

**AGENDA
MAY 19-20, 1995
SCAC MEETING**

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1. Report of the Supreme Court Advisory Committee on Proposed Changes to the Jury Charge Rules
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May 19-20, 1995

**REPORT OF THE
SUPREME COURT ADVISORY COMMITTEE
ON PROPOSED CHANGES
TO THE JURY CHARGE RULES**

Rule 226. Oath to Jury Panel

Before the parties or their attorneys begin the examination of the ~~jurors whose names have thus been listed~~ jury panel, the jurors shall be sworn by the court or under its direction as follows: "~~You, and each of you, &~~ Do you solemnly swear or affirm that you will give true answers ~~give~~ to all questions ~~propounded to you~~ concerning your qualifications as a juror, ~~so help you God.?~~"

Notes and Comments

Comment to 1995 change:

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 tried to a six-person jury, the references to ten or eleven jurors in these instructions should be changed to read "five."

~~APPROVED INSTRUCTIONS~~

~~Pursuant to the provisions of Rule 226a, Texas Rules of Civil Procedure, it is ordered [July 20, 1966] by the Supreme Court of Texas, effective January 1, 1967; January 1, 1971; February 1, 1973; December 5, 1983, effective April 1, 1984:~~

~~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:~~

PART 1 - JURY PANEL

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

~~Ladies and Gentlemen~~ Members of the Jury Panel: The case that is now on trial is _____ vs. _____.
This is a civil action lawsuit which that will be tried before a

jury. Your duty as jurors will be to decide the disputed facts. It is ~~the~~ my duty ~~of the~~ as 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. I instruct you, therefore, to~~ It is very important that you follow carefully all instructions that I give you now and later during the trial. If you do not obey these instructions ~~I am about to give you,~~ it may become necessary for another jury to re-try this case with all of the attendant resulting waste of your time here and the expense to the litigants and the taxpayers of this county for another trial. ~~These~~ Your initial instructions are as follows:

1. Do not mingle ~~with~~ nor talk with the parties, 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.~~ You may not even have casual conversation about things completely unrelated to this lawsuit with any of these people.

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

3. ~~Do not discuss anything about this case with anyone, or even mention it to anyone whomsoever, including your wife or husband, nor permit anyone to mention it spouse. Do not let anyone discuss the case in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss tries to talk about the case with you or in your hearing, report it to me at once tell me or the baliff immediately.~~

4. ~~The parties through their attorneys will now have an opportunity to talk with you about the case and the parties involved, and to ask you some have the right to direct questions to each of you concerning about your qualifications, backgrounds, experiences, and attitudes, and opinions.~~ In questioning you, they are not meddling in your personal affairs, but are trying to select a fair and impartial juryers who are free from any bias or prejudice in this particular case.

a. ~~Do not conceal information or give answers which are not true. Listen to the questions and give full true and complete answers. Do not conceal information. If you cannot hear or understand the questions, please let me know.~~

b5. ~~If the attorneys ask some a questions directed to you as a group which is asked of the whole panel or part of the panel that requires an answer on your part individually from you, hold up please raise your hand and keep it raised long enough for everyone to make a note of those who responded until you have answered the questions.~~

~~Do you understand these instructions? If not, 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.~~
Counsel you may proceed.

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:~~

ORAL INSTRUCTIONS

PART 2 - JURY

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:

~~Ladies and Gentlemen:~~

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 essential to the~~

administration of fair and impartial justice that you follow these instructions:

~~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:~~

~~(The written instructions set out below in this Section II shall thereupon be read by the court to the jury.)~~

~~Counsel, you may proceed.~~

WRITTEN INSTRUCTIONS

1. ~~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. 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.

~~2. Do not accept from, nor give to, any of these persons any favors however slight, 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. If anyone attempts to discuss the case, report it to me at once.~~

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

~~53. Do not make any investigation about the facts of this case. Occasionally we have a juror who privately seeks out information about a case on trial. This is improper. All evidence must be presented in open court so that each side may question the witnesses and make proper objection. This avoids a trial based upon secret evidence. These rules apply to jurors the same as they apply to the parties and to me. If you know of, or learn anything about, this case except from the evidence admitted during the course of this trial, you should tell me about it at once. You have just taken an oath that you will render a verdict on the evidence submitted to you under my rulings. 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.

64. In answering these questions, you can consider only the evidence admitted during the trial. Do not make personal inspections, observations, any investigations, or experiments nor personally view premises, things or articles not produced in court about the facts of this case. 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.

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.

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 about why it was asked or what the answer might 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 or consider for any reason the objections or my rulings on them.

I stress again that it is imperative that you follow these instructions, as well as any others that I may give you later. If you do not obey these instructions, then it may become necessary for another jury to retry this case with all of the resulting 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 the trial. A violation of any instruction must be reported to me or the baliff as soon as possible.

~~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.~~

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

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

~~10. Do not seek information contained 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 or 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.~~

III. PART 3 - COURT'S CHARGE

The judge shall give ~~That~~ the following written instructions to the jury, 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:

~~Ladies and Gentlemen of the Jury:~~

1. This case is submitted to you by asking questions about the facts, ~~7~~ which you must decide from Your answers must be based only upon the evidence, including exhibits, admitted during the you have heard in this trial.

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

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.~~

14. 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.~~

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 the courtroom. This avoids a trial based upon secret evidence.

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

7. Do not discuss or consider whether any party has insurance. [Omit when insurance is admissible.]

8. This charge includes the legal instructions and definitions that you should use in reaching your verdict. If no definition is given, the normal meaning of the words applies. Do not look up any information in law books or dictionaries.

~~39. Since eEvery answer that is required by the charge is important, no juror should state or consider that any required answer is not important.~~

~~410. You must Do not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.~~

~~511. You will Do not decide the answer to a question by lot or by drawing straws, or by any other method of chance.~~

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

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

~~14. After you retire to the jury room, you will select a presiding juror. You will then deliberate upon your answers.~~

~~15. It is the duty of that presiding juror:~~

- ~~a. to preside during the deliberations to maintain order and compliance with all instructions given you;~~

- 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. You may render your verdict upon the vote of ten or more members of the jury. ~~The, but the same ten or more of you must agree upon all of the each and every answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten* jurors.~~

17. ~~If the verdict and all of the answers therein are is~~ reached by unanimous agreement, the presiding juror shall will sign the verdict on the certificate page for the entire jury.

18. ~~If any juror disagrees as to any answer made by the verdict, these jurors~~ If the verdict is less than unanimous, the ten or eleven jurors who agree to all findings shall each and every answer will sign the verdict individually on the certificate page.

19. If you observe a violation of my instructions outside the jury room, by either a juror or any other person, you must report that to me or the bailiff.

20. During your deliberations, any juror who observes a violation of my instructions shall point out the violation to the offending juror and caution that juror not to violate the instruction again.

21. You must not discuss the case with anyone, not even with other members of the jury, unless all of the jurors are in the jury room. If anyone other than a juror tries to talk to you about the

case before you reach a verdict, tell me or the bailiff immediately.

22. When you have answered all applicable questions and signed the verdict, you should inform the bailiff before returning to the courtroom with your verdict.

~~These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys, and the judges. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.~~

~~The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.~~

~~[Instructions, Definitions, and questions and special instructions given to the jury will be transcribed to be placed here.]~~

CERTIFICATE

We, the jury, have answered the above and foregoing questions as shown and as herein indicated, and herewith return these answers to the same into court as our verdict.

~~(To be signed by the presiding juror if unanimous.)~~

Presiding Juror

Signature of presiding juror, if unanimous. [One signature line here.]

~~(To be signed by those rendering the verdict if not unanimous.)~~

Signatures of juror voting for the verdict, if not unanimous
[Eleven signature lines here.]

PART 4 - JURY RELEASE

IV.

~~That~~ The judge shall give the jury the following oral instructions ~~shall be given by the court to the jury after accepting the verdict has been accepted by the court and before the jurors are discharged and then release them:~~

~~The court has previously~~ I earlier instructed you that you should to observe strict secrecy during the trial ~~and during your deliberations, and that you should not to discuss this case with anyone except other jurors during your deliberations while you were deliberating.~~ I am now about to discharge you. ~~After your discharge~~ Once I have discharged you, you are released from your secrecy and from all the other orders that I gave you. You will then be completely free to discuss ~~the anything about this case and your deliberations~~ with anyone. ~~However, you are also will be just as free to decline to discuss talk about the case and your deliberations if you wish if that is your decision.~~

[Judge's commendation of jurors and the important service they have performed may be added here.]

~~After you are discharged, it is lawful for the attorneys or other persons to question you to determine whether any of the standards for jury conduct which I have given you in the course of this trial were violated and to ask you to give an affidavit to that effect. You are free to discuss or not to discuss these matters and to give or not to give an affidavit.~~

Notes and Comments

Comment to 1995 change:

Rule 236. ~~Oath to~~ Juryor's Oath

The jury shall be sworn by the court or under its direction, ~~in substance~~ as follows: "~~You, and each of you, d~~Do you solemnly swear or affirm that ~~in all cases between parties which shall be to you submitted,~~ you will return a true verdict ~~render,~~ according to the law, ~~as it may be given you stated~~ in the court's charge by the ~~court,~~ and ~~to~~ the evidence submitted to you under the rulings of the this court.? ~~So help you God.~~"

Notes and Comments

Comment to 1995 change:

Rule 271. Charge to the Jury

~~Unless expressly waived by the parties, t~~The trial court shall prepare and ~~in open court deliver~~ a written charge to the jury. ~~(FROM A PORTION OF FORMER RULE 272).~~ ~~It shall be submitted to the respective parties or their attorneys for inspection, and a~~ The court shall provide counsel with written copies of the proposed charge, and shall provide a reasonable time given them in which to examine and present opportunity for the parties to prepare their requests and objections thereto and to present them on the record outside the presence of the jury, ~~which objections shall in every instance be presented to the court in writing, or be dictated to the court reporter in the presence of the court and opposing counsel, after the conclusion of the evidence and before the charge is read to the jury.~~ ~~(FROM A PORTION OF FORMER RULE 275).~~ Before the argument is begun, After the requests and objections are made and ruled upon and any modifications to the charge are made, ¶~~t~~he trial court shall read the charge to the jury in open court in the precise words in which it is written, including all questions, definitions, and instructions which the court may give. The court shall deliver one or more copies of the written charge to the jury. ~~(FROM A PORTION OF FORMER RULE 272).~~ The charge shall be in writing, signed by the court, and filed with the clerk, ~~and shall be a part of the record of the cause.~~

Notes and Comments

Comment to 1995 change:

Rule 272. Requisites Standards for the Jury Charge

~~The charge shall be in writing, signed by the court, and filed with the clerk, and shall be a part of the record of the cause. It shall be submitted to the respective parties or their attorneys for their inspection, and a reasonable time given them in which to examine and present objections thereto outside the presence of the jury, which objections shall in every instance be presented to the court in writing, or be dictated to the court reporter in the presence of the court and opposing counsel, before the charge is read to the jury. All objections not so presented shall be considered as waived. The court shall announce its rulings thereon before reading the charge to the jury and shall endorse the rulings on the objections if written or dictate same to the court reporter in the presence of counsel. Objections to the charge and the court's rulings thereon may be included as a part of any transcript or statement of facts on appeal and, when so included in either, shall constitute a sufficient bill of exception to the rulings of the court thereon. It shall be presumed, unless otherwise noted in the record, that the party making such objections presented the same at the proper time and excepted to the ruling thereon.~~

1. General Standards

~~(FROM A PORTION OF FORMER RULE 278.)~~

a. Pleading Required. ~~Except in trespass to try title, statutory partition proceedings, and other special proceedings in which pleadings are specially defined by statutes or procedural rules, a~~ party who has the burden of pleading a matter shall not

be entitled to any the submission of any question, instruction, or definition regarding that matter unless the matter is affirmatively raised only by a general denial and not raised by affirmative written pleading by that by the party's pleading.

~~(FROM A PORTION OF FORMER RULE 277)~~

b. Comment on the Evidence. ~~The court shall not in its charge comment shall not directly comment~~ on the weight of the evidence or advise the jury of the effect of ~~their~~ any answers, but ~~the court's charge~~ an otherwise proper question, instruction, or definition shall not be objectionable on the ground that it incidentally comments on the weight of the evidence or advises the jury of the effect of ~~their~~ any answers ~~when it is properly a part of an instruction or definition.~~ The charge shall not submit different shades of the same question, definition, or instruction.

~~(FROM A PORTION OF FORMER RULE 276)~~

2. Questions

a. In General. The court shall submit ~~the questions, instructions and definitions in the form provided by Rule 277, which are~~ about the disputed material issues of fact raised by the written pleadings and the evidence.

~~(FROM A PORTION OF FORMER RULE 277)~~

b. Broad Form Submission. ~~In all jury cases t~~The court shall, whenever feasible, submit the ~~cause~~ case by upon broad-form questions.

c. Conditional Submission. The court may predicate the ~~damage question or questions upon affirmative findings of liability~~

jury's consideration of one or more questions upon specified answers to another question or questions on which the materiality of the predicated question or questions depends.

d. Disjunctive Submission. The court may submit a question disjunctively when ~~it is apparant from~~ the evidence shows that only one or the other of the ~~conditions of facts~~ matters inquired about necessarily exists. A proper disjunctive question is not an impermissible inferential rebuttal submission.

e. Inferential Rebuttal. Inferential rebuttal questions shall not be submitted ~~in the charge.~~

3. Instructions and Definitions

a. In General. The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.

b. Burden of Proof. The placing of the burden of proof may be accomplished by instructions ~~rather than~~ or by inclusion in the questions.

Notes and Comments

Comment to 1995 change:

~~Rule 273. Jury Submissions [Repealed.]~~

~~Each party may present to the court and request written questions, definitions, and instructions to be given to the jury, and the court may give them or a part thereof, or may refuse to give them, as may be proper. Such requests shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination. A request by either party for any questions, definitions, or instructions shall be made separate and apart from such party's objections to the court's charge.~~

Notes and Comments

Comment to 1995 Change:

Rule 274. ~~Objections and Requests~~ Preservation of Appellate
Complaints

~~A party objecting to a charge must point out distinctly the objectionable matter and the grounds of the objection. Any complaint as to a question, definition, or instruction, on account of any defect, omission, or fault in pleading, is waived unless specifically included in the objections. When the complaining party's objection, or requested question, definition, or instruction is, in the opinion of the appellate court, obscured or concealed by voluminous unfounded objections, minute differentiations or numerous unnecessary requests, such objection or request shall be untenable. No objection to one part of the charge may be adopted and applied to any other part of the charge by reference only.~~

(DERIVED FROM RULES 272, 273 AND 274)

1. Requests. A party may not assign as error the failure to give a question, definition, or instruction on a matter which that party was required to plead unless the record reflects that, after the conclusion of the evidence and before or at the time of objecting, the party tendered a question, definition, or instruction to the judge in writing. Defects in a requested question, definition, or instruction shall not constitute a waiver of error if the request provides the trial court reasonable guidance in fashioning a correct question, definition, or instruction. If a request has been filed and bears the judge's

signature, it shall be presumed, unless otherwise noted in the record, that the request was tendered at the proper time.

2. Objections. A party may not assign as error the giving or the failure to give a question, definition, or instruction unless that party objects thereto before the charge is read to the jury, stating distinctly the matter objected to and the grounds of the objection. An objection must identify that portion of the charge to which complaint is made and be specific enough to enable the trial court to make an informed ruling on the objection. Objections shall be either in writing or made orally in the presence of the court, the court reporter, and opposing counsel. It shall be presumed, unless otherwise noted in the record, that a party making objections did so at the proper time.

3. Obscured or Concealed Objections or Requests. When an objection or request is obscured or concealed by voluminous unfounded objections or requests, minute differentiations or numerous unnecessary objections or requests, such objection or request shall not preserve appellate complaint. No objection to one part of the charge may be adopted and applied to any other part of the charge by reference only.

4. Rulings. The court shall make its rulings on objections in writing or orally on the record before reading the charge to the jury. It shall be presumed, unless otherwise noted in the record, that any rulings were made at the proper time. In the absence of an express ruling, any objection not cured by the charge is deemed overruled at the proper time.

