

Admonitory Instruction Subcommittee
PJC Oversight Committee

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

Draft of
August 2008

**After discussion at SCAC at October 18, 2007 meeting
and April 4, 2008**

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 of the Jury Panel]: Thank you for being here. We are about to select a jury. Twelve [six] of you will be chosen for the jury. 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.

Before we begin: Turn off all mobile phones and electronic devices. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

Here is some background about this case. This is a civil case, which means it is a lawsuit that is not a criminal case. The parties are as follows: The plaintiff is _____, and the defendant is _____. Representing the plaintiff is _____, and representing the defendant is _____.

[description of the current case]

Every juror must obey my instructions. If you do not follow these instructions, you would be guilty of juror misconduct and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

These are the instructions:

1. 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 when you follow the instructions.
2. 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.
3. Do not discuss this case with anyone, even your spouse or a 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 immediately.

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. The parties, through their attorneys, have the right to ask you questions about your background, experiences, and attitudes. They are not trying to meddle in your affairs. They are just being thorough and trying to choose fair jurors who do not have any bias or prejudice in this particular case.

Comment [T1]: New intro

Comment [T2]: Old 226a "whether you are selected as a juror for this case or not you are performing a significant service which only free people can perform"

Comment [T3]: New per SCAC discussion

Comment [T4]: Old 226a. The case that is now on trial is _____ v _____. This is a civil action that will be tried before a jury.

Comment [T5]: Old 226a. In this case, as in all cases, the actions of the judge, parties, witnesses, attorneys and jurors must be according to law. The Texas law permits proof of any violation of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about acts of jury misconduct. I instruct you, therefore, to follow carefully all instructions which I am now going to give you, as well as others which you will receive while this case is on trial. If you do not obey the instructions I am about to give you, it may become necessary for another jury to re-try this case with all of the attendant waste of your time here and the expense to the litigants and the taxpayers of this county for another trial.

Comment [T6]: Old 226a. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.

Comment [T7]: Old 226a. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.

Comment [T8]: Old 226a. Do not discuss anything about this case, or even mention it to anyone whomsoever, including your wife or husband, nor permit anyone to mention it in your hearing until you are discharged as jurors or excused from this case

Comment [T9]: new

Comment [T10]: Old 226a. The parties through their attorneys have the right to direct questions to each of you concerning your qualifications, background, experiences and attitudes. In questioning you, they are not meddling in your personal affairs, but are trying to select fair and impartial jurors who are free from any bias or prejudice in this particular case.

[new bias and prejudice insert]

5. 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. If you do not answer a question that applies to you, that violates your oath. 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.

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

The lawyers will now begin asking questions.

Comment [T11]: Old 226a. Do not conceal information or give answers which are not true. Listen to the questions and give full and complete answers. If the attorneys ask some questions directed to you as a group which require an answer on your part individually, hold up your hand until you have answered the 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 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]

You have received a set of written instructions. I am going to read them with you now. Some of them you have heard before and some are new.

1. Turn off all mobile phones and electronic devices. Do not communicate with anyone electronically during court proceedings. [I will give you a number where others may contact you in case of an emergency.] Do not record or photograph any part of these court proceedings, because it is prohibited by law.
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 when you follow them.
3. 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.
4. Do not discuss this case with anyone, even your spouse or a 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 immediately.

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.

5. Do not talk about the case with anyone during the trial, not even with the other jurors, until the end of the trial. After you have heard all the evidence, received all of my instructions, and heard all of the lawyers’ arguments, you will then discuss the case with the other jurors and reach a verdict.

We ask you not to discuss the case with your fellow jurors until the end of the trial so that you do not form opinions about the case before you have heard everything.

Comment [T12]: Old 226a By the oath which you take as jurors, you become officials of this court and active participants in the public administration of justice. I now give you further instructions which you must obey throughout this trial.

Comment [T13]: New per SCAC discussions

Comment [T14]: Repeat from first instruction

Comment [T15]: Old 226a Do not even discuss this case among yourselves until after you have heard all of the evidence, the court's charge, the attorneys' arguments and until I have sent you to the jury room to consider your verdict.

Comment [T16]: new

6. 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.
 - Do not look things up in law books, dictionaries, public records, or on the Internet.
7. 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 similar case. Do not tell the other jurors about it. Telling other jurors about it is wrong because it means the jury will be considering things that were not presented in court.
8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.
9. 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.
10. 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 share your notes with other jurors. Do not rely on another juror's notes.
11. It is your duty to listen to and consider the evidence and to determine fact issues that I may submit to you at the end of the trial. 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 and you should not consider which side will win. Instead, you will need to answer the specific questions I give you.

Every juror must obey my instructions. If you do not follow these instructions, you would be guilty of juror misconduct and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial.

Comment [T17]: Old 226a. Do not make any investigation about the facts of this case. Occasionally we have a juror who privately seeks out information about a case on trial. This is improper. All evidence must be presented in open court so that each side may question the witnesses and make proper objection. This avoids a trial based upon secret evidence. These rules apply to jurors the same as they apply to the parties and to me. If you know of, or learn anything about, this case except from the evidence admitted during the course of this trial, you should tell me about it at once. You have just taken an oath that you will render a verdict on the evidence submitted to you under my rulings. Do not make personal inspections, observations, investigations, or experiments nor personally view premises, things or articles not produced in court. Do not let anyone else do any of these things for you

Comment [T18]: Old 226a. Do not tell other jurors your own personal experiences nor those of other persons, nor relate any special information. A juror may have special knowledge of matters such as business, technical or professional matters or he may have expert knowledge or opinions, or he may know what happened in this or some other lawsuit. To tell the other jurors any of this information is a violation of these instructions.

Comment [T19]: Old 226a. Do not discuss or consider attorney's fees unless evidence about attorney's fees is admitted.

Comment [T20]: Old 226a. Do not consider, discuss, nor speculate whether or not any party is or is not protected in whole or in part by insurance of any kind.

Comment [T21]: New per SCAC discussion

Comment [T22]: Old 226a. At the conclusion of all the evidence, I may submit to you a written charge asking you some specific questions. You will not be asked, and you should not consider, whether one party or the other should win. Since you will need to consider all of the evidence admitted by me, it is important that you pay close attention to the evidence as it is presented.

Comment [T23]: Same as first set

Comment [T24]:

Comment [T25]:

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

Please 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

Charge of the Court

Members of the Jury [*or Ladies & Gentlemen of the Jury*]: You are about to go to the jury room to discuss the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else. Do not do any independent investigation about the case. Do not look up any words in dictionaries or on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your mobile phone during your discussions. Any notes you have taken are for your own personal use and may be taken back into the jury room and consulted during deliberations. Do not share your notes with other jurors. Do not rely on another juror's notes.

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 that is in these instructions and questions. Do not consider or discuss any evidence that was not presented in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. 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.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. 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.
 - The term "preponderance of the evidence" 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." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

Comment [T26]: Re-enforcement of previous instructions needed and cell phone and note taking added.

Comment [T27]: Old 226a In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case

Comment [T28]: Old 266a You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge.

Comment [T29]: Old 226a When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Comment [T30]: Old 226a Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

Comment [T31]: Not actually in 226a but in all charges per the PJC. Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless otherwise instructed. Also include new more likely than not language approved by the SCAC and all of the PJC committees

7. 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. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance.
9. 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.
10. Do not trade your answers. For example, do not say "I will answer this question your way if you answer another question my way."
11. The answers to the questions must be based on the decision of at least 10 of the 12 jurors unless the question has a different instruction. 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 signs the verdict certificate for the entire jury.
 - If all 12 jurors do not agree, the 10 or more jurors who agree to every answer should each sign the verdict certificate.

As I have said before, if you do not follow these instructions, you would be guilty of juror misconduct and I may have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. 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.]

Comment [T32]: Old 226a You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

Comment [T33]: Old 226a You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

Comment [T34]: Old 226a You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

Comment [T35]: Approved by SCAC to beef up contempt issue 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:

1. Read the complete charge aloud.
2. 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.
3. Give written questions or comments to the bailiff who will give them to the judge.
4. Sign the verdict certificate if all 12 jurors agree or get the signatures of all those who agree if the verdict is not by all 12. Remember: if the verdict is not by all 12 of you, the same 10 or 11 who sign the verdict certificate must have agreed to every answer.

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 tell the bailiff. Do not tell the bailiff that you have reached a verdict until—

1. You have answered all the questions, and
2. The presiding juror has written down the answers, and
3. The presiding juror has signed the verdict certificate if all 12 jurors agree with the verdict, or had all those who agree sign the verdict certificate.

Judge Presiding

Comment [T36]: Not in 226a. Current instructions from PJC. After you retire to the jury room, you will select your own presiding juror. 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.

It is the duty of the presiding juror—

- 1.to preside during your deliberations,
 - 2.to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,
 - 3.to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,
 - 4.to vote on the questions,
 - 5.to write your answers to the questions in the spaces provided, and
 - 6.to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.
- You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

Verdict Certificate

Check one:

- _____ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate below.
- _____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.
- _____ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

If unanimous, the presiding juror signs here.

PRESIDING JUROR

Printed Name of Presiding Juror

If the answers to some questions were not unanimous, the jurors 10 or 11 jurors who agreed to every answer must sign below:

SIGNATURE

NAME PRINTED

- | | | |
|-----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |
| 6. | _____ | _____ |
| 7. | _____ | _____ |
| 8. | _____ | _____ |
| 9. | _____ | _____ |
| 10. | _____ | _____ |
| 11. | _____ | _____ |

Additional Certificate

[used when some questions require unanimous answers]

I certify that the jury was unanimous in answering “yes” to the following questions. All 12 of us agreed to the answer.

[Judge to list questions that require a unanimous “yes” answer]

Comment [T37]: New certificate to clarify the 10-2 votes and the unanimous issue

Presiding Juror

Comment [T38]: New certificate to clarify unanimous vote