate at the end of the charge:]

We, the jury, have answered the questions as indicated and now submit them as our verdict.

The presiding juror fills out the next section:

I certify that all jurors agreed on the these questions (Answer "All" or list the answers):

Presiding Juror

Printed name

If all of you did not agree on the answers to some questions, the jurors who did agree to those answers must certify as follows:

We agree to the answers to the following questions:

List the questions: _____

Signature

Printed name

[Insert the appropriate number of lines—11 or 5—for signatures and for printed names.]

[The court may also decide that a clearer way of obtaining the required certificate is to segregate the questions to which the jury's answers must be unanimous and request a certificate for each part of the charge.]

[Or]

Certificate: Second Part of Two-Part Trial with Unanimous Verdict

We, the jury, have answered the questions as indicated and now submit them as our verdict.

The presiding juror fills out the next section:

I certify that all jurors agreed on the these questions (Answer “All” or list the answers):

Presiding Juror

Printed name

Proposed Texas Rule of Civil Procedure 226a(IV) (PJC 100.5)
Instructions after a verdict

Thank you for your verdict.

I now release you from jury duty. I have told you that the only time you can discuss the case is with the other jurors in the jury room. Now you can discuss the case with anyone. But you can choose not to discuss the case; that is your right.

After you are released from jury duty, the lawyers and others can ask you questions to see if the jury followed the instructions, and they can ask you to give a sworn statement. You are free to discuss the case with them and to give a sworn statement if you want. But you may choose not to discuss the case and not to give a sworn statement; that is your right.

Proposed New 226a(V) /PJC 100.11
Optional Instructions on Jurors' Note-Taking

During the trial, if taking notes will help focus your attention on the evidence, you may take notes. If taking notes will distract your attention from the evidence, you should not take notes. Any notes you take are for your own personal use and may be taken back into the jury room and consulted during deliberations. Do not take your notes out of the courtroom. Do not share your notes with other jurors. Do not rely on another juror's notes.

Proposed New 226a(VI)/PJC 100.13 Instruction
Instructions to the jury on language interpreters

***Note:** The Committee decided not to include an instruction that requires a juror to inform the judge if the juror disagrees with the official interpretation.*

During this trial, one or more witnesses or documents may be introduced in another language and interpreted into English. The interpreter has been certified by the State of Texas and has sworn to truly and wholly interpret into English the evidence given in this case.

You may have special knowledge of the language being interpreted. But do not rely on your special knowledge and do not tell any other jurors any of your special knowledge.

The official testimony of the witness or document is the English interpretation, and you must rely on the official interpretation personally and in your discussions with other jurors. Do not tell any of the other jurors if your own interpretation differs from the official interpretation.

Proposed Rule 226
Jury panel's oath

Before the parties or their lawyers begin asking questions of those on the jury panel, the judge, or someone acting under the judge's direction, must swear in the panel members in substance as follows:

Do you swear or affirm that you will truthfully answer all questions asked of you concerning your qualifications as a juror, so help you God?

Proposed Texas Rule of Civil Procedure 236
Juror's oath

The judge, or someone acting under the judge's direction, must swear in the jurors in substance as follows:

Do you swear or affirm that you will render a true verdict, according to the law and the evidence, so help you God?

Proposed PJC 100.4
Additional instruction for a two-part trial

Members of the Jury [*or* Ladies and Gentlemen]:

In addition to these instructions, you must continue to follow all the other instructions I have given you.

[Additional definitions, questions, and special instructions given to the jury will be transcribed here.]

JUDGE PRESIDING

Proposed PJC 100.6
Instructions if permitted to separate

During this trial, you will be allowed to separate from each other in the evening.

I remind you of the rule I explained before: Do not discuss this case with anyone, even your spouse or friend. Do not allow anyone to discuss the case with you or in front of you. If anyone tries to discuss the case with you, tell me.

Proposed PJC 100.7
Instructions if jurors disagree about testimony

You have asked to hear testimony from the trial.

If you disagree about the testimony of a witness, please write down the exact point you disagree about, and I will have the court reporter search the record and read you the testimony of the witness. It will take some time for the court reporter to find this testimony and prepare to read it to you, so please be patient.

Proposed PJC 100.8
Direct and indirect evidence

During this trial, you may have heard two kinds of evidence. They are direct evidence and indirect evidence.

Direct evidence means a fact was proved by a document, by an item, or by testimony from a witness who heard or saw the fact directly.

Indirect evidence means the circumstances reasonably suggest the fact. Indirect evidence means that based on the evidence, you can conclude the fact is true. Indirect evidence is also called “circumstantial evidence.”

For example, suppose a witness was outside and saw that it was raining. The witness could testify that it was raining, and this would be direct evidence. Now suppose the witness was inside a building and the witness testified that people walked into the building with wet umbrellas. This could prove by indirect evidence that it was raining outside.

A fact may be proved by direct evidence or by indirect evidence or by both.

Proposed PJC 100.10
Instructions for a jury that cannot reach a verdict

You have told me you cannot reach a verdict.

If, in the interest of justice, you can end this case by reaching a verdict, you should.

But none of you should give in on what you believe is right or what you believe is the truth unless you are convinced to change your mind.

Continue to discuss the case carefully, listen to each other, and try your best to reach a verdict. Keep your minds open to every reasonable argument the other jurors present. Perhaps you will change your mind. That way, you can reach a verdict that is fair, and you can feel good about it because you did not give in on what you believe.

Do not assume your opinion is the only right one. You should be willing to consider other opinions. Do not be hasty in forming and expressing your opinions. But as I said, none of you should give in on what you believe is right or what you believe is the truth unless you are convinced to change your mind.

If you cannot reach a verdict, I may have to order a new trial. That means we would have to do this over again and our time and money spent on this trial would be a waste. So please do your best to reach a verdict.

Please return to the jury room and continue your discussions.

Proposed PJC 100.12

Instructions if someone exercises a privilege other than 5th Amendment privilege

You cannot assume anything from [*name of party*]'s claim of [*privilege asserted*] privilege.