

## RULE 279. OMISSIONS FROM THE CHARGE

### Amended Text

### Sources and Dispositions

#### 1. Omission of Entire Ground.

~~Upon appeal all~~ Any independent grounds of recovery or of defense which is not conclusively established under the evidence and ~~no element of which is submitted or requested~~ all elements of which are omitted from the charge without preservation of appellate complaint by the party relying thereon are is waived.

#### 2. Omission of One or More Elements.

When an independent ground of recovery or defense consists of more than one element, if and one or more of such the elements necessary to sustain such ground of recovery or defense, and necessarily referable thereto, ~~are is~~ submitted to and found by the jury, and one or more of such elements ~~are is~~ omitted from the charge, ~~without request or objection, and there is factually sufficient evidence to support a finding thereon,~~ the trial court, at the request of either party, may after notice and hearing and at any time before the judgment is rendered, make and file written findings on such omitted element or elements ~~in support of the judgment, if the party aggrieved by the findings has failed to preserve appellate complaint with respect to the omitted elements.~~ If no such written findings are made, such the omitted elements shall be deemed found by the court in such manner as to support the judgment if such deemed findings are supported by legally and factually sufficient evidence. The legal or factual sufficiency of the evidence to support express findings made under this rule may be challenged in the same manner as challenges to express findings in nonjury cases. ~~A claim that the evidence was legally or factually insufficient to warrant the submission of any question may be made for the first time after verdict, regardless of whether the submission of such question was requested by the complainant.~~

Disposition: Later in same sentence

Disposition: Second sentence of New Rule 279(2)

Disposition: Omitted as unnecessary

Source: Language conformed to Current Rule 299

Source: Second sentence of Current Rule 279

Source: New, to conform to Tex. R. App. P. 52(d)

Disposition: New Rule 274(5), in modified form

**Proposed Amendment: Rule 226a**

Rule 226a. ~~Admonitory~~ Instructions to Jury Panel and Jury.

~~The court judge shall give such admonitory the following instructions to the jury panel and to the jury as may be prescribed by the Supreme Court in an order or orders entered for that purpose. If the case is to be tried to a six-person jury, the references to ten or eleven jurors in these instructions should be changed to read "five."~~

New

Part 1 - Jury Panel

~~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 the members of the panel have been sworn as provided in Rule 226 and before the voir dire examination, the judge shall read the following instructions, with such modifications as the circumstances of the particular case may require, to the jury panel.~~

The case that is now on trial is \_\_\_\_\_ v. \_\_\_\_\_. This is a civil lawsuit action that will be tried before a jury. Your duty as jurors will be to decide the disputed facts. It is the duty of the judge to see that the case is tried in accordance with the rules of law. 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. It is very important that you follow carefully all instructions that I give you now and later during the trial 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 these instructions ~~the instructions I am about to give you,~~ it may become necessary for another jury to retry 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. Throughout your service, you must obey the following instructions:

1. Do not mingle with or talk with the parties, the lawyers, the witnesses, or any other person who might be connected with or interested in this case, except for casual greetings. You may not even have casual conversation about things completely unrelated to this lawsuit with any of those people. ~~They have to follow these same instructions and you will understand it when they do.~~

2. Do not accept from, nor give to, any of these persons any favors however slight from these people, and do not give them any favors. You must avoid even slight favors, such as rides, food, or refreshments.

3. 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 with anyone, including your spouse. Do not let anyone discuss the case in your presence. If anyone ~~attempts to discuss this case~~ tries to talk about the case with you or in your hearing, tell report it to me immediately at once.

4. The attorneys will now have an opportunity to talk with you about the case and the people involved, and to ask you some questions about your backgrounds, experiences, attitudes, and opinions. ~~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. Listen to the questions and give true full and complete answers. Do not conceal information or give answers which are not true. If you cannot hear or understand the questions, please let me know.~~

~~5.4b. 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. If a question is asked of the whole panel that requires an answer from you, please raise your hand, and keep it raised long enough for everyone to make a quick note of the people who responded.~~

~~Do you understand these instructions? If you, please let me know now.~~

~~Whether you are selected as a juror for this case or not, you are performing a significant service which only free people can perform. We shall try the case as fast as possible consistent with justice, which requires a careful and correct trial. If selected on the jury, unless I instruct you differently, you will be permitted to separate at recesses and for meals, and at night.~~

~~The attorneys will now proceed with their examination.~~

## Part 2 - Jury

~~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:~~

Immediately after the jurors are selected and have been sworn as provided in Rule 236, the judge shall give each juror a copy of the following written instructions and then read them to the jury.

### Written Instructions

~~By the your oath which you take as jurors, you become are now 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.~~

~~It is your duty to listen to and consider the evidence and to determine fact issues later submitted to you, but I, as judge, will decide matters of the law. You will now receive written instructions which you will observe during this trial, together with such other instructions as I may hereafter give, or as heretofore I have given to you. (A copy of the written instructions set out below in this Section II shall thereupon be handed to each juror.) As you examine the instructions which have just been handed to you, we will go over them briefly together. The first three instructions have previously been stated, and you will continue to observe them throughout the trial. These and the other instructions just handed to you are as follows: It is essential to the administration of fair and impartial justice that you follow these instructions:~~

See new  
paragraph 3

See paragraph 1

1. You must continue to obey the instructions I gave you earlier. Do not talk about the case with anyone, and do not have any contact with the parties, attorneys, witnesses, or other

~~interested persons outside the courtroom. 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.~~

~~2. Do not accept from, nor give to, any of these persons any favors however slight, such as rides, food or refreshments.~~

See paragraph 1

~~3. 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. If anyone attempts to discuss this case, report it to me at once.~~

See paragraph 1

2. Do not even discuss the case among yourselves until after you have heard all of the evidence, the court's charge, and the attorneys' arguments, and until I have sent you to the jury room to begin your deliberations ~~consider your verdict.~~

3. You are the judges of the facts of this case. It is your duty to listen to and consider carefully the evidence admitted under my rulings, and to answer the specific questions about the facts that I will submit to you in writing in the court's charge.

From second introductory paragraph

4. In arriving at your verdict, you can consider only the evidence admitted during the trial. 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. 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 seek out any information contained in documents, books, or records that are not in evidence. Do not make personal inspections or observations outside the courtroom. Do not let anyone else do any of these things for you. This avoids a trial based upon secret evidence.~~

~~6. 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.~~

See paragraph 4

~~7. 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.~~

Moved to Part 3 -  
Court's Charge

5. The law is determined by the legislature and courts of this state. You are obligated to follow my instructions about the law, regardless of whether you think the law is right or wrong.

New

6. During the presentation of evidence, the attorneys may make legal objections. If an objection to a question is sustained, disregard the question, and do not speculate as to why it was asked or what the answer would have been. If an objection to a witness's answer is sustained, disregard that answer. It is not in evidence, and should not be considered. Do not speculate about

New

or consider for any reason the objections or my rulings themselves.

~~8. Do not discuss or consider attorneys' fees unless evidence about attorneys' fees is admitted.~~

Moved to Part 3 -  
Court's Charge

~~9. Do not consider, discuss, nor speculate whether or not any party is or is not protected in whole in part by insurance of any kind.~~

Moved to Part 3 -  
Court's Charge

~~10. Do not seek information in law books, dictionaries, public or private records or elsewhere, which is not admitted in evidence.~~

~~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.~~

~~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 have given you, as well as others which you later receive while this case is on trial.~~

~~You may keep these instructions and review them as the case proceeds. A violation of these instructions should be reported to me.~~

I stress again that it is imperative that you follow these instructions, as well as any others that I may later give you. If you do not obey these instructions, then 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. Keep your copy of these instructions, and refer to them should any question arise about the rules that govern your conduct during this trial. A violation of any instruction must be reported to me as soon as possible.

### Part 3 - Court's Charge

~~That~~ The following written instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury as part of the charge:

1. This case is submitted to you by asking questions about the facts ~~which you must decide from the evidence you have heard in this trial.~~ Your answers must be based only upon the evidence, including exhibits, admitted during the trial.

2. In considering the evidence, you are bound to follow the law set forth in this charge, as well as all instructions concerning jurors' conduct that you have been given.

New emphasis

3. 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.~~

~~In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.~~

See paragraph 2

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

~~2. 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.~~

See paragraph 1

5. Do not become a secret witness by telling other jurors about other incidents, experiences, or lawsuits. Do not tell other jurors about any special knowledge, information, or expertise you may have. You must confine your deliberations to the evidence presented in open court. This avoids a trial based upon secret evidence.

Moved from Part 2

6. Do not discuss or consider attorneys' fees. [Omit when attorneys' fees are in issue.]

Moved from Part 2

7. Do not discuss or consider whether insurance protects any party. [Omit when coverage is in issue.]

Moved from Part 2

8. This charge includes all legal instructions and definitions that are necessary to assist you in reaching your verdict, so do not seek out any information in law books or dictionaries.

Moved from Part 2

~~9.3. Since Every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.~~

~~10.4. You must not~~ Do not decide who you think should win and then try to answer the questions accordingly. Simply answer the questions, and do not discuss or concern yourselves with the effect of your answers.

11. ~~5.~~ You will not Do not decide ~~the answer~~ to a question by ~~lot or by drawing straws or by~~ any ~~other~~ method of chance.

12. ~~5.~~ Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by Do not answer a question that calls for a numerical answer by adding together each juror's figure and dividing by the number of jurors to get an average.

13. ~~5.~~ Do not do any trading on your answers. That is, one juror must not agree to answer a certain one question ~~one a certain~~ way if other jurors will agree to answer another question ~~another a certain~~ way.

14. After you retire to the jury room, you will select ~~your own a~~ presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then You will then deliberate upon your answers ~~to the~~ questions asked.

15. It is the duty of that presiding juror:

a. to preside during the deliberations to provide order and compliance with the charge;

b. to write, sign, and deliver to the bailiff any communication to me;

c. to conduct the vote; and

d. to write your answers in the spaces provided.

16. ~~6.~~ You may render your verdict on the vote of ten or more members of the jury, but the same ten or more must agree upon each of the answers made. ~~and to the entire verdict. You will not, therefore, enter into an agreement to be~~

New

