

191 CLOSING: LONG FORM

Now, members of the jury, this case is ready to be submitted to you for your serious deliberation. You are free to deliberate in any way you wish consistent with your oath as jurors, but these suggestions may help you proceed in a smooth and timely way.

I would remind you to follow the instructions about the law. Respect each other's opinions and value the different viewpoints you each bring to the case. Listen to one another and be respectful of each other's opinions. Do not be afraid to change your opinion if you are convinced by the reasoning of your fellow jurors. Be thoughtful and do not rush. The parties to this case deserve your complete attention and consideration.

Selecting the Presiding Juror

When you retire to the jury room, select one of your members to preside over your deliberations. That person's vote is entitled to no greater weight than the vote of any other juror. The presiding juror should:

- Encourage discussions that include all jurors.
- Keep the deliberations focused on the evidence and the law.
- Let the court know when there are any questions or problems.
- Tell the court when a verdict has been reached.

Discussing the Evidence and the Law

I will send written copies of the instructions to the jury room for you to refer to during deliberations. It is a violation of the juror's oath not to follow the instructions, to refuse to deliberate, or to rely on any information outside of the evidence.

I remind you that you may not bring into the jury room any research materials or additional information; this includes dictionaries, computers, electronic communication devices, or other reference materials. You may not communicate in any way with anyone other than jurors until you have reached your verdict.

Getting Assistance from the Court

You will not have a copy of a written transcript of the trial testimony available for use during your deliberations. You must rely primarily on your memory of the evidence and testimony introduced during the trial. You may ask to have specific portions of the testimony read to you, but you may not receive everything you ask for or you may receive more than you ask for.

[If you wish to see an exhibit, you may ask for it. I will respond by either sending the exhibit to you or by sending back a note that I cannot send you that particular exhibit. If I do not send you the exhibit, do not concern yourselves about the reason why I have not done so.]

If you need to communicate with me while you are deliberating, send a note through the bailiff, signed by the presiding juror. To have a complete record of this trial, it is important that you not communicate with me except by a written note.

If you have questions, I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait for my answer. I will answer any questions in writing or orally here in open court.

Do not reveal to me or anyone else how the vote stands on the issues in this case unless I ask you to do so.

Reaching a Verdict

Agreement by ten (five) or more jurors is sufficient to become the verdict of the jury. Jurors have a duty to consult with one another and deliberate for the purpose of reaching agreement. If you can do so consistently with your duty as a juror, at least the same ten (five) jurors should agree in all the answers. I ask you to be unanimous if you can.

At the bottom of the verdict, you will find a place provided where dissenting jurors, if there be any, will sign their names and state the answer or answers with which they do not agree. Either the blank lines or the space below them may be used for that purpose.

After you have reached a verdict, the following steps will be followed:

- The presiding juror tells the bailiff that a verdict has been reached.
- The judge calls everyone, including you, back into the courtroom.
- The verdict is read into the record in open court.
- I may ask for an individual poll of each of you to see if you agree with the verdict. You need only answer “yes” or “no” to the question.

Members of the jury, you will consider the case fairly, honestly, impartially, and in the light of reason and common sense. Give each question in the verdict your careful and conscientious consideration. In answering each question, free your minds of all feelings of sympathy, bias, or prejudice. Let your verdict speak the truth, whatever the truth may be.

The clerk may now swear the bailiffs.

COMMENT

The instruction was approved in 2010 and revised in 2011 and 2016. It is an alternative to Wis JI-Civil 190. The comment was revised in 2017.

See Wis JI-Civil 180.

Wis. Stat. § 805.09(2) does not require that five-sixths of the jury agree on all questions in the verdict. Rather, five-sixths must agree on all questions necessary to support a judgment on a particular claim. Therefore, a verdict must be reviewed on a claim-by-claim basis. Geise v. Montgomery Ward, Inc., 111 Wis.2d 392, 400, 331 N.W.2d 585 (1983).

Multiple Claims. When instructing the jury in cases involving multiple claims, see In Interest of C.E.W., 124 Wis.2d 47, 368 N.W.2d 47 (1985). In that decision, the court said it was error to give this instruction in a case involving six verdict forms because the instruction's language that "at least the same ten jurors should concur in all the answers made" gives the jury the belief that the same jurors must make the same decision on all verdicts. The court said that the six verdicts were independent, and, therefore, there was no reason for the trial court to impose the requirement of unanimity across verdicts.