

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.

[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.

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.

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 should 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.

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.

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.]

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

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]

Presiding Juror