

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CIVIL
PROPOSAL 2022-016**

March 7, 2022

The Uniform Jury Instructions - Civil Committee has recommended amendments to UJI 13-110 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Sally A. Paez, Deputy Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 6, 2022, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

13-110. Conduct of Jurors.

Your job is to find and determine the facts in this case, which you must do solely upon the evidence received in court. There are [~~a number of~~] important rules [~~governing your conduct~~] you must follow during the trial.

First, you may discuss the evidence during the trial, but only among yourselves and only in the jury room when all of you are present. During the recesses and adjournments, while [~~this case~~] the trial is in progress, do not discuss the case with anyone other than yourselves as a group. The kinds of things you may discuss include the [~~witnesses, their~~] witness testimony[;] and exhibits. Be careful, however, not to make up your minds, or to try to convince others about the final outcome of the case, until you have heard everything - all the evidence, the final instructions of law, and the attorneys' closing arguments. It would be unfair to the parties if you attempt to decide the outcome of the case before you begin final deliberations.

Second, it is for you to decide whether the witnesses know what they are talking about and whether they are being truthful. You may give the testimony of any witness or other evidence whatever weight you believe it merits. You may take into account the witness's ability and opportunity to observe, any interest, bias or prejudice that the witness may have, and the reasonableness of the testimony considered in light of all the evidence in the case.

Third, to minimize the risk of accidentally overhearing something that is not evidence in this case, please continue to wear the jurors' badges while in and around the courthouse. If someone happens to discuss the case in your presence, report that fact at once to a member of the staff.

Fourth, though it is natural to visit with people you meet, please do not talk with any of the attorneys, parties, witnesses or spectators, either in or out of the courtroom. If you meet in the hallways or elevators, there is nothing wrong with saying "good morning" or "good afternoon", but your conversation should end there. If the attorneys, parties and witnesses do not greet you outside of court, or avoid riding in the same elevator with you, they are not being rude. They are just carefully observing this rule.

Fifth, do not consider anything you may have read or heard about the case outside the courtroom. During the trial and your deliberations, avoid news accounts of the trial, whether on radio, television, in the newspaper, on the internet or elsewhere. If you happen to see or hear any news account of the trial, please report that fact to a member of the staff.

Sixth, do not attempt any research, tests, experiments, visits to any locations involved in this case, or other investigation~~[, including on the internet]~~. It would be difficult or impossible to duplicate conditions shown by the evidence; therefore, your results would not be reliable. Such conduct also runs contrary to the rule that your verdict must be based solely upon the evidence presented to you. Nonetheless, in your deliberations, you need not ignore your backgrounds, including professional, vocational, and educational experience.

Seventh, because you are only to consider the evidence presented ~~[in]~~ during the trial ~~[in]~~ of this case, you may not refer to print or electronic resources before rendering your verdict. This means that you may not use [your] a computer, [or phone] telephone, smartphone, or any other electronic device [at any time to do any] to email, text, comment on, or research [on] any issue that may [arising in the trial or jury deliberations, or to comment on what is happening in the trial or jury deliberations. Specifically, you may not text message or go to or use any social networking sites, including, but not limited to,] arise during these proceedings. You may not use internet dictionaries, Google, Safari, Yahoo, Wikipedia, or any other search engine to research any issue, the parties, witnesses or attorneys. [Facebook, MySpace, LinkedIn, Twitter, and/or YouTube. Don't use internet dictionaries, Wikipedia, or any other source of information]. This prohibition includes the use of blogs, social networking sites, such as Facebook, LinkedIn, Twitter, YouTube, Snapchat, and any and all others. Again, [Y]you may rely only on the evidence presented in the trial [in] of this case.

Last, there are at least two sides to every lawsuit. It is important that you keep an open mind and not decide any part of the case until the entire case has been completed and submitted to you. Your special responsibility as jurors demands that throughout this trial you exercise your judgment impartially and without regard to any sympathy, ~~[bias or prejudice]~~ prejudice, or any actual or implicit bias of which you are or may become aware.

~~[These rules apply at all times during the trial]~~ These restrictions apply at all times during the trial, recesses, deliberations, and when you are away from the courthouse—24 hours a day, 7 days a week—until you return a verdict in open court and are discharged by me.

[Approved, effective March 1, 2005; as amended by Supreme Court Order No. 08-8300-012, effective June 13, 2008; by Supreme Court Order No. 11-8300-003, effective March 21, 2011; as amended by Supreme Court Order No. _____, effective for all cases filed or pending on or after _____.]

Committee commentary. — "Juror misconduct . . . includes activity by members of the jury which is inconsistent with the instructions by the court." *State v. Mann*, 2002-NMSC-001, ¶ 22, 131 N.M. 459, 39 P.3d 124. [~~*State v. Sena*, 105 N.M. 686, 688, 736 P.2d 491, 493 (1987).~~] Juror misconduct also includes members of the jury making an unauthorized visit to the scene or

referring to material not in evidence and against the instructions of the court. *See State v. Melton*, 1984-NMCA-115, ¶¶ 4-17, 102 N.M. 120, [122-24,] 692 P.2d 45[47-49 (Ct. App. 1984)]. However, jurors are allowed to take into consideration their knowledge and impressions founded upon experience in their everyday walks of life. [*State v.*] *Mann*, 2002-NMSC-001, ¶ 32 [131 N.M. 459, 469, 39 P.3d 124, 134].

[As amended by Supreme Court Order No. _____, effective for all cases filed or pending on or after _____.]