

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 04-9226

AMENDMENTS TO JURY INSTRUCTIONS UNDER RULE 226a, TEXAS RULES OF CIVIL PROCEDURE

ORDERED that

1. To implement 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, Part III of the jury instructions prescribed under Rule 226a, Texas Rules of Civil Procedure, by orders dated July 20, 1966 (effective January 1, 1967), July 21, 1970 (effective January 1, 1971), October 3, 1972 (effective February 1, 1973), December 5, 1983 (effective April 1, 1984), March 10, 1987 (effective January 1, 1988), December 16, 1987 (effective January 1, 1988), and January 28, 1988 (effective January 1, 1988), is amended as follows.

2. These amendments, with any changes made after public comments are received, take effect on February 1, 2005, in all cases filed on or after September 1, 2004.

3. The Clerk is directed to:

- a. file a copy of this Order with the Secretary of State;
- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this Order to each member of the Legislature; and
- d. submit a copy of the Order for publication in the *Texas Register*.

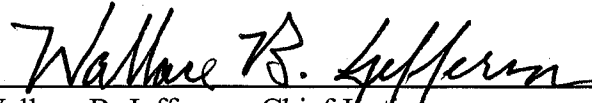
4. These amendments may be changed in response to comments received before January 15, 2005. Any interested party may submit comments in writing as follows:

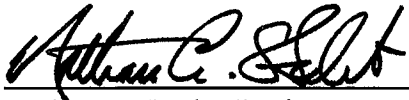
by mail to: Ms. Lisa Hobbs, Rules Attorney
The Supreme Court of Texas
P.O. Box 12248
Austin TX 78711


by fax to: 512-463-1365
Attn: Ms. Lisa Hobbs, Rules Attorney

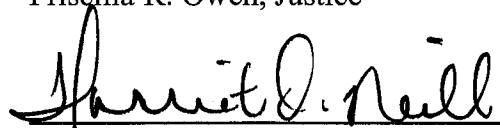
by email to: Lisa.Hobbs@courts.state.tx.us


SIGNED AND ENTERED this 7th day of October, 2004.



Wallace B. Jefferson, Chief Justice


Nathan L. Hecht, Justice


Priscilla R. Owen, Justice


Harriet O'Neill, Justice


Steven Wayne Smith, Justice


J. Dale Wainwright, Justice


Scott Brister, Justice

**AMENDMENTS TO PART III OF THE
JURY INSTRUCTIONS PRESCRIBED UNDER
RULE 226a, TEXAS RULES OF CIVIL PROCEDURE**

[It is ordered . . .]

III.

COURT'S CHARGE

That 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, shall be given by the court to the jury as part of the charge:

Ladies and Gentlemen of the Jury:

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. 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.

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.
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.
4. You must 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.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may render your verdict answer a question upon the vote of ten or more members of the jury jurors. The same ten or more of you must agree upon all of the 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. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. 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.

(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:

[Note: for ease of reading, the following examples, which are new, are not redlined.]

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 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.)

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

Judge Presiding

(The jury must certify to every answer in the verdict. The presiding juror may, on the jury’s behalf, make the required certificate for any answers on which the jury is unanimous. For any answers on which the jury is not unanimous, the jurors who agree must each make the required certificate. If none of the jury’s answers must be unanimous, the following certificate should be used:

[Note: For ease of reading, the following examples, which are partly new, are not redlined.]

Certificate

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

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

Presiding Juror

Printed Name of Presiding Juror

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

Jurors' Signatures

Jurors' Printed Names

[Insert the appropriate number of lines — 11 or 5 — for signatures and for printed names.]

If some of the jury's answers must be unanimous and others need not be, the court should obtain the required certificate in a clear and simple manner, which will depend on the nature of the charge. The court may consider using the following certificate at the end of the charge:

Certificate

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

I certify that the jury was unanimous in answering the following questions:

Answer "All" or list answers: _____

Presiding Juror

Printed Name of Presiding Juror

(If the answers to some questions were not unanimous, the jurors who agreed to those answers must certify as follows:)

We agree to the answers to the following questions:

List answers: _____

Jurors' Signatures

Jurors' Printed Names

[Insert the appropriate number of lines — 11 or 5 — for signatures and for printed names.]

The court may also determine that a clearer way of obtaining the required certificate is to segregate the questions to which the jury's answers must be unanimous and request a certificate for each part of the charge.)