

MORRIS ATLAS
ROBERT L. SCHWARZ
GARY GURWITZ
E.G. HALL
CHARLES C. MURRAY
A. KIRBY CAVIN
MIKE MILLS
MOLLY THORNBERRY
CHARLES W. HURY
FREDERICK J. BIEL
REX N. LEACH
LISA POWELL
STEPHEN L. CRAIN
O.C. HAMILTON, JR.
VICKI M. SKAGGS
RANDY CRANE
STEPHEN C. HAYNES
DAN K. WORTHINGTON
VALORIE C. GLASS
DANIEL G. GURWITZ
DAVID E. GIRAULT
HECTOR J. TORRES
JOSÉ CANO
AARON I. VELA

ATLAS & HALL, L.L.P.
ATTORNEYS AT LAW
McALLEN, TEXAS 78502-3725
PROFESSIONAL ARTS BUILDING • 818 PECAN
P.O. BOX 3725
(210) 682-5501
FAX (210) 686-6109

BROWNSVILLE OFFICE:
2334 BOCA CHICA BLVD., SUITE 500
BROWNSVILLE, TEXAS 78521-2266
(210) 542-1850

March 18, 1997

The Honorable Thomas R. Phillips
Chief Justice, Supreme Court
Supreme Court Bldg.
P.O. Box 12248
Capitol Station
Austin, Texas 78711

RE: Court Rules Committee - Rules 226a and 281

Dear Justice Phillips:

Enclosed are proposed rule changes to Rules 226a and 281 which have been approved for submission to the Supreme Court by the Court Rules Committee.

By copy of this letter, I am forwarding copies of these proposed rules to Luke Soules, Chairman of the Supreme Court Advisory Committee.

Sincerely,

By:


O. C. Hamilton, Jr.

OCH/sam

Enclosures

Correspondence
March 18, 1997
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cc: Mr. Luther H. Soules, III (w/encl.)
Soules & Wallace
Fifteenth Floor, Frost Bank Tower
100 W. Houston Street, Suite 1500
San Antonio, Texas 78205-1457

Ms. Laurie Baxter (w/encl.)
State Bar of Texas Committees
P.O. Box 12487
Austin, Texas 78711

STATE BAR OF TEXAS

COURT RULES COMMITTEE

REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE

TEXAS RULES OF CIVIL PROCEDURE

I. Existing Rule:

Rule 226a. ADMONITORY INSTRUCTIONS TO JURY PANEL AND JURY

The court shall give such admonitory 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.

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:

Ladies and Gentlemen of the Jury Panel:

The case that is now on trial is _____ vs. _____. This is a civil action which 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. I instruct you, therefore, to follow carefully all instructions 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 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. These instructions are as follows:

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.

2. Do not accept from, nor give to, any of those 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.

4. 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.

a. Do not conceal information or give answers which are not true. Listen to the questions and give full and complete answers.

b. 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.

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.

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

Ladies and Gentlemen:

By the oath which you take as jurors, you become 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:

(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.

2. Do not accept from, nor give to, any of those 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.

4. Do not even discuss this 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.

5. 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.

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.

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 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.

III.

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:

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. You may render your verdict upon the vote of ten or more members of the jury. 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.

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.)

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

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 unanimous.)

Presiding Juror

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

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:

The court has previously instructed you that you should observe strict secrecy during the trial and during your deliberations, and that you should not discuss this case with anyone except other jurors during your deliberations. I am now about to discharge you. After your discharge, you are released from your secrecy. You will then be free to discuss the case and your deliberations with anyone. However, you are also free to decline to discuss the case and your deliberations if you wish.

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.

II. Exact wording of proposed Rule (the proposed new wording has been underlined):

Rule 226a. ADMONITORY INSTRUCTIONS TO JURY PANEL AND JURY

Preamble - Unchanged.

I. - Unchanged.

II. - Unchanged through paragraph 9 under "Written Instructions".

. . .

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

(The court may, in its discretion, allow the jurors to take notes during the trial for the purpose of refreshing their memories during their deliberations. The court shall see that suitable materials are provided for this purpose, shall retain custody and ensure confidentiality of the notes during the trial and shall collect and destroy the notes after the jurors render their verdict. If the court allows the jury to take notes, it shall read the following instructions to the jury:)

11. You will be allowed to take notes during the trial and, after the arguments of counsel, take them into the jury room for the purpose of refreshing your memories during your deliberations. You must, however, follow these instructions:

- a. The notes are not considered evidence.
- b. The notes should not be considered any more accurate than the memory of a juror not making notes.
- c. Your note taking should not interfere with your ability to pay attention to the evidence.
- d. You have been provided materials to use in taking notes. Do not remove the notes from the courtroom at any time during the trial or from the jury room during your deliberations. During any morning and afternoon breaks, you may leave your notes on your chairs. At the noon break and at the end of the day, please hand your notes to the bailiff for safekeeping. No one will look at your notes during the breaks. At the end of the trial, leave your notes with the bailiff and they will be destroyed.

. . . the remainder of paragraph II is unchanged.

III.

That the following written and oral 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:

Written Instructions

Ladies and Gentlemen of the Jury:

This case is submitted to you . . . (remainder of the rule down through the form for the jury to sign is unchanged).

Oral Instructions

(If the court allowed the jury to take notes during the trial, after the final arguments of counsel and before the jury retires to deliberate, the following instructions shall be given by the court to the jury:)

You may take your notes to the jury room but remember to follow the instructions I gave you before, including the following:

- a. The notes are not considered evidence.
- b. The notes should not be considered any more accurate than the memory of a juror not making notes.

IV. - Unchanged.

III. Brief statement of reasons for requested change and advantages to be served by the proposed new rule:

The purpose of the proposed rule is allow jury note-taking during the trial, and to allow the juror notes in the jury room during deliberations.