

STATE BAR OF TEXAS COURT RULES COMMITTEE
PROPOSED AMENDMENT TO
TEXAS RULE OF CIVIL PROCEDURE 226a

I. Exact Language of Existing Rule

RULE 226a. INSTRUCTIONS TO JURY PANEL AND JURY

The court must give instructions to the jury panel and the jury as prescribed by order of the Supreme Court under this rule.

Approved Instructions

I.

That the following oral instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the members of the jury panel after they have been sworn in as provided in Rule 226 and before the voir dire examination:

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

Thank you for being here. We are here 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 phones and other electronic devices. While you are in the courtroom, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [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.

If you are chosen for the jury, your role as jurors will be to decide the disputed facts in this case. My role will be to ensure that this case is tried in accordance with the rules of law.

Here is some background about this case. This is a civil case. 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 _____. They will ask you some questions during jury selection. But before their questions begin, I must give you some instructions for jury selection.

Every juror must obey these instructions. You may be called into court to testify about any violations of these instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I might 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. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may 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 you should not be offended when they follow the instructions.

2. Do not accept any favors from the lawyers, witnesses, parties, or anyone else 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, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted 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.

5. Remember that you took an oath that you will tell the truth, so be truthful 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 to ask their questions.

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

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 each 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 phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

2. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may 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 you should not be offended when they follow the instructions.

3. Do not accept any favors from the lawyers, witnesses, parties, or anyone else 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, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted in court.

5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not 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.

After you have heard all the evidence, received all of my instructions, and heard all of the lawyers’ arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:
- a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;
 - b. go to places mentioned in the case to inspect the places;
 - c. inspect items mentioned in this case unless they are presented as evidence in court;

- d. look anything up in a law book, dictionary, or public record to try to learn more about the case;
- e. look anything up on the Internet to try to learn more about the case; or
- f. let anyone else do any of these things for you.

This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not tell other jurors about your own experiences or other people's experiences. For Page 163 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 admitted in court.

8. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

9. Do not consider or guess whether any party is covered by insurance unless I tell you to.

10. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

You must leave your notes in the jury room or with the bailiff. The bailiff is instructed not to read your notes and to give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone.

[You may take your notes back into the jury room and consult them during deliberations. But keep in mind that your notes are not evidence. When you deliberate, each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. After you complete your deliberations, the bailiff will collect your notes.]

When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

11. I will decide matters of law in this case. 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 will 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.

III. Court's Charge

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions, with such modifications as the circumstances of the particular case may require:

Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide 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 together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your

deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

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 the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted 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 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 agree in advance to 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. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority.

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

Preceding question (ii):

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

You are instructed that in order to answer "Yes" to [any part of] Question (ii), your answer must be unanimous. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

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

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

These examples are given by way of illustration.]

Presiding Juror:

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

2. The presiding juror has these duties:

- a. have the complete charge read aloud if it will be helpful to your deliberations;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and

- f. notify the bailiff that you have reached a verdict.

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

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.

2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.

If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions _____ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

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

Judge Presiding

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

_____ 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 [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE	NAME PRINTED
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____

If you have answered Question No. _____ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

Signature of Presiding Juror

Printed Name of Presiding Juror

IV.

That the following oral instructions shall be given by the court to the jury after the verdict has been accepted by the court and before the jurors are released from jury duty:

Thank you for your verdict.

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

After you are released from jury duty, the lawyers and others may ask you questions to see if the jury followed the instructions, and they may ask you to give a sworn statement. You

are free to discuss the case with them and to give a sworn statement. But you may choose not to discuss the case and not to give a sworn statement; that is your right.

Notes and Comments

Comment to 2005 change: The rule is clarified. With these amendments, the Supreme Court has ordered changes in the prescribed jury instructions consistent with Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 13.04, 2003 Tex. Gen. Laws 847, 888, codified as Tex. Civ. Prac. & Rem. Code § 41.003.

II. Proposed Amendments to Existing Rule

RULE 226a. INSTRUCTIONS TO JURY PANEL AND JURY

The court must give instructions to the jury panel and the jury as prescribed by order of the Supreme Court under this rule.

Approved Instructions

I.

That the following oral instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the members of the jury panel after they have been sworn in as provided in Rule 226 and before the voir dire examination:

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

Thank you for being here. We are here 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 phones and other electronic devices. While you are in the courtroom, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [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.

If you are chosen for the jury, your role as jurors will be to decide the disputed facts in this case. My role will be to ensure that this case is tried in accordance with the rules of law.

Here is some background about this case. This is a civil case. 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 _____. They will ask you some questions during jury selection. But before their questions begin, I must give you some instructions for jury selection.

Every juror must obey these instructions. You may be called into court to testify about any violations of these instructions. If you do not follow these instructions, you will be guilty of juror misconduct, and I might 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. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, witnesses, parties, or anyone else involved in the case. You may 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 you should not be offended when they follow the instructions.

2. Do not accept any favors from the lawyers, witnesses, parties, or anyone else 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, either in person or by any other means [including by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace]. Do not allow anyone to discuss the case with you or in your hearing. If anyone tries to discuss the case with you or in your hearing, tell me immediately. We do not want you to be influenced by something other than the evidence admitted 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.

5. Our system of justice depends on judges like me and people like you making careful, unbiased, and fair decisions. When we interact with other people, we often group or categorize people. Sometimes these categorizations involve negative or positive biases or prejudices, which may be conscious or unconscious. Such preferences or biases, whether they are conscious or unconscious, should be discussed now. If you are selected for the jury, our goal is to treat all parties equally and to arrive at a just, fair, and unbiased verdict.

~~56~~. Remember that you took an oath that you will tell the truth, so be truthful 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 to ask their questions.

II.

That the following oral and written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury immediately after the jurors are selected for the case:

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 each 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 phones and other electronic devices. While you are in the courtroom and while you are deliberating, do not communicate with anyone through any electronic device. [For example, do not communicate by phone, text message, email message, chat room, blog, or social networking websites such as Facebook, Twitter, or Myspace.] [I will give you a number where others may contact you in case of an emergency.] Do not post information about the case on the Internet before these court proceedings end and you are released from jury duty. Do not record or photograph any part of these court proceedings, because it is prohibited by law.

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5. Do not discuss this case with anyone during the trial, not even with the other jurors, until the end of the trial. You should not 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.

After you have heard all the evidence, received all of my instructions, and heard all of the lawyers’ arguments, you will then go to the jury room to discuss the case with the other jurors and reach a verdict.

6. Do not investigate this case on your own. For example, do not:

- a. try to get information about the case, lawyers, witnesses, or issues from outside this courtroom;
- b. go to places mentioned in the case to inspect the places;

- c. inspect items mentioned in this case unless they are presented as evidence in court;
- d. look anything up in a law book, dictionary, or public record to try to learn more about the case;
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This rule is very important because we want a trial based only on evidence admitted in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom because the law does not permit you to base your conclusions on information that has not been presented to you in open court. All the information must be presented in open court so the parties and their lawyers can test it and object to it. Information from other sources, like the Internet, will not go through this important process in the courtroom. In addition, information from other sources could be completely unreliable. As a result, if you investigate this case on your own, you could compromise the fairness to all parties in this case and jeopardize the results of this trial.

7. Do not tell other jurors about your own experiences or other people's experiences. For Page 163 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 admitted in court.

8. Your verdict must be based on the evidence admitted in court and my instructions on the law.

Our system of justice depends on judges like me and jurors like you making careful, unbiased, and fair decisions. During our interactions with other people, it is not unusual for us to group or categorize people. Sometimes these categorizations involve negative or positive biases or prejudices, which may be conscious or unconscious. Such preferences or biases, whether they are conscious or unconscious, have no place in a courtroom or your deliberations, where our goal is to treat all parties equally and to arrive at a just, fair, and unbiased verdict. All people deserve fair treatment in our system of justice, regardless of their race, color, national origin or ancestry, religion or creed, age, disability (physical or mental), sex, gender (including gender identity), sexual orientation, education, income level, familial status, or any other personal characteristic.

Techniques that you can use as jurors to check whether any unconscious biases are influencing you include slowing down and examining your thought processes thoroughly to identify where you may be relying on reflexive, gut reactions, and considering whether you are making assumptions that have no basis in the evidence admitted in this case. Ask yourself whether you would view the evidence differently if the parties, witnesses, or attorneys had different personal characteristics.

In sum, your task is to render a verdict based on the evidence admitted in the case and from the law as stated in my instructions to you, and not based on bias or prejudice for or against any party or person involved in the trial.

~~89~~. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.

~~910~~. Do not consider or guess whether any party is covered by insurance unless I tell you to.

~~101~~. During the trial, if taking notes will help focus your attention on the evidence, you may take notes using the materials the court has provided. Do not use any personal electronic devices to take notes. If taking notes will distract your attention from the evidence, you should not take notes. Your notes are for your own personal use. They are not evidence. Do not show or read your notes to anyone, including other jurors.

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Members of the Jury [or Ladies & Gentlemen of the Jury]:

After the closing arguments, you will go to the jury room to decide 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 together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

[Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.]

[You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.]

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Our system of justice depends on judges like me and jurors like you making careful, unbiased, and fair decisions. During our interactions with other people, it is not unusual for us to group or categorize people. Sometimes these categorizations involve negative or positive biases or prejudices, which may be conscious or unconscious. Such preferences or biases, whether they are conscious or unconscious, have no place in a courtroom or your deliberations, where our goal is to treat all parties equally and to arrive at a just, fair, and unbiased verdict. In sum, your task is to render a verdict based on the evidence admitted in the case and from the law as stated in my instructions to you, and not based on bias or prejudice for or against any party or person involved in the trial.

23. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

43. 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.

45. 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.

56. All the questions and answers are important. No one should say that any question or answer is not important.

76. 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 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.

78. 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.

98. Do not answer questions by drawing straws or by any method of chance.

109. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror’s amount and then figuring the average.

101. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”

124. [Unless otherwise instructed] The answers to the questions must be based on the decision of at least 10 of the 12 [5 of the 6] jurors. The same 10 [5] jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 [5] jurors, even if it would be a majority.

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

Preceding question (ii):

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

You are instructed that in order to answer "Yes" to [any part of] Question (ii), your answer must be unanimous. You may answer "No" to [any part of] Question (ii) only upon a vote of 10 [5] or more jurors. Otherwise, you must not answer [that part of] Question (ii).

Preceding question (iii):

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

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

These examples are given by way of illustration.]

Presiding Juror:

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

2. The presiding juror has these duties:

- a. have the complete charge read aloud if it will be helpful to your deliberations;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and
- f. notify the bailiff that you have reached a verdict.

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

Instructions for Signing the Verdict Certificate:

1. [Unless otherwise instructed] You may answer the questions on a vote of 10 [5] jurors. The same 10 [5] jurors must agree on every answer in the charge. This means you may not have one group of 10 [5] jurors agree on one answer and a different group of 10 [5] jurors agree on another answer.

2. If 10 [5] jurors agree on every answer, those 10 [5] jurors sign the verdict.

If 11 jurors agree on every answer, those 11 jurors sign the verdict.

If all 12 [6] of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 [6] of you agreeing on some answers, while only 10 [5] or 11 of you agree on other answers. But when you sign the verdict, only those 10 [5] who agree on every answer will sign the verdict.

4. [Added if the charge requires some unanimity] There are some special instructions before Questions _____ explaining how to answer those questions. Please follow the instructions. If all 12 [6] of you answer those questions, you will need to complete a second verdict certificate for those questions.

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

Judge Presiding

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All 12 [6] of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 [6] of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

_____ 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 [Five] of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

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

If you have answered Question No. _____ [the exemplary damages amount], then you must sign this certificate also.

Additional Certificate

[Used when some questions require unanimous answers]

I certify that the jury was unanimous in answering the following questions. All 12 [6] of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 [6] of us.

[Judge to list questions that require a unanimous answer, including the predicate liability question.]

Signature of Presiding Juror

Printed Name of Presiding Juror

IV.

That the following oral instructions shall be given by the court to the jury after the verdict has been accepted by the court and before the jurors are released from jury duty:

Thank you for your verdict.

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

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

Notes and Comments

Comment to 2005 change: The rule is clarified. With these amendments, the Supreme Court has ordered changes in the prescribed jury instructions consistent with Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 13.04, 2003 Tex. Gen. Laws 847, 888, codified as Tex. Civ. Prac. & Rem. Code § 41.003.

III. Brief Statement of Reasons for Requested Amendments to Tex. R. Civ. P. 226a and Advantages Served by Them

Implicit bias is an important issue that needs to be, but is not, addressed in Tex. R. Civ. P. 226a. This proposed instruction is intended to address implicit bias through instructions given to the jury panel and jurors. The proposed instruction is designed to instruct jurors on the appropriate basis to weigh the evidence presented to them and the importance of making an unbiased and just decision through their verdict. The proposed addition is designed to help the jury panel and jurors better understand bias and provide trial judges and advocates a basis to better discuss biases and prejudices in *voir dire* should they desire or think it appropriate.

In response to the discussion by SCAC when it considered amendments to TRCP 226a proposed by this Committee in 2021, the Committee placed an abbreviated reference to implicit bias in the instructions that are read to the jury panel and included in the Court's Charge. The complete implicit bias instruction is read to the empaneled jurors. The Committee believes that the abbreviated reference to implicit bias will prompt potential jurors to examine their possible biases without chilling their response to questioning during *voir dire*. The Committee also believes that it is important to remind the jury of their duty to set aside any bias as they deliberate.

The proposed addition makes specific reference to characteristics protected by the Civil Rights Act of 1964, 42 U.S.C. § 1981, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and the Age Discrimination Act of 1975, 42 U.S.C. § 6101.

The Committee spent considerable time reviewing other examples of "implicit bias" instructions from other jurisdictions including federal, state, and various Texas counties. The Committee also actively solicited, received, and considered suggestions from various stakeholders with an interest in the proposed instruction. These stakeholders included local bar associations and judges, as well as State Bar of Texas committees, sections, and members. The Committee limited the use of words or terms that might imply to a juror that they could not use their personal judgment or common sense.

The proposed addition is based on efforts by the Travis County Bar Association and members of the Dallas Bar Association to implement such instructions in civil cases. The Dallas Civil District Courts engaged in a pilot program where an implicit bias instruction was given in smaller civil matters by agreement of the parties. Ninety-four percent of the jurors surveyed following the trials in which an implicit bias instruction was used indicated that they considered the instruction in their deliberations. Fifty-four percent of the jurors surveyed reported that the instruction influenced the way in which they processed evidence and deliberated. Strong evidence, through this Dallas pilot program, shows that an instruction on implicit bias, such as the one the Committee now proposes, increases juror self-awareness during trial about how they processed the evidence and motivated them to be fair in their deliberations.

Adopting an implicit bias instruction is consistent with the September 2020 charge from the Public Trust & Confidence Committee of the Texas Judicial Council (chaired by Chief Justice Hecht) that “implicit bias” be addressed in the Texas legal system, including through annual training for judges on that topic.

This proposed implicit bias instruction closely tracks the Connecticut Judicial Branch Criminal Jury Instructions. In addition to Connecticut, other jurisdictions across the United States have already adopted implicit bias instructions, including the United States District Court for the Northern District of the State of Iowa, the United States District Court for the Northern District of the State of California, the State of Missouri, the State of Washington, and the United States Court of Appeals for the Ninth Circuit.

The proposed instruction is consistent with the 2019 ABA resolution calling on all states to implement an “implicit bias” instruction in their jury instructions.

The proposed instruction is calculated to be impartial and applicable to all cases without comment on the evidence.