

**Revised Order Following Texas Rule of Civil Procedure 226a**

-February 19, 2009-

**Approved Instructions**

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[Prefatory Order Language]

**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 jurors after they have been sworn 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 mobile phones and other electronic devices. Do not communicate with anyone electronically while you are in the courtroom. [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.

Here is some background about this case. This is a civil case, which means i. I 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, which we call voir dire. But before we begin voir dire, 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 do not mingle or talk with the lawyers, the witnesses, the parties, or anyone else involved in the case to avoid looking like you are friendly with one side of the case. You canmay 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, ~~the~~ witnesses, ~~the~~ 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. 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. Then we will begin voir dire.

~~The lawyers will now begin asking 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 mobile phones and other electronic devices. Do not communicate with anyone electronically while you are in the courtroom or while you are deliberating ~~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. To avoid looking like you are friendly with one side of the case, do not mingle or talk with the lawyers, ~~the~~ witnesses, ~~the~~ parties, or anyone else involved in the case ~~to avoid looking like you are friendly with one side of the case~~. You ~~can~~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, ~~the~~ witnesses, ~~the~~ 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. 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 talk about the 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. ~~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:

- a. Do not try to get information about the case, ~~the~~ lawyers, ~~the~~ witnesses, or ~~the~~ issues from outside this courtroom.
- b. Do not go to places mentioned in the case to inspect the places.
- c. Do not inspect items mentioned in this case unless they are presented as evidence in court.
- d. Do not try to learn more about the case by looking things up in law books, dictionaries, or public records.
- e. Do not try to learn more about the case by looking things up on the Internet.
- f. And do not let anyone else do any of these 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.

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 or guess ~~about insurance or who might be~~ 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. Do not show or read your notes to anyone, including other jurors.

You may take your notes back into the jury room and consult them during deliberations. But 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.

You must leave your notes in the courtroom or with the bailiff. The bailiff will keep your notes in a safe, secure location and will not allow them to be disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are discharged, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

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 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. 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 share any special knowledge or experiences with the other jurors. Do not use your mobile phone or any other electronic devices during your deliberations.

Any notes you have taken are for your own personal use, and You may take your notes ~~be taken~~ back into the jury room and consulted ~~by you~~ 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 upon 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 keep your notes in a safe, secure location and will not allow them to be disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are discharged, 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 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 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. ~~It is also possible that you might 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.]

**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. This means the presiding juror will 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.
  - 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 ~~can~~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 (~~all 12 of you agree on every answer~~) 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 as to how to answer ~~the~~ those questions. Please follow ~~those~~ instructions. If all 12 [6] of you unanimously 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.

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Judge Presiding

### **Verdict Certificate**

Check one:

\_\_\_\_\_ Our verdict is unanimous. All twelve [six] 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 nName 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. \_\_\_\_\_
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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 nName 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 discharged:

Thank you for your verdict.

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

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