

GENERAL CAUTIONARY INSTRUCTIONS

INTRODUCTION

The instructions in the 1.00 through the 3.00 series are “cautionary” instructions. The instructions in the 1.00 series are intended to be given before opening statements, along with any substantive instructions the Court deems appropriate, periodically during trial, and after closing argument, with all other instructions. The instructions in the 2.00 series are intended for use during trial. The instructions in the 3.00 series may be used prior to opening statements and after closing arguments. Supreme Court Rule 239(d) should be consulted with regard to the time instructions are given.

Giving cautionary instructions is within the sound discretion of the trial court. *Birmingham Fire Ins. Co. v. Pulver*, 126 Ill. 329, 339, 18 N.E. 804, 808 (1888); *Martin v. Kralis Poultry Co.*, 12 Ill.App.3d 453, 464, 297 N.E.2d 610, 618 (5th Dist.1973); *Beiermann v. Edwards*, 193 Ill.App.3d 968, 981, 550 N.E.2d 587, 597, 140 Ill. Dec. 702, 712 (2d Dist.1990); *DeYoung v. Alpha Const. Co.*, 186 Ill.App.3d 758, 771; 542 N.E.2d 859, 867; 134 Ill. Dec. 513, 521 (1st Dist.1989); *Clay v. Brodsky*, 148 Ill.App.3d 63, 72, 499 N.E.2d 68, 74, 101 Ill. Dec. 701, 707 (4th Dist.1986); *Tuttle v. Fruehauf Div. of Fruehauf Corp.*, 122 Ill.App.3d 835, 844, 462 N.E.2d 645, 653, 78 Ill. Dec. 526, 534 (1st Dist.1984). A trial court's refusal to give a certain instruction is not reversible error unless the complaining party has in some way been prejudiced by the court's denial. *Chloupek v. Jordan*, 49 Ill.App.3d 809, 816, 364 N.E.2d 650, 655; 7 Ill. Dec. 489, 494 (1st Dist.1977).

Use of the pronouns “he/she” or “he” in these instructions is for convenience only. It does not reflect a judgment of any kind by the Court on gender identity or expression. Judges and practitioners should modify and adapt these instructions based on the facts of each case. The Committee notes that references to the parties and personal pronouns in these instructions may be modified to fit the particular circumstances of a case.

It is the policy of the State of Illinois that intersex, transgender, and nonbinary people are entitled to full legal recognition and equal treatment under the law. Accordingly, attorneys and courts should take affirmative steps to ensure that they are using correct personal pronouns. Although this committee acknowledges a trend for the singular use of “they,” “their,” and “them,” the committee also recognizes these pronouns have plural denotations with the potential to confuse jurors. For clarity in the jury instructions, the committee recommends using an individual’s name rather than a personal nonbinary pronoun (such as “they”) if the pronoun could result in confusion.

1.01(A) Cautionary Instructions (Prior to Opening)

[1] Before opening statements, I will instruct you as to the law and your duties.

[2] The law regarding this case is contained in the instructions I will give to you. [I will give some instructions now and all of the instructions at the close of evidence, before you retire to make your decision.] You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

[3] It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. [[Participants in the case may use the personal pronouns [specify the participant's pronouns]. You may hear the judge and attorneys refer to [name of participant] using the pronouns: [specify the participant's pronouns]. [Each party, whether a [(i.e., corporation, partnership, etc.)] or an individual, should receive your same fair consideration.] My rulings, remarks or instructions do not indicate any opinion as to the facts.

[4] You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses you will hear and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during trial.

[5] You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

[6] You should not do any independent investigation or research on any subject relating to the case. What you may see or hear outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[7] For example, you must not use the Internet, [including Google,] [Wikipedia,] [[(insert current examples)], or any other sources that you might use every day, to search for any information about the case, or the law which applies to the case, or the people involved in the case, including the parties, witnesses, lawyers, and judge.

[8] During the course of the trial, do not discuss this case with anyone--not even your own families or friends, and also not even among yourselves--until the end of the trial when you have retired to the jury room to deliberate on your verdict. Even though this is hard to do, it will be a violation of these instructions and your oath if you discuss the case with anyone else.

[9] You must not provide any information about the case to anyone by any means at all, and this includes posting information about the case, or your thoughts about it, on any device or Internet site, including [blogs,] [chat-rooms,] or [[(insert current examples)], or any social networking websites, such as [Twitter], [Facebook] or [[(insert current examples)], or any other means.

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[10] You cannot use any electronic devices or services to communicate about this case, including [cell-phones,] [smart-phones,] [lap-tops,] [the Internet,] [[(insert current examples)] and any other tools of technology. The use of any such devices or services in connection with your duties is prohibited.

[11] The reason for these instructions is that your verdict must be based only on the evidence presented in this courtroom and the law I [provide][will provide] [have provided] to you in my instructions. It would be unfair to the parties and a violation of your oath to base your decision on information from outside this courtroom. If you become aware of any violation of these instructions, it is your legal duty to report this to me immediately.

[12] Disobeying these instructions could cause a mistrial, meaning all of our efforts have been wasted and we would have to start over again with a new trial. If you violate these instructions you could be found in contempt of court.

[13] Pay close attention to the testimony as it is given. At the end of the trial you must make your decision based on what you recall of the evidence. You will not receive a written transcript of the testimony when you retire to the jury room.

[14] An opening statement is what an attorney expects the evidence will be. A closing argument is given at the conclusion of the case and is a summary of what an attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence, you should disregard that statement or argument.

[15] During this trial, you may be permitted to ask questions of [certain] witnesses, but you must follow the procedures that I describe:

If you have a question for a witness and you believe the answer would be helpful to you in understanding the case, then after the lawyers have completed their questions, but before that witness is excused, I will give you a chance to submit your question in writing.

I will have you write your question on a piece of paper and hand it to the bailiff. [The court may now describe specific procedures to be used. See Comment for examples.] You should not write your name or juror number with the question. Also, you should not discuss your questions with your fellow jurors at this time.

You may submit one or more questions or no question at all. It is up to you. Please keep in mind, though, that you should only ask a question if you think it is important to your ability to decide the issues in this case fairly. You should be sure you are asking a question and not making a comment. You should not use your questions to argue with a witness or to express opinions about

a witness's testimony. Your role is to be an impartial fact-finder. The purpose of your question should be to clarify testimony that you have not understood or that has failed to address a factual question that you believe is important.

After the bailiff has collected the pieces of paper and given them to me, I will decide whether the law allows the question to be asked of the witness. Not all questions can be asked or asked using the wording that was submitted. The rules of evidence might not permit me to ask your question. You shall not concern yourself with the reason for the exclusion or modification of any question submitted. If I cannot ask your question or if I rephrase it, please do not be Section 1, Page 4 of 23 offended and do not let it affect your judgment of the evidence or the witness in any way.

If the question is allowed, I will ask the question of the witness and the attorneys may then ask some follow-up questions. Please do not speak directly to me, the lawyers, or the witnesses.

1.01(B) Cautionary Instructions (During Trial)

[1] Remember that you should not do any independent investigation or research on any subject relating to the case. What you may see or hear outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[2] You must not use the Internet, [including Google,] [Wikipedia,] [[(insert current examples)]], or any other sources that you might use every day, to search for any information about the case, or the law which applies to the case, or the people involved in the case, including the parties, witnesses, lawyers, and judge.

[3] During the recess, do not discuss this case with anyone--not even your own families or friends, and also not even among yourselves--until at the end of the trial when you have retired to the jury room to deliberate on your verdict. Even though this is hard to do, it will be a violation of these instructions and your oath if you discuss the case with anyone else.

[4] You must not provide any information about the case to anyone by any means at all, and this includes posting information about the case, or your thoughts about it, on any device or Internet site, including [blogs,] [chat-rooms,] or [[(insert current examples)]], or any socialnetworking websites, such as [Twitter], [Facebook] or [[(insert current examples)]], or any other means.

[5] You cannot use any electronic devices or services to communicate about this case, including [cell-phones,] [smart-phones,] [lap-tops,] [the Internet,] [[(insert current examples)]] and any other tools of technology. The use of any such devices or services in connection with your duties is prohibited.

[6] The reason for these instructions is that your verdict must be based only on the evidence presented in this courtroom and the law I [will provide] [have provided] to you in my instructions. It would be unfair to the parties and a violation of your oath to base your decision on information from outside this courtroom. You should feel free to remind each other that your

verdict is to be based only on the evidence admitted in court and that you cannot use information from any other sources. If you become aware of any violation of these instructions, it is your legal duty to report this to me immediately.

1.01(C) Cautionary Instructions (After Closing)

[1] Now that the evidence has concluded, I will instruct you as to the law and your duties. Once you retire to the jury room, you must first select a foreperson. There are no specific rules regarding how you should select a foreperson. That is up to you. The foreperson does not have Section 1, Page 5 of 23 any greater power than any other juror, and the foreperson's input does not have any more importance than the input of others. The foreperson will preside during your deliberations and serves to help you conduct your deliberations in an orderly manner, to ensure that the issues are fully and fairly discussed, and to give each of you the opportunity to participate in the discussion.

[2] The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

[3] It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. [[Participants in the case may use the personal pronouns [specify the participant's pronouns]. You may hear the judge and attorneys refer to [name of participant] using the pronouns: [specify the participant's pronouns]. [Each party, whether a [(i.e., corporation, partnership, etc.)] or an individual, should receive your same fair consideration.] My rulings, remarks or instructions during trial do not indicate any opinion as to the facts.

[4] You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses you have heard and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you have seen and heard during trial.

[5] You are the only judges of the credibility of the witnesses who testified. You must decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

[6] During your deliberations, you should not do any independent investigation or research on any subject relating to the case. What you may have seen or heard outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[7] For example, during your deliberations, you must not use the Internet, [including Google,] [Wikipedia,] [[(insert current examples)]], or any other sources that you might use every day, to search for any information about the case, or the law that applies to the case, or the people involved in the case, including the parties, witnesses, lawyers, and judge.

[8] During the course of your deliberations, do not discuss this case with anyone--not even your own families or friends. Even though this is hard to do, it will be a violation of these instructions and your oath if you discuss the case with anyone else other than your fellow jurors.

[9] You must not provide any information about the case or your deliberations to anyone by any means at all, and this includes posting information about the case, your thoughts about it, or the deliberations of the jury on any device or Internet site, including [blogs,] [chat-rooms,] or [[(insert current examples)]], or any social-networking websites, such as [Twitter], [Facebook] or [[(insert current examples)]], or any other means.

[10] You cannot use any electronic devices or services to communicate about this case and Section 1, Page 6 of 23 this includes [cell-phones,] [smart-phones,] [lap-tops,] [the Internet,] [[(insert current examples)]] and any other tools of technology. The use of any such devices or services in connection with your duties is prohibited.

[11] The reason for these instructions is that your verdict must be based only on the evidence presented in this courtroom and the law I [will provide] [have provided] to you in my instructions. It would be unfair to the parties and a violation of your oath to base your decision on information from outside this courtroom. You should feel free to remind each other that your verdict is to be based only on the evidence admitted in court and that you cannot use information from any other sources. If you become aware of any violation of these instructions, it is your legal duty to report this to me immediately.

[12] Disobeying these instructions could cause a mistrial, meaning all of our efforts have been wasted and we would have to start over again with a new trial. If you violate these instructions you could be found in contempt of court.

[13] The opening statements, given at the start of this trial, were what the attorneys expected the evidence to be. The closing arguments, given at the conclusion of the case, were a summary of what the attorneys contend the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence, you should disregard that statement or argument.

Instruction, Notes on Use and Comment revised January 2011 and Notes on Use subsequently revised August 2018; [15] Instruction and Notes on Use on 1.01(A) [15] approved June 2012 and [15] Comment approved June 2012. Instruction, Notes on Use and Comment revised June 2019. Instruction 1.01(C)[1] revised May 2023. Introduction, Instructions 1.01(A)[3] and 1.01(C)[3], and Notes on Use revised November 2023.

Notes on Use

Some trial judges give cautionary instructions at the beginning of the trial; some give them at the close of the trial before the deliberations; and some give them throughout the trial. Although the trial judge has discretion as to when to give cautionary instructions, the committee suggests that cautionary instructions 1.01(A) [1]- [15] should be given at the beginning of the trial, 1.01(B) [1]-[6] should be given during the trial, and 1.01(C) [1]-[13] should be given at the end of the trial..

Pursuant to Rule 243, the trial judge may also give any or all of the substantive instructions to be given to the jury both before and after the trial. The Committee makes no recommendation as to whether substantive instructions should be given at the beginning of trial. However, if given at the beginning of trial, the instructions must also be read at the close of the trial. Supreme Court Rule 239(d).

Whenever the news media will be or has been present at any portion of the trial, the judge shall give IPI 1.09A at the beginning of the trial when other cautionary instructions are given, and shall give IPI 1.09B before the jury begins its deliberations.

As to 1.01(A) [3] and 1.01(C) [3], when a party, witness, attorney or other participant uses non-binary pronouns, this instruction should be given. The court should also consult with the individual whose pronouns are being discussed to ensure the court protects the individual's dignity and privacy.

For any of the cautionary instructions that refer to particular forms of technology, such as 1.01(A) [7], [9] and [10], judges should feel free to add new examples as they become available. Section 1, Page 7 of 23 The numbers in the brackets preceding each paragraph refer to the Comments and Notes on Use following the instruction and should not be included when the instruction is given. The instruction, with brackets removed, should be given as a single instruction.

As to 1.01(A) [15], on April 3, 2012, the Illinois Supreme Court adopted Rule 243, which explicitly authorizes judges to allow jurors to submit written questions to certain or all witnesses in civil jury trials in Illinois. The rule outlines the procedures to be followed, see Supreme Court Rule 243, but makes clear that the trial judge has discretion whether to permit questions. See Committee Comments to Supreme Court Rule 243.

Although Rule 243 identifies certain procedures for the submission of juror questions to witnesses, it also indicates that trial judges are free to work out the details of the procedures on their own. See *id.* The Comment provides approaches that other judges have tried to ensure that jurors feel comfortable asking questions.

Rule 243 also makes clear that the judge will review the questions outside of the presence of the jury, read each question for the record, and hear objections, if any, from the lawyers. The judge will rule on whether the question can be asked, including any rephrasing of the question. If the question can be asked, then the judge will ask it and instruct the witness to answer only the

question asked. The lawyers will have a chance to ask follow-up questions of the witness limited to the scope of the new testimony.