

## CHAPTER 1

### GENERAL INSTRUCTIONS PRIOR TO OR DURING TRIAL AND UPON DISCHARGE OF JURY

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## A. JURY ORIENTATION

### 1:1 INTRODUCTORY REMARKS TO JURY PANEL

*(The remarks of the Court to the members of the jury panel at the commencement of the trial should be substantially as follows:)*

**Members of the jury, this is** *(insert appropriate description, e.g., “Courtroom A,” “Division II,” etc.)* **of the (County) (District) Court. My name is** *(insert name)*. **I am the judge assigned to preside in this case.**

**First, I want to tell you about the rules that will govern your conduct during your jury duty, beginning right now, even if you are not finally selected as jurors. If you are chosen as jurors, your job will be to decide this case based solely on the evidence presented during the trial and the instructions that I will give you. You will not be investigators or researchers, so do not attempt to gather any information about this case on your own. Do not read or do research about this case or the issues in the case from any other source, including the Internet. You may not use Google, Bing, Yahoo, or any other type of Internet search engine to learn about any person, place, or thing that is involved in this case. Do not read about this case in newspapers, magazines, or any other publications. Do not listen to any podcasts or television or radio broadcasts about the trial. Do not consult dictionaries; medical, scientific, or technical publications; religious books or materials; or law books. I want to emphasize that you must not seek or receive any information about this case from the Internet, which includes all social networking sites, Google, Wikipedia, blogs, and other websites.**

**If you were to violate this rule by receiving outside information about the case, it could force me to declare a mistrial, meaning that the trial would have to start over, and all of the parties’ work, my work, and your work on this case would be wasted.**

**Therefore, it is very important that you not receive outside information about this case, whether it comes from other people, from the media, from books or publications, or from the Internet. You are free to use the Internet, but only for purposes unrelated to this case. Do not search for or receive any information about the parties, the lawyers, the witnesses, the judge, the evidence, or any place or location mentioned. Do not research the law. Do not look up the meaning of any words or scientific or technical terms used. If necessary, I will give you definitions of words or terms.**

**Also, you are not allowed to visit any place(s) involved in this case. If you normally travel through such a place, you should try to take a different route until I tell you that your jury service is completed. If you cannot take a different route, you must not stop or attempt to gather any information from that location.**

**Until I tell you that your jury service is complete, do not communicate about the case with anyone, including family and friends, whether in person or by telephone, cell phone, smart phone, computer, Internet, or any Internet service. This means you must not email, text, instant message, Tweet, blog, or post information about this case, or about your**

experience as a juror on this case, on any social networking site, website, listserv, chat room, or blog.

When court is not in session, you may communicate about anything other than this case. You may tell others that you are on jury duty and that you cannot talk about this duty until your service is completed, and you may tell them the estimated schedule of your jury duty, but do not tell them anything else about the case. If anyone tries to communicate with you about anything concerning the case, you must stop the communication immediately and report it to the Bailiff, who will notify me.

(The Court) (I) will now introduce you to this case.

The case which we are about to try is a civil case and not a criminal case. The (party) (parties) who started this case (is) (are) called (the) plaintiff(s). The opposing (party) (parties) (is) (are) called (the) defendant(s). *(If there are additional parties, describe them and their role.)* In this case the plaintiff(s) (is) (are) *(insert name[s])*, and the defendant(s) (is) (are) *(insert name[s])*. *(Insert statement about the nature of the case.)*

There will be *(insert number)* jurors in this case. The jury will consider the evidence and reach a verdict with the help of instructions about the law. (The Court) (I) will now read you some of the instructions that may apply in this case. These are preliminary instructions about the law and may not be exactly the same as the final instructions about the law you will be given at the end of the case to use in your deliberations. If there is any difference between the preliminary and final instructions, you must follow and be governed by the final instructions in deciding the case. You should not be concerned about any difference between the preliminary instructions and the final instructions. *(Insert applicable jury instructions, such as the definition of the burden of proof and any applicable evidentiary standards.)*

The jury must decide what the facts are from the evidence you hear and see during the trial.

You have a duty to be fair and impartial.

In this case, the parties are entitled to a jury trial. Trial by jury is part of our American system of justice. Each juror plays an equal and important part in this system. It is your duty to give this case your close attention, absolute fairness, and good judgment.

We estimate that this trial will last *(insert number)* days. *(The Court may either at this time or later inquire whether there are any members of the jury panel who would be unable to serve during the trial if selected as jurors.)*

You will not be required to stay together at noon or at night until the case is finally given to you for your decision.

## Notes on Use

1. This instruction should be appropriately modified and given in conjunction with other applicable instructions in this chapter and Chapters 2 and 3 to comply with the provisions of C.R.C.P. 47(a)(2)(IV) or 347(a)(2)(IV). These rules require that the jury be informed before jury selection of the nature of the case by use of the parties' statement of the case, *see* Instructions 2:1, 2:2, or 2:3, or by use of "a joint statement of factual information intended to provide a relevant context for prospective jurors to respond to questions asked of them." C.R.C.P. 47(a)(2)(IV), 347(a)(2)(IV). In the court's discretion, the attorneys may present that information with short non-argumentative statements.

2. The preliminary jury instructions are to inform prospective jurors of their duties and to facilitate the intelligent exercise of challenges. C.R.C.P. 47(a), 347(a). They should include at a minimum instructions on the burden of proof, credibility of witnesses, objections of counsel, and bench conferences. C.R.C.P. 47 cmt.

3. In proceedings under the Children's Code, Instruction 40:1 (Juvenile Delinquency) or Instruction 41:1 (Dependency and Neglect) should be used rather than this instruction.

4. In other cases the Court's remarks should be changed or modified to suit the exigencies of the case. The above is a suggestion as to what the remarks should cover. The jury plays a vital role in the trial and should be kept fully informed of the judicial procedures as the trial progresses.

5. When this instruction is used in a will contest case, *see* Chapter 34, the ninth paragraph of this instruction must be appropriately modified. For example:

The case we are about to try is a civil case as distinguished from a criminal case. It involves the validity of a will. The parties to the case are the proponent, (*name*), who is the party offering the will for probate, and the contestant, (*name*), who is the party objecting to the admission of the will to probate. The proponent, (*name*), claims the will was validly executed by (*name of alleged testator*), as the testator. The contestant, (*name*), claims the will should not be admitted to probate because (*name of alleged testator*) (*insert brief description, e.g., "did not execute the will in the manner required by law," "was not of sound mind at the time the will was executed," "had revoked the will before she died," etc.*).

6. This instruction should be modified to reflect current communication methods and information-gathering technology.

## Source and Authority

This instruction is supported by C.R.C.P. 47(a) and 347(a), and the Source and Authority to Instruction 1:5.

## 1:2 EXPLANATION TO JURY PANEL OF VOIR DIRE

**(The Court) (I) want(s) to explain briefly to you the method we will use in selecting this jury and some of the reasons for this procedure.**

*(Insert number) members of the panel will be called into the jury box. After the first (number) members of the panel are in the jury box, each of you, regardless of whether you have been called forward to sit in the jury box, will take your oath that you will truthfully answer all questions as to whether you can serve as a juror in this case. After the oath is (administered) (given), (the Court) (I) and each attorney may ask you questions concerning your ability to be fair and impartial jurors. You should answer fully all questions asked by the attorneys or by (the Court) (me). Even though you may not be called forward into the jury box with the first group called, please listen closely to all that is said because you may be asked to sit in the jury box before jury selection is completed. After the questioning has been completed, each side must excuse (insert number) members of the panel without stating a reason. This leaves a jury of (insert number) to try the case. Therefore, do not be embarrassed or consider it any reflection upon you if you are one of those excused.*

*(The Court should then introduce each attorney and request each attorney to introduce their respective clients. The Court should also introduce to the panel all the members of the court staff and describe briefly the functions they perform. The appropriate number of prospective jurors should then be called by lot and the oath on voir dire administered to the entire panel, thus avoiding needless duplication in the administration of the oath.)*

*(After the members initially called have been seated in the jury box, the Court should then continue:)*

**I will now explain why a person cannot serve on a jury.**

**A person cannot serve on a jury if he or she** *(insert the grounds for disqualification in § 13-71-105(2), C.R.S., set out at the beginning of this Chapter).*

**A juror may also be excused for any of the following reasons:** *(insert for civil cases the grounds in C.R.C.P. 47(e) or 347(e) set out at the beginning of this Chapter; for juvenile delinquency cases, insert the grounds set out in Crim. P. 24(b)).*

**It is your duty to volunteer any information that may disqualify you from jury service or might be a reason to excuse you from service, whether or not you are specifically asked about this information. Is there anything which any of you know or think would disqualify you as a juror or which would be reasons for excusing you in this case? If so, would you please raise your hand?** *(Thereafter, as other members of the jury panel may be called to the jury box, a similar question should be put to the prospective juror.)*

## Notes on Use

1. This instruction should be appropriately modified and given in conjunction with other applicable instructions in this Chapter and Chapters 2 and 3 to comply with the provisions of C.R.C.P. 47(a) or 347(a).

2. In general, four peremptory challenges are allowed in district courts and one is allowed in county courts. *See* C.R.C.P. 47(g) & (h), 347(g) & (h).

3. Allowing a civil litigant fewer peremptory challenges than authorized, or than available to and exercised by the opposing party, does not by itself require automatic reversal. **Laura A. Newman, LLC v. Roberts**, 2016 CO 9, ¶ 26, 365 P.3d 972 (overruling **Blades v. DaFoe**, 704 P.2d 317 (Colo. 1985); **Safeway Stores, Inc. v. Langdon**, 187 Colo. 425, 532 P.2d 337 (1975); and **Denver City Tramway Co. v. Kennedy**, 50 Colo. 418, 117 P. 167 (1911), all of which supported automatic reversal). Instead, the reviewing court must apply an outcome-determinative analysis, which asks whether the error substantially influenced the outcome of the case. *Id.*

4. Although juvenile delinquency cases are to be conducted generally as criminal proceedings, *see* Source and Authority to Instruction 40:1, this instruction should be used in such cases. *See* C.R.J.P. 3.5(b) (“Examination, selection, and challenges for jurors [in delinquency cases] shall be as provided by C.R.C.P. 47, except that the grounds for challenge for cause shall be as provided by Crim. P. 24.”).

5. Inclusion of a judge’s spouse as a juror does not merit automatic reversal as either structural error or plain error. **Richardson v. People**, 2020 CO 46, ¶¶ 31-37 (in the absence of a contemporaneous objection, the presence of the judge’s spouse on the jury did not create structural error as the judge did not have a duty to sua sponte excuse his spouse from the jury or to recuse himself).

## Source and Authority

This instruction is supported by C.R.C.P. 47(a) and 347(a).

### **1:3 REMARKS TO JURY PANEL ON VOIR DIRE**

*(After the jury panel has been sworn and the initial panel has been seated in the jury box, the following remarks are recommended.)*

**The attorneys and (the Court) (I) want(s) an impartial jury to decide this case. (The Court) (I) will be asking questions to find out whether any (prospective) juror knows any of the parties, witnesses or court personnel, whether he or she has any knowledge or personal interest in the outcome of the case or whether he or she has any bias or prejudice which might wrongfully influence the juror. No question is intended to pry into your personal affairs. If you are not chosen, it is not a reflection on your character nor does it mean that the attorney has anything personally against you. If you know or at any time during questioning you become aware of anything which might prevent you from being completely impartial to both sides, or might otherwise prevent you from serving as a juror, you should immediately raise your hand.**

*(The Court should proceed with voir dire examination.)*

#### **Notes on Use**

1. This instruction should be appropriately modified and given in conjunction with other applicable instructions in this chapter and Chapters 2 and 3 to comply with the provisions of C.R.C.P. 47(a) or 347(a).

2. Should it appear that a prospective juror is hesitant to answer questions or answer them fully because of their personal nature, the judge, along with counsel, may conduct the voir dire examination of the prospective juror as to such matters in chambers.

3. During voir dire, counsel has the right to ask whether any of the prospective jurors has a relationship to the defendant's insurance company and, if so, to inquire into the nature of that relationship. **Smith v. District Court**, 907 P.2d 611 (Colo. 1995).

#### **Source and Authority**

This instruction is supported by C.R.C.P. 47(a) and 347(a).



**1:4 JURORS' CONDUCT DURING TRIAL — PRE-DELIBERATION  
DISCUSSIONS, PROHIBITION ON COMMUNICATIONS WITH OTHERS**

**Members of the Jury, now that you have been sworn to try this case, I will instruct you as to your conduct during the course of this trial.**

**You may discuss the evidence during the trial, but only among yourselves and only in the jury room when all of you are present.**

**You must not, individually or as a group, discuss or form final opinions about any fact or about any potential outcome of this case until after you have heard and considered all of the evidence, the closing arguments of the lawyers, and the final instructions I will give you on the law. Keep an open mind during the trial. Form your final opinions only after you have discussed this case as a group in the jury room at the end of the trial.**

**Do not talk with anyone else about this case, including your family and friends, the parties, their attorneys, witnesses, representatives of the media, or court staff, until this trial is over and you have been formally discharged by the Court. At that time, you will be free to discuss this case with anyone if you wish to do so; you simply must not do so before the trial is over and you have been formally discharged by the Court.**

**If anyone tries to talk with you or if you overhear others talking about any party, witness, evidence, or anything else about this case, walk away and immediately notify the Bailiff, who will notify me. Also, do not read or listen to any accounts or discussions of the case that may be reported by newspapers or other publications or by television or by radio.**

**Notes on Use**

C.R.C.P. 47(a)(5) allows for discussion of the evidence by the jury throughout the trial with appropriate instructions. However, the trial court retains “the discretion to prohibit or limit pre-deliberation discussions of the evidence in a particular trial based on a specific finding of good cause reflecting the particular circumstances of the case.”

**Source and Authority**

This instruction is supported by C.R.C.P. 47(a)(5).

## **1:5 JURORS' CONDUCT DURING TRIAL — PROHIBITION ON OUTSIDE INFORMATION AND ELECTRONIC COMMUNICATIONS**

**As jurors, your job is to decide this case based solely on the evidence presented during the trial and the instructions that I will give you. You are not investigators or researchers, so you must not read or use any other material of any kind to obtain information about the case or to help you decide the case. This prohibition applies, for example, to: newspapers; magazines; television and radio broadcasts; dictionaries; medical, scientific, or technical publications; religious books or materials; law books; and the Internet. I want to emphasize that you must not seek or receive any information about this case from the Internet, which includes all social networking, Google, Wikipedia, blogs, and other websites.**

**If you were to violate this rule by receiving outside information about the case, it could force me to declare a mistrial, meaning that the trial would have to start over before a different jury, and all of the parties' work, my work, and your work on this trial would be wasted.**

**Therefore, it is very important that you not receive outside information about this case, whether it comes from other people, from the media, from books or publications, or from the Internet. You are free to use the Internet, but only for purposes unrelated to this case. Do not search for or receive any information about the parties, the lawyers, the witnesses, the judge, the evidence you will hear, or any place or location mentioned during the trial. Do not research the law. Do not look up the meaning of any words or scientific or technical terms used during the trial. If necessary, I will give you definitions of words or terms before you begin your deliberations.**

**Also, you are not allowed to visit any place(s) involved in this case. If you normally travel through such a place, you should try to take a different route until I tell you that your jury service is completed. If you cannot take a different route, you must not stop or attempt to gather any information from that location.**

**Until I tell you that your jury service is completed, do not communicate with anyone, including family and friends, about the evidence or the issues in this case. This prohibition applies to all forms of communication, including in-person conversations, written communications, telephone or cell phone calls, and electronic communications through any device. For example, you must not communicate about this case by email, text messages, Twitter, blogging, or social media like Facebook.**

**When court is not in session, you may communicate about anything other than this case. You may tell others that you are on a jury and that you cannot talk about the trial until it is over, and you may tell them the estimated schedule of the trial, but do not tell them anything else about the case. If anyone tries to communicate with you about anything concerning the case, you must stop the communication immediately and report it to the Bailiff, who will notify me.**

## Notes on Use

In some circumstances, the trial court may choose to repeat this instruction or an abbreviated version of it before recesses during trial and as a part of the final instructions to the jury. *See* Instructions 1:10 and 4:1A.

## Source and Authority

This instruction is supported by **People v. Harlan**, 109 P.3d 616 (Colo. 2005) (improper for text from Bible to be used in jury deliberations); **People v. Wadle**, 97 P.3d 932 (Colo. 2004) (improper for juror to download Internet information on the use of anti-depressants and share it during deliberations); **Wiser v. People**, 732 P.2d 1139 (Colo. 1987) (improper for juror to look up legal terms in dictionary during deliberations); **Niemand v. District Court**, 684 P.2d 931 (Colo. 1984) (improper for juror to use law dictionary); **Alvarez v. People**, 653 P.2d 1127 (Colo. 1982) (improper for juror to use dictionary to augment understanding of words used in court's instructions); **Vento v. Colorado National Bank-Pueblo**, 907 P.2d 642 (Colo. App. 1995) (improper for jurors to research legal terms in dictionary); **People v. Cornett**, 685 P.2d 224 (Colo. App. 1984) (improper for jurors to read newspaper article relating to the case); **T.S. v. G.G.**, 679 P.2d 118 (Colo. App. 1984) (improper for juror to consult textbook and use the information during jury deliberations to assess expert testimony); and **People v. Reed**, 42 Colo. App. 275, 598 P.2d 148 (1979) (“experiment” by juror to determine length of time required to drive certain distance, assuming improper, held harmless). *See also* **Kendrick v. Pippin**, 252 P.3d 1052 (Colo. 2011) (not improper for juror who was engineer to use preexisting knowledge of math and physics to perform calculations about the speed, location, and reaction times of a party).

## **1:6 PRETRIAL PUBLICITY**

**There may have been some publicity about this case in the newspapers and on radio and television. Some of this publicity may have come to the attention of some of you. You must disregard anything that you may have heard about this case outside the courtroom. Your verdict must be based solely on evidence admitted during the trial.**

### **Notes on Use**

When this cautionary instruction is appropriate to the circumstances of the case, it should be given immediately after Instruction 1:4. If necessary, however, it may also be given during trial.

### **Source and Authority**

1. This instruction is supported by **Harper v. People**, 817 P.2d 77 (Colo. 1991).
2. This instruction is comparable to COLORADO JURY INSTRUCTIONS – CRIMINAL C:14 (2018).

## **1:7 GENERAL OUTLINE OF TRIAL PROCEDURES TO JURY**

**(The Court) (I) will now explain the procedure that is usually followed during a trial. Before the trial begins, (the Court) (I) will orally give you some preliminary instructions (, including some specific instructions on the law that applies in this case,) (and definitions of [technical] [special] terms) to provide you with a framework for the evidence that will be presented. (You will also receive copies of these preliminary instructions [and definitions].)**

**The attorneys will then have the opportunity to present opening statements. The purpose of opening statements is to give you an outline of each party's claims and defenses. You must remember, however, that what is said in opening statements and all other statements made by the attorneys are not evidence. Your verdict must be based upon the evidence in this case and the instructions regarding the law that governs this case. The evidence usually consists of the sworn testimony of witnesses, the exhibits which are received and any facts which are admitted or agreed to or are judicially noticed.**

**(Also, during the course of this trial, [I] [the Court] [the attorneys] will [make] [read] brief statements summarizing the evidence already presented [and outlining how this evidence relates to evidence that will be presented later in the trial]. These statements are not evidence and are only made for the purpose of assisting you in understanding this case.)**

**Once the trial begins, the plaintiff's attorney will present evidence. The defendant's attorney is permitted to cross-examine all witnesses presented by the plaintiff. Upon the conclusion of the plaintiff's case, the defendant's attorney may offer evidence on behalf of the defendant, but is not required to do so. If the defendant presents witnesses (in response to the plaintiff's evidence or to establish any defense), the plaintiff's attorney may cross-examine them. The plaintiff's attorney may choose to present further evidence in response to any evidence presented by the defendant.**

**After all the evidence has been received, (I) (the Court) will give you final instructions on the law applicable to this particular case. These final instructions will replace the preliminary instructions which you will be given before the trial begins. Based upon the evidence presented, the final instructions may differ from the preliminary instructions. If there is any difference between the preliminary and final instructions, you must follow and be governed by the final instructions in deciding the case.**

**After you have received all the instructions on the law governing this case, each attorney may present a final argument to you. The plaintiff's attorney will first present (his) (her) closing argument. Thereafter, the defendant's attorney will make a closing argument. The plaintiff's attorney may respond to any statements made by the defendant's attorney. After arguments are concluded, the case will be given to you for decision.**

**It is the right of an attorney to object when testimony or other evidence is offered which the attorney believes is not admissible.**

**When (I) (the Court) sustain(s) an objection to a question, the jurors must disregard the question and must draw no conclusion from the question nor guess what the witness would have said. If any answer has been given, the jurors must disregard it.**

**When (I) (the Court) sustain(s) an objection to any evidence or strike(s) any evidence, the jurors must disregard that evidence.**

**When (I) (the Court) overrule(s) an objection to any evidence, the jurors must not give that evidence any more weight than if the objection had not been made. You should not be prejudiced against any party because that party's attorney makes an objection.**

**Legal arguments are occasionally required to be considered outside the presence of the jury. This may cause delay. All rulings (I) (the Court) (am) (is) required to make will be based solely on the law. You must not infer from any ruling or from anything (I) (the Court) say(s) during trial that (I) (the Court) hold(s) any views either for or against any party to this case.**

**During recesses and adjournments of court, you will be free to separate, to eat lunch, and to go home at the end of the day. During these times, you are not to discuss this case with one another or anyone else. Furthermore, you must not talk with any of the parties to this case, their attorneys, witnesses, or representatives of the media until after you have reached your verdict and have been discharged by the Court as jurors in this case.**

**We have a Bailiff, (*name*), and (he) (she) is here to take care of your needs during the course of this trial. Do not discuss this case with the Bailiff. If you have any personal problems or needs, take it up with (*name of Bailiff*) and (he) (she) will notify me.**

### **Notes on Use**

1. This instruction should be appropriately modified to include the information required by C.R.C.P. 47(a)(5) or 347(a)(5), including a detailed statement of applicable instructions, case specific legal principles, and definitions of technical or legal terms that may be used during trial.
2. This instruction should be modified appropriately when necessary for cases involving counterclaims, etc.
3. In juvenile delinquency or dependency and neglect proceedings, Instructions 40:2 and 41:2, respectively, should be used rather than this instruction.
4. Use whichever parenthesized words are appropriate.
5. The "Report of the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries," adopted in principle by the Colorado Supreme Court in February 1997, recommends:

The parties and their counsel should consider the use of interim summaries for the jury after discrete segments of especially long trials or trials in unusually complex cases. The parties shall confirm that they have considered the use of interim summaries.

*Id.* at p. 46, ¶ 18.

#### **Source and Authority**

This instruction is supported by C.R.C.P. 47(a)(5) and comment, and C.R.C.P. 347(a)(5).

## **1:8 NOTE-TAKING BY JURORS**

**You have received writing materials. You may use these materials to take notes during the trial. However, you are not required to do so.**

**If you take notes, you should not allow the note-taking to detract from your close attention to each witness and his or her testimony and all other evidence received during the trial.**

**Take notes sparingly. Do not try to summarize all testimony. (For example, notes can be particularly helpful when dealing with measurements, times, distance, identities and relationships.)**

**Whether you take notes or not, you should rely on your memory as much as possible and not upon your notes or the notes of other jurors. Any notes you take are to refresh your own individual memory.**

**These materials may only be used in the courtroom or jury room. You may take these materials from the courtroom to the jury room and from the jury room to the courtroom. However, these materials may not be taken anywhere else.**

**Please write your name on your materials. Be assured that no one else will read your notes. At the end of the case, these notes will be returned to the Court and destroyed.**

### **Notes on Use**

1. When Instruction 1:9 is given with this instruction, the last two paragraphs of this instruction should not be given.

2. The “Report of the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries,” adopted in principle by the Colorado Supreme Court in February 1997, recommends:

The trial judge should instruct jurors in all cases that jurors are entitled to take notes during the trial if they wish.

*Id.* at p. 45, ¶ 17.

### **Source and Authority**

This instruction is supported by C.R.C.P. 47(m) and (t) and C.R.C.P. 347(m) and (t).



## 1:9 JUROR NOTEBOOKS

To assist you in understanding these proceedings, you have been provided with notebooks containing information about this case. Please write your name in these notebooks. These notebooks may only be used in the courtroom or jury room. You may take these notebooks from the courtroom to the jury room and from the jury room to the courtroom. However, they may not be taken anywhere else. Any notes that you have taken during the trial will be destroyed after they have been returned to the Court.

### Notes on Use

1. Instruction 1:8 should be given with this instruction.

2. The “Report of the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries” (Report), adopted in principle by the Colorado Supreme Court in February 1997, recommends:

The courts should provide juror notebooks in both civil and criminal cases, which contain information on trial proceedings, copies of judge’s instructions, copies of important exhibits, lists of witnesses, and other information appropriate for the case.

*Id.* at p. 42, ¶ 16.

3. The Report further recommends that the notebooks contain the following information: (1) an explanation of the nature of the case being tried; (2) trial procedures; (3) housekeeping matters; (4) a diagram of the courtroom with the positions and names of all the participants labeled; (5) preliminary jury instructions; (6) a list of actual witnesses; (7) a list of actual exhibits; (8) admitted exhibits or exhibits the court allows the jury to have; (9) excerpts from important exhibits; (10) a glossary of technical and scientific terms; (11) a glossary of legal terms; (12) limiting instructions given during the trial; (13) final instructions; (14) blank paper for juror notes with an instruction on how they are to be utilized; and (15) any other items agreed upon by the court and counsel. *Id.* at pp. 43-44; *see also* C.R.C.P. 47 cmt.

4. The Report also recommends that “[n]otebooks should be used in all cases of any complexity or length[,]” and that these notebooks should include “paper for juror notes with an instruction as to how they are to be utilized.” Report at pp. 43-44; *see* Instruction 1:8.

5. Citing this instruction and Instruction 1:8, the court in **People v. Willcoxon**, 80 P.3d 817, 820 (Colo. App. 2003), *overruled on other grounds by* **People v. Adams**, 2016 CO 74, 384 P.3d 345, held that although the error was not structural, the trial court erred by allowing jurors in criminal trial to take juror notebooks home with them “because this procedure is not expressly authorized by Crim. P. 16(IV)(f).”

### Source and Authority

This instruction is supported by C.R.C.P. 47(m) and (t) and C.R.C.P. 347(m) and (t). *See also* C.R.C.P. 16(f)(3)(VI)(C) and C.R.C.P. 316(e).

## **1:10 ADMONITION AT RECESS**

**We will now (recess for the day) (have a recess) (and the Bailiff will escort you to the jury room). You may discuss the evidence during the trial, but only among yourselves and only in the jury room when all of you are present.**

**You must not discuss this case with anyone else, or read, view, or listen to any reports about this case in the press, on radio, or on television.**

**Remember what I told you at the beginning of the case: do not look at, read, consult, or use any material of any kind, including any newspapers, magazines, television and radio broadcasts, dictionaries, medical, scientific, technical, religious, or law books or materials, the Internet, or any material of any type or description in connection with your jury service. I want to emphasize that you must not seek or receive any information about this case from the Internet, which includes all social networking, Google, Wikipedia, blogs, and other websites. Do not do any research of any kind about this case.**

**Do not use any information from any other source concerning the facts or the law applicable to this case other than the evidence presented and the instructions that I give you. Do not do your own investigation about this case. (You are not allowed to visit any place[s] mentioned in the evidence. If this is an area that you normally go through, you should try to take an alternate route. If you are not able to take an alternate route you should not gather any information from that location.)**

**You must not form or express any opinion on the outcome of the case until it is given to you for your final decision.**

**Attorneys and parties are ordered not to talk with you. Please do not consider them impolite when they do not talk to you.**

### **Notes on Use**

1. Use whichever parenthesized portions are appropriate.
2. C.R.C.P. 47(a)(5) allows for discussion of the evidence by the jury throughout the trial with appropriate instructions. However, the trial court retains “the discretion to prohibit or limit pre-deliberation discussions of the evidence in a particular trial based on a specific finding of good cause reflecting the particular circumstances of the case.” C.R.C.P. 47(a)(5).
3. In some circumstances, the trial court may choose to give Instruction 1:5 with this instruction.

### **Source and Authority**

1. This instruction is supported by C.R.C.P. 47(a)(5) and 347(a)(5).

2. This instruction is comparable to COLORADO JURY INSTRUCTIONS – CRIMINAL C:13 (2018).

## B. INSTRUCTIONS DURING TRIAL

### 1:11 EVIDENCE ADMISSIBLE FOR PARTICULAR PURPOSE ONLY

**In certain instances evidence may be admitted for a limited purpose only. (Exhibit [insert identification]) (Witness [name]’s testimony [you are about to hear] [you have just heard]) is such an instance. It may be used as evidence for the purpose of showing (insert description), but you should not consider it as evidence for any other purpose.**

#### Notes on Use

1. This instruction should be given immediately before or immediately after evidence received for a limited purpose is admitted, using whichever parenthesized phrases are appropriate.

2. A limited-purpose instruction need be provided only when requested. **Qwest Services Corp. v. Blood**, 252 P.3d 1071 (Colo. 2011). “It is a fundamental rule of trial practice, long established in Colorado, that when evidence is admissible for one purpose and not another, the burden is upon counsel opposing the admission of the evidence to object and request limitations on its admission.” **Polster v. Griff’s of Am., Inc.**, 184 Colo. 418, 421-22, 520 P.2d 745, 747 (1974).

#### Source and Authority

1. This instruction is supported by CRE 105, and **Blood**, 252 P.3d at 1087.

2. This instruction is modeled after COLORADO JURY INSTRUCTIONS – CRIMINAL D:02 (2018). *See also* **Lannon v. Taco Bell, Inc.**, 708 P.2d 1370 (Colo. App. 1985), *aff’d on other grounds*, 744 P.2d 43 (Colo. 1987).

## 1:12 STRICKEN EVIDENCE

**The (testimony) (or) (evidence) offered by (name of witness) as to (description of fact in issue) has been rejected by this Court and is stricken. You are not to consider for any purpose any offer of evidence that is rejected or stricken. Such (testimony) (or) (evidence) is to be treated as if you had never (heard) (or) (seen) it.**

### Notes on Use

Use whichever parenthesized words are appropriate.

### Source and Authority

1. This instruction is supported by **Vigil v. People**, 731 P.2d 713 (Colo. 1987).
2. This instruction is comparable to COLORADO JURY INSTRUCTIONS – CRIMINAL D:04.5 (2018).

### **1:13 STIPULATION OR ADMISSION OF A FACT**

**You have heard (the parties stipulate or agree to the existence of a fact) (or) (that a fact has been admitted). This (agreement) (admission) makes the presentation of any evidence to prove this fact unnecessary. The (agreement) (admission) means that you must accept this fact (these facts) as true.**

#### **Notes on Use**

Use whichever parenthesized words are appropriate.

#### **Source and Authority**

This instruction is supported by C.R.C.P. 36(b).

**1:14 STIPULATION CONCERNING WITNESS'S TESTIMONY**

**The attorneys have agreed to what (*name*) would have testified to if (he) (she) were here. You are to treat this testimony the same as any other witness.**

**Source and Authority**

This instruction is supported by C.R.C.P. 16(f)(3)(I) and 36(b).

## **1:15 DIRECTIONS UPON AUTHORIZED JURY VIEW**

**The Court has concluded that you should now view *(insert appropriate description of the subject or scene)* as a group, and you are to go with the Bailiff(s). While you are there or in transit do not discuss this case among yourselves and do not ask any questions of the attorneys or of the people who may be there. The purpose of the viewing is to assist you in understanding and applying the testimony you hear and the exhibits introduced at this trial.**

### **Notes on Use**

Views are not permitted in civil trials in county courts, C.R.C.P. 347(k), but are permitted in district court trials. C.R.C.P. 47(k).

### **Source and Authority**

1. This instruction is supported by C.R.C.P. 47(k).
2. This instruction is modeled after COLORADO JURY INSTRUCTIONS – CRIMINAL C:09 (2018).



## **1:16 COURT'S QUESTIONS TO WITNESSES**

**No instruction to be given.**

### **Note**

Questions by judges are not encouraged, but if a judge deems it necessary to ask a question or line of questions, the judge should instruct the jury immediately before asking the question or questions as follows:

I am going to direct (a) (one or more) question(s) to the witness. You are not to assume that I hold any opinion on the matter concerning my question(s). Remember that any witness's answer to any question that I may ask is of no greater value and of no greater weight than any other answer that may be given. Attorneys may object to my question and you should not be prejudiced against any party because (his) (or) (her) attorney makes an objection.

### **Source and Authority**

The instruction suggested in the Note is modeled after COLORADO JURY INSTRUCTIONS – CRIMINAL C:03 (2018).

## **1:17 QUESTIONS BY JURORS OF WITNESSES**

**Rules governing jury trials do not allow jurors to ask questions orally of a witness. If you do have a question you would like to ask a witness during the trial, write your question down, but do not sign it. (Use the same procedure for any follow-up questions.) If you have a question for a witness, signal the Bailiff or me before the witness leaves the stand.**

**I may discuss the question with the lawyers. If I decide the question is proper, I will ask it at the appropriate time. Keep in mind, however, that the rules of evidence or other rules of law may prevent me from asking certain questions. I will apply the same legal standards to your questions as I do to the questions asked by the lawyers.**

**If I do not ask a particular question, do not guess why or what the answer might have been. My decision not to ask a question is not a reflection on the person asking it, and you should not attach any significance to my decision.**

### **Notes on Use**

1. If a juror's question is objectionable because of the form of the question, but is otherwise appropriate, it should be rephrased. **People v. Zamarripa-Diaz**, 187 P.3d 1120 (Colo. App. 2008) (better practice is for trial judge to consult with counsel before asking juror questions).
2. The court has discretion to allow juror follow-up questions in writing. C.R.C.P. 47(u).

### **Source and Authority**

This instruction is supported by C.R.C.P. 47(u) and 347(u).

## **C. DISCHARGE OF JURY**

### **1:18 MANDATORY INSTRUCTION UPON DISCHARGE**

**This case has now been concluded and (I) (the Court) wish(es) to express (my) (its) appreciation to you for your services.**

**You may now talk to anyone, including the attorneys and parties, about this case. Whether you do so is entirely up to you.**

**If you decide not to discuss the case, your decision will undoubtedly be respected. However, if an attorney or a party persists in discussing the case over your objection, or becomes critical of your services as a juror, please report the incident to me.**

**You are now allowed to leave with the thanks of the Court.**

### **Notes on Use**

The Court should not express any opinion as to its agreement or lack of agreement with the jury's verdict.

## **D. OATHS**

### **1:19 OATH ON VOIR DIRE**

**Do you, and each of you, solemnly swear (by the everliving God) or affirm to answer fully and truthfully the questions asked by the Court or the attorneys concerning your service as a juror in this case and to volunteer fully any information concerning your ability to render a just verdict?**

#### **Notes on Use**

The Colorado Rules of Civil Procedure do not specifically require an oath for voir dire, although an oath is traditional and is implied in C.R.C.P. 47(a) and 347(a). Under section 24-12-101, C.R.S., the phrase “by the everliving God” is allowed but not required in an oath.

#### **Source and Authority**

This instruction is supported by C.R.C.P. 47(u) and 347(u).

## 1:20 OATH OF JURORS

**Do you, and each of you, solemnly swear (by the everliving God) or affirm that you will fairly consider and decide the case now before you between *(name[s])*, the plaintiff(s), and *(name[s])*, the defendant(s) and that you will reach a true verdict based upon the evidence and the law contained in the instructions of the Court?**

### Notes on Use

1. C.R.C.P. 47(i) and 347(i), respectively, provide that the district courts and county courts shall administer an oath to the jurors which in substance should say: “That you and each of you will well and truly try the matter at issue between \_\_\_\_\_, the plaintiff, and \_\_\_\_\_, the defendant, and a true verdict render according to the evidence.”

2. Under section 24-12-101, C.R.S., the phrase “by the everliving God” is allowed but not required in an oath.

### Source and Authority

This instruction is supported by C.R.C.P. 47(i) and 347(i).

## 1:21 OATH OR AFFIRMATION OF WITNESSES

**Do you solemnly (swear) (by the everliving God) (affirm), under penalty of perjury, that the testimony you will give before this Court shall be the truth, the whole truth, and nothing but the truth?**

### Notes on Use

1. An affirmation, rather than an oath, may be administered under section 13-90-117, C.R.S., which provides:

**Affirmation — form — perjury.** (1) A witness who desires it, at his option, instead of taking an oath may make his solemn affirmation or declaration by assenting when addressed in the following form:

“You do solemnly affirm that the evidence you shall give in this issue (or matter), pending between \_\_\_\_\_ and \_\_\_\_\_ shall be the truth, the whole truth, and nothing but the truth.”

(2) Assent to this affirmation shall be made by answer: “I do.”

(3) A false affirmation or declaration is perjury in the first degree.

2. This instruction must be modified to read, “Do you promise to tell the truth?” for “any child who testifies in any proceeding pursuant to section 13-90-106(1)(b)(II)” (child under ten in any civil or criminal proceeding for sexual abuse, sexual assault, or incest). § 13-90-117.5, C.R.S.

3. Under section 24-12-101, C.R.S., the phrase “by the everliving God” is permitted but not required for an oath.

### Source and Authority

1. This instruction is supported by CRE 603, which requires that an oath or affirmation be “administered [to a witness] in a form calculated to awaken his conscience and impress his mind with his duty to [testify truthfully].”

2. In addition to section 13-90-117, C.R.S., see sections 18-8-501 to -509, C.R.S. (perjury and related offenses).

## 1:22 OATH OF INTERPRETER

**Do you solemnly (swear) (by the everliving God) (affirm) under penalty of perjury that you will, to the best of your ability, accurately translate into the *(insert description)* language, the oaths that are administered and the questions asked the witness(es) in this case, and that you will accurately translate into the English language the answers to those questions to the best of your ability?**

### Notes on Use

1. Before an interpreter is allowed to interpret, the Court may first have to make or permit a preliminary inquiry into the interpreter's qualifications to serve. *See* CRE 604 (interpreters must be qualified as experts and swear or affirm to the making of a true translation).

2. Concerning interpreters for hearing impaired persons, *see* §§ 13-90-201 to -210, C.R.S., and for appropriate modifications to be made in this instruction in such cases, *see* section 13-90-207, C.R.S.

3. Under section 24-12-101, C.R.S., the phrase "by the everliving God" is permitted but not required for an oath.

### Source and Authority

This instruction is supported by CRE 604 and section 13-90-117, C.R.S.

**1:23 OATH OF BAILIFF ON RETIREMENT OF JURY**

**Do you solemnly (swear) (by the everliving God) (affirm) under penalty of law that you will keep these jurors together in a private place; that you will not speak to them about any aspect of this trial nor allow any other person to do so, except to ask the jurors if they have agreed on a verdict; and that when the jurors have agreed upon a verdict, you will return with them into court?**

**Notes on Use**

Under section 24-12-101, C.R.S., the phrase “by the everliving God” is permitted but not required for an oath.