

To: Judge Tracy Christopher and the Texas Supreme Court Advisory Committee
From: Julie Kirkendall
Date: November 4, 2009
Re: Pattern Jury Instruction

Pattern Jury Instructions by State: Table of Contents

Alabama	2
Alaska	2
Arizona	3
Arkansas.....	3
California	3
Colorado.....	4
Connecticut	5
Delaware	6
Florida	6
Georgia	7
Hawaii.....	7
Idaho	7
Illinois	8
Indiana	8
Iowa	9
Kansas.....	9
Kentucky.....	9
Louisiana.....	10
Maine	13
Maryland.....	13
Massachusetts.....	13
Michigan	14
Minnesota.....	14
Mississippi	15
Missouri	15
Montana	15
Nebraska	15
Nevada	16
New Hampshire.....	16
New Jersey	17
New Mexico.....	17
New York.....	17
North Carolina.....	18
North Dakota.....	18
Ohio	18
Oklahoma.....	20
Oregon	20
Pennsylvania	20
Rhode Island	21

South Carolina.....	21
South Dakota.....	21
Tennessee.....	21
Utah	21
Vermont	22
Virginia	22
Washington	23
West Virginia	24
Wisconsin.....	25
Wyoming	25

ALABAMA

Alabama Pattern Jury Instruction 1.19: Questions by the Jury During Deliberation

If during your deliberations a question arises which you wish to address to the Court, it should be reduced to writing so there will be no misunderstanding as to what is requested. You will then give this question to the bailiff who will deliver it to me. Upon consideration of the question and discussion with counsel the Court will make an appropriate answer.

Notes on Use:

This charge may be given at any time the judge deems appropriate. It seems better judgment *not* to encourage the asking of questions by jurors by suggesting how to do it. It is suggested that the bailiff be instructed that in the event the jury desires to ask a question while deliberating that he request the foreman of the jury to reduce the question to writing for delivery to the judge. After the question has been considered and discussed with counsel, you will then decide what response you will make. If it is a question that requires a discussion with the jury, the jury should be placed in the jury box.

ALASKA

02.29 Closing Instruction — Jurors' Communication With Court

If it becomes necessary during your deliberations to communicate with me, you may give the bailiff a note. The note should be signed by your foreperson or by one or more members of the jury and should contain the date and time of the communication. No member of the jury should ever communicate with me by any means other than a signed note.

Judges sometimes receive written questions from jurors during their deliberations. Although I cannot always answer those questions, if you desire to ask a question, you may write the question on a piece of paper and hand it to the bailiff. A delay will occur prior to a response to your question, since I must first convene the attorneys for consideration of the question.

The law prohibits the bailiff from answering questions about the case or providing you with any books or materials. The bailiff is forbidden to communicate with any juror about the substance of the case.

If you would like to re-hear the testimony of a witness, you may send me a note, and I will decide whether you should hear the testimony again. No new evidence will be presented.

ARIZONA

Arizona Pattern Jury Instructions – Civil Standard 6: Impasse in Jury Deliberations

I have been informed you are having difficulty reaching a verdict. This instruction is offered to help you, not to force you to reach a verdict.

You may want to identify areas of agreement and disagreement and discuss the law and the evidence as they relate to the areas of disagreement.

If you still disagree, you may wish to tell the attorneys and me which issues, questions, law or facts you would like us to assist you with. If you decide to follow these steps, please write down the areas of disagreement and give the note to the bailiff. We will then discuss your note and try to help you.

Use Note:

This instruction should not be routinely given. However, the instruction should be used only if the jury indicates it is at an impasse.

The options for helping the jury identified in the Comment to Rule 39(h) include giving additional instructions, clarifying earlier instructions, directing the attorneys to give additional closing argument, reopening the evidence for limited purposes, or a combination of these measures. The list is not exclusive.

ARKANSAS

No relevant jury instruction could be found in this state's pattern jury instructions.

CALIFORNIA

California Civil Jury Instructions 5009 Predeliberation Instructions

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently.

Please do not state your opinions too strongly at the beginning of your deliberations. Also, do not immediately announce how you plan to vote. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

You should use your common sense, but do not use or consider any special training or unique personal experience that any of you have in matters involved in this case. Your training or experience is not a part of the evidence received in this case.

Sometimes jurors disagree or have questions about the evidence or about what the witnesses said in their testimony. If that happens, you may ask to have testimony read back to you or ask to see any exhibits admitted into evidence that have not already been provided to you. Also, jurors may need further explanation about the laws that apply to the case. If this happens during your discussions, write down your questions and give them to the [clerk/bailiff/court attendant]. I will do my best to answer them. When you write me a note, do not tell me how you voted on an issue until I ask for this information in open court.

[At least nine jurors must agree on each verdict and on each question that you are asked to answer. However, the same jurors do not have to agree on each verdict or each question. Any nine jurors is sufficient. As soon as you have agreed on a verdict and answered all the questions as instructed, the presiding juror must date and sign the form(s) and notify the [clerk/ bailiff/court attendant].

[or]

At least nine jurors must agree on a verdict. As soon as you have agreed on a verdict, the presiding juror must date and sign the form and notify the [clerk/bailiff/court attendant].]

Your decision must be based on your personal evaluation of the evidence presented in the case. Each of you may be asked in open court how you voted on each question.

While I know you would not do this, I am required to advise you that you must not base your decision on chance, such as a flip of a coin. If you decide to award damages, you may not agree in advance to simply add up the amounts each juror thinks is right and then make the average your verdict.

You may take breaks, but do not discuss this case with anyone, including each other, until all of you are back in the jury room.

COLORADO

4:2a Questions During Deliberations

Once you begin your deliberations, if you have a question about the evidence in this case or about the instructions (or) (verdict forms) (special interrogatories) that you have been given, your Foreperson should write the question on a piece of paper, sign it and give it to the bailiff who will bring it to me.

(The Court) (I) will then confer with the attorneys as to the appropriate way to answer your question. However, there may be some questions that, under the law, (the Court) (I) am not permitted to answer. If it is improper for (the Court) (me) to answer the question, (the Court) (I) will tell you that. Please do not speculate about what the answer to your question might be or why (the Court) (I) am not able to answer a particular question.

Notes on Use:

The trial judge should instruct jurors about what they should do if they have a question during deliberations and how the judge will deal with it. Additionally, judges should be directed by the Chief Justice to attempt to answer the jurors' questions. If the question cannot be answered, the judge should explain why that is so in a courteous and complete manner.

CONNECTICUT

2.9-3 Process for Jury's Deliberations

At this time, ladies and gentlemen, I will explain the verdict form[s] to you and then you will be escorted to the jury deliberation room. You should not begin your deliberations until the exhibits and the verdict form[s] are delivered to you by the clerk. This will occur after the lawyers have had an opportunity to check that all the exhibits are present and to tell me if they think that any different or additional instructions to you are necessary. I will recall you to the courtroom if I conclude that further instructions are needed.

When the exhibits are delivered to you, your first task will be to elect a foreperson who will serve as your clerk. After you have received the exhibits and then elected the foreperson, you will begin deliberating. If you have questions during your deliberations, the foreperson should write the jury's question on a sheet of paper, sign and date it, and knock on the door. The marshal will then bring the question to me, and I will respond in open court. It may take a few minutes to assemble the staff before you are brought to the courtroom to hear the response. Please try to make any questions very precise. We cannot engage in an informal dialogue, and I will respond only to the question on the paper.

If you need to have any testimony or any part of my instructions (played / read back), follow the same procedure: on a sheet of paper specify what it is that you want to hear as precisely as you can. For example, if you know that you want to hear only the direct examination or only the cross examination of a particular witness, specify that. Otherwise, we will have to repeat the whole testimony.

We will now go over the verdict form[s]. *<Pass out verdict forms to each juror and explain the circumstances for the use of each form.>*

Your verdict must be unanimous. There is no such thing as a majority vote of a jury in Connecticut. Rather, you must all agree on the verdict.

No one will hurry you. If you are not able to reach a verdict today, you will resume your deliberations tomorrow. You may have as much time as you need to reach a verdict.

Marshal, please escort the jury to the jury deliberation room.

Notes:

This instruction may be adapted to be given prior to or after discharge of alternates.

DELAWARE

No relevant jury instruction could be found in this state's pattern jury instructions.

FLORIDA

7.2 Use Of Notes During Deliberations; Election Of Foreman; Verdict Forms

Any notes you have taken during the trial may be taken to the jury room for use during your discussions. Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. For this reason, you should not be unduly influenced by anyone's notes, including your own, and you should not give greater weight to a particular piece of evidence or testimony merely because it is mentioned in a juror's notes.

Your notes are not a substitute for your own memory or that of other jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial. You should consider the recollections of other jurors, but you need not abandon your own recollection of the evidence and testimony merely because your recollection differs from the written notes of another juror. At the conclusion of the trial, the bailiff will collect all of your notes and immediately destroy them. No one will ever read your notes.

When you retire to the jury room, you should select one of your number to act as the foreperson to preside over your deliberations and sign your verdict[s]. Your verdict[s] must be unanimous, that is, your verdict[s] must be agreed to by each of you.

You will be given (state the number) forms of verdict, which I shall now read to you:

[If you find for the plaintiff[s], your verdict will be in the following form:
(read form of verdict).]

[If you find for the defendant[s], your verdict will be in the following form:
(read form of verdict).]

When you have agreed on your verdict[s], the foreperson, acting for the jury, should date and sign the appropriate form[s] of verdict. You may now retire to consider your verdict[s].

If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split or the reason for the communication.

Notes On Use:

2. When final instructions are read to the jury before the attorneys' closing arguments, this instruction should not be given at that time. It should be given following closing arguments, just before the jury retires to deliberate.

GEORGIA

No relevant jury instruction could be found in this state's pattern jury instructions.

HAWAII

Hawaii Civil Jury Instruction 9.3: Verdict

Remember that you are the judges of the facts in this case. Your only interest is to seek the truth from the evidence presented.

From the time you retire to the jury room to begin your deliberations until you complete your deliberations, it is necessary that you remain together as a body. You should not discuss the case with anyone other than your fellow jurors. If it becomes necessary for you to communicate with me during your deliberations, you may send a note by the bailiff.

Your verdict will consist of answers to the questions on the verdict form. You will answer the questions according to the instructions I have given you and according to the directions contained in the verdict form.

At least ten of you must agree on each answer required by the verdict form. The same ten jurors need not agree on all answers, but at least ten jurors must agree on each answer. Each of the ten must be able to state, when you return to the courtroom after a verdict is reached, that his or her vote is expressed in the answer on the verdict form.

As soon as ten or more of you agree upon each answer required by the directions in the verdict form, the form should be dated and signed by your foreperson. The foreperson will then notify the bailiff by a written communication that (1) the jury has reached a verdict; and (2) at least ten of the jurors have agreed as to each answer required by the verdict form. The bailiff will then arrange to have you return with the verdict form to the courtroom.

Bear in mind that you are not to reveal to the court or anyone else how the jury stands on the verdict until at least ten of you (and I repeat, at least ten of you) have agreed on it.

IDAHO

Idaho Jury Instructions (Civil) 1.11 – Communications with court

If it becomes necessary during your deliberations to communicate with me, you may send a note signed by one or more of you to the bailiff. You should not try to communicate with me by any means other than such a note.

During your deliberations, you are not to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.

ILLINOIS

No relevant jury instruction could be found in this state's pattern jury instructions.

INDIANA

3.19 Jury Management

Verdict forms have been prepared. The bailiff will bring them to you. Before deliberating, you must select a foreperson. The foreperson will preside over your deliberations and must sign and date the verdict[s] upon which you all agree.

You will be under the supervision of the bailiff who will be in attendance but not in the jury room during deliberations. Once you begin your deliberations, do not use cellular telephones or any other device to communicate with anyone outside the jury room. If you need to make a telephone call during deliberations, inform the bailiff.

If you leave the jury room during deliberation, you will be in the charge of the bailiff. While out of the jury room or separated from the other jurors, you must not:

- (1) talk about the case among yourselves or with anyone else;
- (2) talk to the attorneys, parties, or witnesses;
- (3) express any opinion about the case; or
- (4) listen to or read any outside or media accounts of the trial.

If you have a question, put it in writing and give it to the bailiff who will deliver it to the court. The court will respond appropriately.

Do not sign any verdict form for which there is not unanimous agreement. The foreperson must return all verdict forms into open court. When you have reached your verdict[s], please notify the bailiff. The bailiff will return you to court with your verdict[s] where the judge will review and read your verdict[s]. After you all agree to your verdict[s], you are under no obligation to discuss it with anyone.

Comments:

For a discussion on options trial courts can employ to provide assistance to enable a deliberating jury to resolve difficulties, *see Tincher v. Davidson*, 762 N.E.2d 1221 (Ind. 2002), wherein the Indiana Supreme Court concluded under appropriate circumstances and with advance consultation with parties and opportunity to voice objections, a trial court, for example:

1. may directly seek further information or clarification from the jury regarding its concerns;
2. may directly answer the jury's question (either with or without directing the jury to reread the other instructions);

3. may allow counsel to briefly address the jury's question in short supplemental arguments to the jury; or
4. may employ other approaches or a combination thereof.

IOWA

Suggestions for Instructing Juries:

8. Telling the jurors the procedure to use if they have any questions during their deliberations. For example:

"Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If however, any of you feel it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict."

"The court attendant who has been working with me on this case is in the same position as I am. [He] [She] has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put [him] [her] on the spot by asking [him] [her] any questions. You should direct your questions to the Court and not to the court attendant."

KANSAS

No relevant jury instruction could be found in this state's pattern jury instructions.

KENTUCKY

§ 13.08 Time for Giving Instructions

Ky. CR 51 (2) requires that the written instructions be given before the arguments to the jury. This means, at least by custom, that they are to be read aloud to the jurors. It is customary also that the written instructions then be handed to one of the jurors when they retire to deliberate, though it would more faithfully comply with the letter of the Rule if copies were made available for all of the jurors to follow as the instructions are being read aloud by the trial judge.

Though not authorized by the Rule, the giving of an instruction after the arguments of counsel, or even after the jury has retired, is not necessarily prejudicial. In fact, it has been held an abuse of discretion for the court to refuse to give an essential instruction (on damages) requested by counsel upon discovery that it had been omitted. Logic would suggest, however, that if it is truly an instruction, as distinguished from clarifying information, it should be in writing.

The court may give information to the jury upon its request after it has retired to deliberate. Under *Ky. RCr 9.74* it has been held that a proper explanation of an instruction given in a criminal case did not violate the requirement of *Ky. RCr 9.54* that the instructions be given in writing. Presumably the same would hold true in a civil case. Needless to say, the handling of such requests for clarification calls for the greatest of care on the part of the trial court.

"When ... an instruction is given [or amended] after the argument is closed, the court should always permit the attorneys, if they desire so to do, to reargue the case, at least to the extent that the issues are affected by the belated instruction."

If the instructions are clear, the trial court cannot be required to explain or enlarge upon them.

It is error for the trial court to enter the jury room or otherwise to communicate with the jurors, without the consent of the parties, while the jury is deliberating.

LOUISIANA

Louisiana Civil Jury Instructions § 2.15. Final instructions prior to deliberation

This completes my remarks on the law applicable to this case. In summary, let me recall to you the essence of my remarks. The plaintiff has the burden of proving the following elements by a preponderance of the evidence. He must demonstrate:

- (1) that the injury which he says he suffered was, in fact, caused by the conduct of the defendant;
- (2) that the conduct of the defendant was below the standards which I have told you are applicable to the defendant's conduct; and
- (3) that there was actual damage to the plaintiff's person or his property.

If you are satisfied that the plaintiff has established these three elements, then plaintiff is entitled to recover and you should return a verdict for the plaintiff, unless the defendant has proved by a preponderance of the evidence that the plaintiff contributed to his own injury by his own sub-standard conduct. If the defendant has proved that plaintiff was at fault himself and his fault contributed to his own injury, then you should assign a percentage of fault or responsibility to the plaintiff on the forms that I will provide to you. If the plaintiff has failed to establish these three elements of his case by a preponderance of the evidence, then you must return a verdict for the defendant.

If you decide to return a verdict for plaintiff, then you will make an appropriate award according to the instructions which I have given you on the subject of damages.

You will recall that I told you at the beginning of the trial that you—and not I—are the judges of the facts. If I have made any comments during the trial, or asked any questions myself, they were not intended to indicate in any way how you should decide

a question of fact or whether you should believe or disbelieve a particular witness. If anything I have said or done seemed to indicate that, you must disregard that and form your own opinion.

I am required to tell you about all of our law which seems applicable to this case. Whether some of my instructions apply depends upon what you find the facts to be. Even though I have instructed you on various subjects, including damages, you should not treat my instructions as indicating which party is entitled to a verdict in this case.

[Our law will not permit you to decide an issue by chance, such as by the flip of a coin or the drawing of lots. As to a percentage of fault to be assigned, if any, or an amount of damages, you may not arrive at that figure by agreeing in advance to an average of various individual amounts advanced by jurors. You must reach these determinations by your own independent consideration and judgment, and nine of you must ultimately agree on the percentage on the figure in question, or on a denial of an award altogether.]

When you retire for your deliberations, you may take with you, if you wish, a complete copy of all of my instructions to you, or you may ask for a copy to be sent to you later. You may also ask to have in the jury room any document or object that has been admitted into evidence, if you think a physical examination of that document or object will help you reach a verdict.

You will remember that I told you at the beginning of the trial that you were not to discuss the case among yourselves. I now remove that restriction. It is now your duty to consult with one another and to deliberate, with a view toward reaching agreement, if you can do so without violence to your individual judgment. You each must decide the case for yourself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when you are convinced that you are wrong. However, you should not be influenced to vote in any way on any question which you have to decide by the fact that a majority of your fellow jurors favor such a decision. In other words, you should not surrender your honest convictions for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

Let me say that it is usually not a good idea for a juror, when he first enters the jury room, to make an emphatic expression of his opinion on the case or announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be at issue, and he may hesitate to back down from an announced position, even if he is shown to be wrong. Remember that you are not advocates in this matter, but rather you are judges. The final test of the quality of your service will lie in the verdict which you return to the court, not in the opinions any of you may hold as you go to the jury room. Your contribution to the judicial system will be to arrive at a just and proper verdict in this case. To that end, I remind you that in your deliberations in the jury room there can be no triumph except the ascertainment and declaration of the truth.

You are twelve in number. Louisiana law requires that nine of you agree in order to render a verdict for either side. When nine of you are of the same opinion about this case, that ends your deliberation and that opinion should be your verdict.

You are being asked to return a verdict in this case by answering certain specific questions which will be posed to you. [*Verdict form should be explained.*]

The first thing you should do when you retire to the jury room is to choose from your number a person to represent you in returning the verdict. That person may be male or female. When you have reached a verdict, your representative will record that verdict in its entirety on the appropriate form. He or she should then sign the form and date it and notify the bailiff that you have reached a verdict.

Finally, I remind you again that you represent our community in the determination of this dispute. The community appreciates your service on this jury, and at the same time expects you to reach a fair and impartial verdict.

Members of the jury, you will now retire to consider your verdict. Please follow the directions of the bailiff and other court employees as you leave.

In an appropriate case, particularly one with a complicated set of interrogatories to the jury, the court might want to add something like the following:

[You are being asked to return a verdict on what is called a special jury verdict form. Louisiana law requires that nine or more of you agree in order to answer a question on this jury verdict form. When nine or more of you agree about a question you must answer, that should end your deliberation on that question. Your representative should record that answer, and you should move on to the next question. [Each of your votes is separate. By that I mean you are free to vote as you wish on each question, regardless of how you might have voted on a previous question.] When you have answered all the questions, your representative should reflect those answers on the form and return it to me. Each of you should keep the special jury verdict forms that you have been given and should record your own vote on each question, since the lawyers might ask me to “poll” the jury to find out how each of you voted on each question.

If your deliberations last more than a day, then at the end of each day, I will collect the forms from you along with the jury instruction book. At the end of your deliberations for the whole trial, I will also collect these individual forms from you.

If you recess during deliberations, or if your deliberations should last more than one day, you must follow all of the instructions that I have given you about your conduct during the trial. You must not discuss the case with anyone outside of the jury room, even another juror. You may only discuss the case with your fellow jurors in the jury room and only when all of your fellow jurors are present. If you want to send a message to me at any time, you may give a written message or question to the bailiff, who will be nearby, and he will bring it to me. I

will then respond as promptly as possible, either in writing or by having you come back into the courtroom. I am required to disclose to the lawyers what your message or question is and what my response is going to be before I answer your question.]

MAINE

§ 8-1 Introduction: Jury Communications:

In many cases there will be some communication with the jury between final charge and return of the verdict. Generally, these communications will fall into five areas: readback of testimony, review of previous instructions or further instructions on some specific point, requests to examine certain materials produced at trial, indication of difficulty in reaching a verdict, and separation.

When the jury does send a note or otherwise communicate with the court, the contents of the communication should be fully disclosed to the parties. *State v. Tremblay*, 2003 ME 47 , PP 9-13. Good practice for handling such communications could include the following: (1) the jury's communication should be put in writing or stated on the record, (2) it should be marked as an exhibit or otherwise identified in the record, (3) it should be shown, or read fully, to counsel, (4) counsel should be given the opportunity to suggest or comment on the appropriate response, and (5) the court should inform counsel of the substance of the response to the jury, and assure that the response, and the manner of communicating the response, appears in the record. *Id.*, P 11.

MARYLAND

No relevant jury instruction could be found in this state's pattern jury instructions.

MASSACHUSETTS

§ 24.6.2 Questions from the Jury

One of the duties of the foreperson of the jury is to write down any questions the jury has for the court during deliberations. A typical question is to ask for a restatement of a portion of the charge, such as the difference between negligence and gross negligence. Each question is handed to the court officer and brought to the court, who then shares it with counsel.

It is common for the court and counsel to have an informal discussion of the question--particularly if the court reporter has left the courtroom and is not immediately available. If there is any disagreement among counsel concerning the answer to the question, the informal discussion will be followed by an opportunity to state positions on the record.

Most questions from a jury will result in the jury returning to the courtroom for further instructions by the court. More rarely, a question will be answered in writing. Each question and written answer is marked and becomes part of the record.

MICHIGAN

Michigan Civil Jury Instructions 60.01: Jury Deliberations

When you go to the jury room, your deliberations should be conducted in a businesslike manner. You should first select a foreperson. She or he should see to it that the discussion goes forward in an orderly fashion and that each juror has full opportunity to discuss the issues.

When at least five of you agree upon a verdict, it will be received as your verdict. In your deliberations, you should weigh the evidence with an open mind and consideration for each other's opinions.

If differences of opinion arise, you should discuss them in a spirit of fairness and frankness. You should express not only your opinion but also the facts and reasons upon which you base it.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you are convinced that it is wrong. However, none of you should surrender your honest conviction as to the weight and effect of the evidence or lack of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

If you wish to communicate with me or examine the exhibits while you are deliberating, please have your foreperson write a note and give it to the bailiff.

During your deliberations, and before you reach a verdict, you must not disclose anything about your discussions to others outside the jury room, not even how your voting stands. Therefore, until you reach a verdict, do not disclose that information, even in the courtroom.

During your deliberations you may not communicate with persons outside the jury room (other than the Judge), or seek information by any means, including cellular telephones or other electronic devices.

If you discover a juror has violated my instructions, you should report it to me.

MINNESOTA

Minnesota Practice Series Jury Instruction Guides (Civil) 10.45 - Communication Between the Judge and Jury

The Minnesota Civil Trialbook § 16 provides that the court may receive written questions from the deliberating jury. When the jury communicates with the court, the court should “review the propriety of any answer with counsel, unless counsel have waived the right to participate or cannot be found after reasonable and diligent search documented by the court.” The court may review the answer with counsel either in person or by telephone. The answer

to the question should then be made part of the record and given in open court, unless counsel stipulate to some other procedure.

MISSISSIPPI

No relevant jury instruction could be found in this state's pattern jury instructions.

MISSOURI

No relevant jury instruction could be found in this state's pattern jury instructions.

MONTANA

A reliable copy of this state's pattern jury instructions could not be located.

NEBRASKA

Nebraska Jury Instructions Civ. 5.01 Submission to the Jury

This case is now ready to be submitted to you for your consideration. [As I said to you at the beginning of the trial,] (*It, it*) is your duty to determine what the facts are. You must approach this task with open minds—consulting with one another, freely and honestly exchanging your views concerning this case, and respectfully considering the views of the other jurors. Remember, you are not partisans or advocates. Do not hesitate to reexamine your own views and to change your mind if reason and logic so dictate.

When you get to the jury room, the first thing you must do is to select one of you to be the presiding juror, the person who will preside over your deliberations. It is the presiding juror's job to see that a verdict is fairly reached and that each juror has a chance to speak fully and freely on the issues in this case.

A verdict reached during the first six hours of your deliberation must be agreed to by all of you, that is, it must be unanimous. After six hours of deliberation, you may reach a verdict agreed to by ten or eleven of you. If your verdict is unanimous, it should be signed by the presiding juror only. If your verdict is not unanimous, it should be signed by each of the ten or eleven jurors who do agree to it.

(If you do not agree on a verdict by o'clock (*this afternoon, this evening, .m.*), you may separate, You may separate for noon and evening meals whenever you choose and, if you do not reach a verdict today, you may separate at any time you choose) and return for further deliberation at o'clock (*tomorrow morning, .m. tomorrow, etc.*). If you do separate, then, during that time, you are not allowed to discuss this case with anyone, even another juror.

Verdict forms have been prepared for you, and you will have them in the jury room. You are to complete only one of them, but you are to return them all.

[In the jury room, you will have these instructions and the exhibits in this case and forms on which you are to record your verdict *(and here identify anything else the jury will take with them to the jury room)*.]

[If you have any questions, please write them out and give them to *(here designate appropriate person)*, who will give them to me. I may need to assemble the attorneys and confer with them before I respond.]

[If you need to get a message to anyone outside of the jury room, for example, to tell a family member that you will be working late, let *(here designate appropriate person)* know *[in writing]*.

NEVADA

A reliable copy of this state's pattern jury instructions could not be located.

NEW HAMPSHIRE

§ 1.9 Standard Final Instruction

Members of the jury:

The principles of law given to you in these instructions, as I said before, are intended to guide you in reaching a fair and just verdict in this case which is of utmost importance to the parties as well as the court. You should decide the facts of this case without passion, without sympathy, and without prejudice but with honesty and understanding. You should be conscientious of a just result in this case as that is your highest duty as officers of this court. (Explain use of verdict form.)

Unlike verdicts in criminal cases, which are delivered in open court, a verdict in a civil case such as this one is given in writing and delivered to me by the court officer to be opened in the presence of counsel in chambers. When you have reached a verdict, knock on the door of the deliberation room and deliver the written verdict to the court officer in the furnished envelope.

Your verdict must be unanimous, that is, you must all agree. In order to ensure that the verdict is in fact unanimous, the verdict of the jury as a whole must be the verdict of each of you individually.

The duty of the foreperson of the jury is to act very much like the chairperson of a committee, making certain that each and every member of the jury is given a full and fair opportunity to present his or her views and opinions on each of the issues presented to you for determination. You are each instructed to consider each other's views and opinions and in the final instance reach your own conclusions.

In the event you have some question relative to my instructions or the legal issues presented in this case, please put the question in writing, have the foreperson sign the question and, if you remember to do so, write down the time you presented the question to the court officer. He will then present the question to me for response which I will furnish you after I have had the opportunity to discuss the question and proposed answer with counsel. I cannot comment on the evidence, as that is not my role. As I said previously, it is up to you to evaluate the evidence and you must use your own recollection of it.

You may now retire and commence your deliberations, and I will see to it that the exhibits that have been entered in this case are delivered to you.

NEW JERSEY

1.12U Communications With Court (Long Version)

After you have begun deliberations, all communications are done by sending a note from your foreperson. Knock on the door and hand the note to the attendant. No member of the jury should communicate with anyone outside the jury room except in this fashion. No member of the jury should indicate at any time how the jury stands numerically or otherwise until after you have reached a verdict. When I receive your note that you have reached a verdict, the attorneys will be gathered, and I will have the entire jury into court to receive the verdict. [Note: You may have the foreperson read the verdict sheet or the judge may ask the question on the verdict sheet and have the foreperson respond and give the vote.]

Should you desire to communicate for any other reason, you must send a note in the same fashion. After I have your note, I will discuss it with counsel and then reply to you in open court on the record.

1.12V Communications With Court (Short Version)

If during your deliberations you wish to communicate with the court, or you would like me to repeat any part of the jury instruction, please write your request or question and give the note to the attendant. I will respond as quickly as I can by having you in the courtroom on the record. I should caution you, however, that at no point until you reach your final verdict should you indicate to the attendant or anyone else what your vote has been on any question before you. That is a matter that only members of the jury should know until you have reached a verdict.

NEW MEXICO

No relevant jury instruction could be found in this state's pattern jury instructions.

NEW YORK

PJI 1:24 Return to Courtroom

If, in the course of your deliberations, your recollection of any part of the testimony should fail, or you have any question about my instructions to you on the law, you have the right to return to the courtroom for the purpose of having such testimony read to you or have such question answered.

NORTH CAROLINA

A reliable copy of this state's pattern jury instructions could not be located.

NORTH DAKOTA

Deliberations and Conduct of Jury in Retirement: Closing Instructions

[I appoint _____ to act as Jury Leader.]

[When you go to the jury room, you will select a Jury Leader.]

The Jury Leader will lead your deliberations, communicate with the bailiff(s) for you and speak for you in court. The Jury Leader does not have more authority than other jurors, and the Jury Leader's opinion does not carry more weight than the opinions of other jurors.

In order to return a verdict, each Juror must agree to the verdict. Your verdict must be unanimous.

It is your duty to work with each other in an effort to reach an agreement, if you are able to do so without giving up your individual judgment. Each of you must decide the case for yourself, but you should consider the evidence impartially with the other Jurors. You should not hesitate to change your opinion if you are convinced it was wrong. But, you should not change your opinion about the weight or effect of the evidence just because of the opinion of the other Jurors, or in order to return a verdict.

If it becomes necessary for you to communicate with me during your deliberations, the Jury Leader should send a note to the bailiff(s). All questions to the Judge must be reviewed by the attorneys. This may take a period of time and some questions may not be answered.

After you have agreed on your verdict, the Jury Leader should fill in, date, and sign a formal verdict, using the appropriate form which accompanies these instructions. The Jury Leader should then notify the bailiff(s) that you have reached a verdict. You will be brought to the courtroom for reception of the verdict. You must not disclose your verdict to anyone until it is returned in open court.

OHIO

CV 101.83 During deliberations

Once the jury commences to deliberate on a verdict, the procedure outlined in the rules for requests and objections to the general instruction has no application. At this late stage of the trial, the delivery of further instructions rests in the inherent power of the court whenever the

circumstances or the ends of justice require it. Further instructions may be initiated by the court, by the request of counsel, or by the jury. As has been repeatedly pointed out in this chapter, the trial judge has the inherent power to control the trial and the law.

Any communication by the court to the jury must be delivered in open court and in the presence of counsel and the parties. Counsel and the parties must remain available or within quick recall by the court. Although notice to the parties and counsel is necessary, the reasonable time for further instructions during deliberations is considerably reduced by the circumstances and should be measured by minutes and not by hours. A secret communication after the jury begins deliberations is error and, absent affirmative evidence to the contrary, cannot be said to be harmless. An instruction in the absence of the parties and without affording them an opportunity either to be present or to make a timely record of objection constitutes error of a serious magnitude. *Fillippon v. Albion Vein Slate Co.* (1919), 250 U.S. 76; *Krieger's Cleaners & Dyers, Inc. v. Benner* (1931), 123 Ohio St. 482; *Hrovat v. Cleveland Ry. Co.* (1932), 125 Ohio St. 67; *State v. Grisafulli* (1939), 135 Ohio St. 87. If after reasonable notice counsel fails to appear, additional instructions may be delivered in his/her absence. *Campbell v. Beckett* (1858), 8 Ohio St. 210.

Despite efforts to settle questions regarding instructions before deliberations commence, the trial judge should recall the jury after it has retired to correct errors and omissions or to clear up ambiguities that come to the court's attention. The trial judge bears the ultimate responsibility for the accuracy and completeness of his or her instructions, and has the obligation to correct any serious mistake. If an error of law is discovered, the duty to correct it is mandatory and a failure to do so a clear abuse of discretion. The discharge of the jury's responsibility for reaching conclusions from the testimony is dependent upon the judge's duty to furnish the guidance required by means of a correct, lucid statement of the law relevant to the problem presented. Sometimes a rereading of the applicable portion of the final instruction is sufficient; however, if the language originally delivered is incomplete, confusing, or does not directly respond to the problem, a perfunctory re-reading of the very instruction which led to the difficulty does not meet the duty of the trial judge.

The trial judge is the legal advisor of the jury. Disclosure within the final instructions of this duty of the court and of the right of the jury to request a further explanation of the law would go a long way to improve the instructional administration of justice and to dispel the lingering doubt that jurors might not understand the law.

Questions by the Jury. When the jury exposes a problem by its questions to the court, the trial judge should clear it away promptly and accurately. Although questions by the jury may be made in open court, the better practice is to request that inquiries be made in writing. This provides an opportunity for a conference on the question with the attorneys before delivering the response. At times, questions by the jury are not clear, in which event a cautious dialogue in open court by the judge and the foreperson may disclose the problem.

Requests by the jury for additional facts or for a repetition of testimony should be considered carefully by the court and counsel. Factual matters in the record are exclusively within the

province of the jury. In this area the judge may not provide additional information, and may not express opinions concerning what the jury has heard. Although the judge may review the testimony, the requirement that it be done fairly and impartially is frequently impossible and never free from objection. A better practice is to have the jurors indicate precisely the witness and testimony to which they refer and the object of their inquiry. Once this is determined, portions of the testimony of such witness or witnesses on the subject may be read to the jury. Counsel for each party should be given the opportunity to locate the appropriate evidence relating to the question. There is no reason why jurors should not be permitted to refresh their recollection of the testimony. Reading all appropriate portions of the record ensures that this is accomplished fairly and impartially.

OKLAHOMA

No relevant jury instruction could be found in this state's pattern jury instructions.

OREGON

A reliable copy of this state's pattern jury instructions could not be located.

PENNSYLVANIA

Pennsylvania Suggested Standard Civil Jury Instructions, 20.00(5)

Before you begin to deliberate, you should select one of your group to be the foreperson. The foreperson will announce the verdict in this courtroom after you have finished deliberating. If, during deliberations, you have a serious doubt about some portion of these instructions, write your question in a note, signed by the foreperson. Give the note to the bailiff. The bailiff will give it to me for response. You should not, however, reveal to anyone how the jury stands numerically.

Subcommittee Note:

The obligation to commit to writing any communications between the deliberating jury and trial judge has frequently been emphasized with the need to perfect a complete and accurate record. *Yarsunas v. Boros*, 223 A.2d 696 (Pa. 1966).

Informal private communications between the deliberating jury and the trial judge, not in writing and not a verbatim part of the record, were condemned as an improper practice that the court in *Kersey Manufacturing Co. v. Rozic*, 222 A.2d 713, 714-15 (Pa. 1966), commanded "must be terminated."

The invitation to return for further instructions, if the jury deems them necessary, is included because of the frequency of Supreme Court suggestions approving such procedure. See, e.g., *Reed v. Kinnik*, 132 A.2d 208, 211 (Pa. 1957).

The injunction to avoid any informal communications with the court is emphasized in view of the severe condemnation by the Supreme Court of such infractions, and the danger of

impairing confidence in the court if such practice is tolerated. In *Glendenning v. Sprowls*, 174 A.2d 865, 866-67 (Pa. 1961), the court stated:

It has been wisely stated that "Next to the tribunal being in fact impartial is the importance of its appearing so": *Shrager v. Basil Dighton, Ltd.* (1924), 1 K.B. 274, 284. This applies in a special way to the Judge and his relationship with the jury... [P]rivate communication by a Judge to or with the jury ... is almost certain to create suspicions and a belief of unfairness in the minds of many people... Instructions to the jury must be given in open court in the presence of the parties or their counsel. There may be no private communication of any kind or character between the judge and the jury, and if additional instructions are needed they must be given in open court.

RHODE ISLAND

A reliable copy of this state's pattern jury instructions could not be located.

SOUTH CAROLINA

No relevant jury instruction could be found in this state's pattern jury instructions.

SOUTH DAKOTA

A reliable copy of this state's pattern jury instructions could not be located.

TENNESSEE

15.19 Questions During Deliberations

If a question arises during deliberations and you need further instructions, please print your question on a sheet of paper, knock on the door of the jury room, and give the question to my court officer. I will read your question and I may call you back into the courtroom to try to help you. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence.

Judicial Note:

In the absence of overriding considerations, the trial judge may not communicate with a jury other than in open court or in the presence of, or with consent of, counsel, and if he does so, it is reversible error [see *Guy v. Chattanooga-Hamilton County Hospital Authority*, 1987 Tenn. App. LEXIS 2838 (Tenn. Ct. App. 1987)] .

UTAH

No relevant jury instruction could be found in this state's pattern jury instructions.

VERMONT

§ C Deliberations

When I complete these instructions, the jury will go to the Jury Room to begin deciding the case. We call that process deliberations." That is an interesting word, because it suggests two important things. A group of people deliberate an issue when they sit around and discuss it. To act deliberately is to act carefully, not rushing. In a sense, those two concepts are all you need to know.

Sit around the table; discuss the evidence at trial; see how it stacks up with the legal standards I have just described. Everyone should have a chance to speak. Be willing to take a fresh look at your own ideas, your own point of view. You may decide to change that point of view, if you conclude that another one makes better sense, better fits that proved facts and the law. But do not just walk away from your individual point of view, if you remain convinced it is the correct one, according to the evidence and these instructions of law. In discussing the evidence, and how it compares to the law, you should not consider yourselves as partisans, fighting for one or another point of view. Instead, you should think of yourselves as judges, judges of the facts. Your sole interest should be to reach the truth.

To return a verdict, the jury must come to a unanimous conclusion-each juror must agree to it. When you have reached that conclusion, you will fill out the Verdict Form and have the foreman sign it. Then place it in the envelope and advise the court officer that you have reached a verdict. The verdict will be read in open court. The court appoints _____ as foreperson, to preside over your deliberations and be your spokesman here in court.

If you have any questions, write them out on paper, have the foreman or someone else sign it, and pass it to the court officer. I will promptly respond, probably in writing, but I may have you brought back to the courtroom, and speak to you like this. If you send a note, however, do not tell me what the vote is on any issue.

VIRGINIA

§ 1:4. Time of giving instructions

It is always the duty of the court at the proper time to instruct the jury on all principles of law applicable to the pleadings and the evidence.

In a civil case, the time of giving instructions rests in the sound discretion of the court but the practice is to instruct the jury at the conclusion of the evidence and before argument.

In criminal cases, the Supreme Court Rules require the Court to instruct the jury before arguments of counsel.

It not only is proper for the court to fully and completely respond to an inquiry that comes from the jury after their retirement and deliberation for information touching their duties, but it has a duty to amend instructions that appear to be erroneous or misleading.

WASHINGTON

WPI 1.08 Concluding Instruction

When you begin to deliberate, your first duty is to select a presiding juror. The presiding juror's responsibility is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

You will be given [the exhibits admitted in evidence,] these instructions [,] and _____ verdict form[s] for recording your verdict. [Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.]

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. [For this purpose, use the form provided in the jury room.] In your question, do not state how the jury has voted, or in any other way indicate how your deliberations are proceeding. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

In order to reach a verdict [*ten*] [*five*] of you must agree. When [*ten*] [*five*] of you have agreed, then the presiding juror will fill in the verdict form. The presiding juror must sign the verdict whether or not the presiding juror agrees with it. The presiding juror will then inform the bailiff that you have reached a verdict. The bailiff will conduct you back into this courtroom where the verdict will be announced.

WEST VIRGINIA

Instructions for West Virginia § 11

It is proper for the court to fully and completely respond to inquiries which might come from the jury for information touching their duties.

Footnotes:

As to time and manner of giving instructions, see §§ 37, 38 of this title.

Instruction after Submission of Cause. -- In an action for breach of warranty, the jury, while considering its verdict, returned to the court room and asked whether it was limited in deciding the case to the typewritten guarantee introduced in evidence. The court replied that it was not, and that it "must take into consideration the oral evidence, the letters and written guarantee, and to decide from all the evidence what the contract was and a breach of it, if any, and the damages, if any." The typewritten guarantee was only a part of the evidence, but a material part, to be interpreted in the light of the circumstances under which it was given, the letters contemporaneously and subsequently written, the construction put upon it by the parties themselves, and the pertinent oral evidence indicating a breach or lack of breach. As the court could not have made any complete reply to the question without fully reinstructing the jury upon all the questions involved in the case, the reply of the court was not harmful. *Standard Paint Co. v. Vietor & Co.*, 120 Va. 595, 91 S.E. 752 (1917).

When responding to a jury's inquiry concerning their duties, the trial judge must fully and accurately inform the jury on matters upon which the jury makes inquiry. *McLean v. Commonwealth*, 28 Va. App. 593, 507 S.E.2d 640 (1998).

Introduction of New Theory. -- When read together, the Virginia rules and case decisions allow the trial judge to give a supplemental jury instruction which clarifies an existing instruction or principle previously existing before the jury; however, if a supplemental jury instruction given in response to a jury's question introduces a new theory to the case, the parties should be given an opportunity to argue the new theory and failure to allow such argument results in unfair prejudice. *McLean v. Commonwealth*, 28 Va. App. 593, 507 S.E.2d 640 (1998).

When the trial judge errs by answering the jury in a manner that is incomplete or unresponsive to the jury's inquiry and, instead, gives a supplemental instruction injecting a new theory into the case, this may suggest to the jury that the issue on which they sought guidance is not as germane as the theory which the trial court injected and might have the effect to mislead the jury as to the law of the case.

Where a defendant was charged with robbery and capital murder and the jury, not having been previously instructed on the "concert of action" theory, requested a definition of "intent" and inquired whether intent was collective, the trial judge's supplemental instruction on "concert of action" was incomplete and unresponsive to the jury's inquiry. By injecting the

concept of "concert of action," the trial judge deprived the defendant of the right to have his counsel argue to the jury the principles contained in the instruction as they related to the facts of the case and may have caused the jury to conclude that the question of intent was not as germane to their inquiry as was the principle of "concert of action." *McLean v. Commonwealth*, 28 Va. App. 593, 507 S.E.2d 640 (1998).

WISCONSIN

A reliable copy of this state's pattern jury instructions could not be located.

WYOMING

A reliable copy of this state's pattern jury instructions could not be located.