

DRAFT JUROR BILL OF RIGHTS

Elements

1. Jurors have a right to receive instructions from the judge or court staff on their privacy rights as jurors.
2. Jurors have a right to be advised of how the information they provide will be used, how it will be retained, and who will have access to that information.
3. Jurors have a right to be advised of their right to provide answers to sensitive questions privately to the judge and the attorneys for parties in the case.
4. Jurors have a right to be kept informed of the process, the schedule planned for the day, and any changes to the schedule as those changes occur.
- ***5. Jurors have a right to take notes for their personal use during trial *at the discretion of the court* in any case that the testimony is expected to last at least three (3) or more days. In any case, where the court allows note taking the court shall provide materials suitable for the purpose of note taking. The court may also authorize trial notebooks for the use of the jurors. The notebook may contain copies of all documents and photos that are admitted into evidence as exhibits. The judge may allow jurors shall be allowed access to their notes and notebooks during their deliberations.

If note-taking is allowed, the court shall instruct the jurors that their notes should not be used as a substitute for the official record of the proceeding and the court should instruct the jurors that if they are unclear as to a particular individual's testimony on a particular matter then the jurors should certify to the court that they need that portion of a particular witness's testimony to be transcribed by the court reporter and provided to them for their review.

If note-taking is allowed, at the conclusion of the trial and after the jury

has been dismissed but before the jurors are released all notes taken by the jurors and all juror notebooks shall be collected by the bailiff who shall promptly destroy them.

6. Jurors have a right to give comments to the court staff concerning their jury service.

7. Jurors have a right to counseling services if they are disturbed by the evidence presented during trial.

8. Jurors have the right to be instructed that at the conclusion of the trial, they have the right to talk to anyone about any aspect of the case, or that they have the right to not talk with any one about the trial, if they so choose. Jurors should also be instructed that the Judge may not be able to discuss the case with them.

9. Jurors have the right to be advised of the right to receive an escort to their mode of transportation after dismissal from trial.

10. Jurors have a right to receive an expression of gratitude from the staff of the court and the judge for appearing for jury service.

I think that we need to modify the note taking section so that it follows the rules for note taking announced by the Court of Criminal Appeals in Price v. State 887 S.W. 2d 949 (Tex.Crim App.1994)

We are confident the inherent risks of note-taking can be avoided if the trial judge takes the following steps.

First, determine if juror note-taking would be beneficial in light of the factual and legal issues to be presented at the trial. Jumpp, 619 A.2d at 609. If the trial is to be relatively short and simple, the need for note-taking will be slight. On the other hand, if a long and complex trial is anticipated, note-taking could be extremely beneficial.

Second, the trial judge should inform the parties, prior to *voir dire*, if the jurors will be permitted to take notes. If note-taking is to be allowed, the parties should be permitted to question the venire as to their ability to read, write or take notes. Triplett, 421 S.E.2d at 519-520 (W.Va.1992).

Third, the trial judge should admonish the jury, at the time it is impaneled, on note-taking. MacLean, 578 F.2d at 66; DiLuca, 448 N.Y.S.2d at 735. Having reviewed the jury

instructions used by many jurisdictions, we believe the following admonition, or one substantially similar, should be given:

Ladies and Gentlemen of the Jury:

Because of the potential usefulness of taking notes, you may take notes during the presentation of evidence in this case. However, you may not take notes during the arguments of the lawyers, or when the jury charge is read to you.

Moreover, to ensure a completely fair and impartial trial, I will instruct you to observe the following limitations:

1. Note taking is permitted, but not required. Each of you may take notes. However, no one is required to take notes.
2. Take notes sparingly. Do not try to summarize all of the testimony. Notes are for the purpose of refreshing memory. They are particularly helpful when dealing with measurements, times, distances, identities, and relationships.
3. Be brief. Overindulgence in note taking may be distracting. You, the jurors, must pass on the credibility of witnesses; hence, you must observe the demeanor and appearance of each person on the witness stand to assist you in passing on his or her credibility. Note taking must not distract you from that task. If you wish to make a note, you need not sacrifice the opportunity to make important observations. You may make your note after having made the observation itself. Keep in mind that when you ultimately make a decision in a case you will rely principally upon your eyes, your ears, and your mind, not upon your fingers.
4. Do not take your notes away from court. At the end of each day, please place your notes in the envelope which has been provided to you. A court officer will be directed to take the envelopes to a safe place and return them at the beginning of the next session on this case, unopened.
5. Your notes are for your own private use only. It is improper for you to share your notes with any other juror during any phase of the trial other than jury deliberations. You may, however, discuss the contents of your notes during your deliberations.

Fourth, the trial judge should provide the following instruction, or one substantially similar, in the jury charge at each phase of the trial:

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand,

you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial. Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdict in this case.

See generally, MacLean, 578 F.2d at 67; DiLuca, 448 N.Y.S.2d at 735; and, Tex.Code Crim.Proc.Ann. art. 36.28.

I would suggest that we modify 5 to read:

5. If the Trial Judge determines in light of the nature of the trial that note-taking would assist the Jurors in meeting their responsibility as Jurors the Trial Judge will prior to voir dire inform the attorneys and parties that note-taking will be permitted. The Trial Judge will provide instructions to the Jurors prior to the beginning of testimony about their use of note-taking during the trial and in their deliberations of the case.