

195 SUPPLEMENTAL INSTRUCTION WHERE THE JURY IS UNABLE TO AGREE

The court has been informed that the jury is unable to agree on a verdict. You are not going to be kept here until you do agree, but you jurors are as competent to agree on a verdict as the next jury that may be called to hear the same evidence and arguments that you have heard.

You do not have to violate your individual judgment and conscience. However, you do have the duty to be open-minded to discuss the evidence freely and fairly, to listen to the arguments of your fellow jurors, and to examine your own position and to make a conscientious effort to agree on a verdict.

Remember, agreement by ten (five) or more jurors is sufficient to become the verdict of the jury. [If you can do so consistently with your duty as a juror, at least the same ten (five) should agree in all the answers (as to a particular claim).] If possible, I ask you to be unanimous.

At the bottom of the verdict, you will find a place provided where dissenting jurors, if there be any, will sign their name or 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.

COMMENT

The instruction was originally published in 1972 and revised in 1991 and 2002. The comment was updated in 1980 and was reviewed in 2002 without change.

Wis. Stat. § 805.13(5).

Kelley v. State, 51 Wis.2d 641, 645, 187 N.W.2d 810 (1971). See also Lewandowski v. Continental Casualty Co., 88 Wis.2d 271, 282, 276 N.W.2d 284 (1979).

It is not error to permit a civil jury to separate at night and return the next morning to continue deliberations. Annot., 77 A.L.R.2d 1086 (1961).

For reinstruction of the jury, see Hareng v. Blanke, 90 Wis.2d 158, 279 N.W.2d 437 (1979).