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**APPENDIX B**

# The Florida Bar News

August 15, 2016

## Amendments to jury instructions in civil cases

The Supreme Court Committee on Standard Jury Instructions in Civil Cases submits these amendments to Florida Standard Jury Instructions in Civil Cases. The Committee proposes amending following Florida Standard Jury Instructions in Civil Cases 403.17 — Burden of Proof on Main Claim; 408.2 — Summary of Claims or Contentions; 409.10 — Burden of Proof on Main Claim; 415.4 — Retaliation; Adverse Employment Action; 415.5 — Protected Activity; 415.10 — Issues on Plaintiff’s Claim; 415.12 — Unlawful Retaliation Damages, Model Instruction No. 1; and Form 4 — Model Forms of Verdict for Statute of Limitations Defense in a Medical Negligence Case to address errors and omissions. Additionally, these amendments to Model Instruction No. 1 correct inconsistencies between the model instructions and the standard instructions and address the new instruction on subsequent medical care.

Interested parties have until September 15, 2016, to submit comments electronically or by mail to the Civil Committee at [sjicivil@flcourts.org](mailto:sjicivil@flcourts.org), or to the chair of the Civil Committee, Rebecca Mercier Vargas, Kreuzler-Walsh, Compiani & Vargas, P.A., 501 S. Flagler Drive, Suite 503, West Palm Beach 33401-5913, [rvargas@kwcvpa.com](mailto:rvargas@kwcvpa.com), and a copy to the Florida Bar liaison for the committee, Heather Savage Telfer, The Florida Bar, 651 E. Jefferson Street, Tallahassee 32399-6523, [htelfer@floridabar.org](mailto:htelfer@floridabar.org).

### 403.17 BURDEN OF PROOF ON MAIN CLAIM

**If the greater weight of the evidence does not support [one or more of] (claimant’s) claim[s], your verdict should be for (defendant(s)) [on [that] [those] claim(s)].**

**[However, if the greater weight of the evidence supports [one or more of] (claimant’s) claim[s], then your verdict should be for (claimant) and against (defendant) [on [that] [those] claim(s)].**

**[However, if the greater weight of the evidence supports (claimant’s) claim against one or [both] [more] of the defendants, then you should decide and write on the verdict form the percentage of the total fault of [both] [all] defendants that was caused by each of them.]**

NOTE ON USE FOR 403.17

Use the first paragraph in all cases. If there is an affirmative defense to the claim, do not use either of the bracketed paragraphs; instead turn to instruction 403.18. If there is no affirmative defense, use the first or second bracketed paragraph depending on whether there is one defendant or more than one.

#### **408.2 SUMMARY OF CLAIMS OR CONTENTIONS**

**The claims [and defenses] in this case are as follows.** (Claimant) **claims that** (defendant) **intentionally interfered with** (claimant's) **[contract] [or] [business relations] with** (name) **which caused harm to** (claimant).

(Defendant) **denies that claim [and also claims that** (describe any affirmative defenses)-].

**The parties must prove all claims [and defenses] by the greater weight of the evidence. I will now define some of the terms you will use in deciding this case.**

#### **409.10 BURDEN OF PROOF ON MAIN CLAIM**

**If the greater weight of the evidence does not support [one or more of] (claimant's) claim[s], your verdict should be for (defendant) [on [that] [those] claim[s]].**

**[However, if the greater weight of the evidence supports [one or more of] (claimant's) claim[s], then your verdict should be for (claimant) and against (defendant) [on [that] [those] claim[s]].]**

#### **NOTE ON USE FOR 409.10**

Use the second paragraph if there are no defense issues. If there are defense issues, omit the second paragraph and go to instruction 409.11.

#### **415.4 RETALIATION; ADVERSE EMPLOYMENT ACTION**

**Retaliation means [discharging] [or] [demoting] [or] [suspending] [or] [taking certain adverse employment action against] an employee because the employee engaged in [a] protected activit[y] [ies].}**

**[An adverse employment action is retaliation if it affects the terms and conditions of employment and would discourage a reasonable employee in [(claimant's)] position from engaging in [a] [protected activit[y] [ies]].]**

#### **NOTES ON USE FOR 415.4**

1. The definitions of retaliation and adverse employment action are derived from *F.S. 448.101(5)* and case law. *Donovan v. Broward Cnty. Bd. of Comm'rs*, 974 So.2d 458, 460 (Fla. 4th DCA 2008) (adverse employment action is action which would discourage reasonable employee from making or supporting charge of discrimination).

2. Use the second paragraph of this instruction when plaintiff claims that the defendant imposed an adverse employment action other than or in addition to discharge, suspension or demotion.

#### **415.5 PROTECTED ACTIVITY**

**Protected activity is:**

**[disclosing] [or] [threatening to disclose] to** (appropriate governmental agency), **under oath, in writing, an activity, policy or practice of** (defendant) **that violated** (describe law, rule or regulation)] **[or]**

**[providing information to] [or] [testifying before]** (appropriate governmental agency, person or entity), **which was conducting an [investigation,] [hearing] [or] [inquiry] into an alleged violation of** (describe law, rule or regulation) **by** (defendant)] **[or]**

**[objecting to ~~(defendant's)~~(defendant's) activity, policy, or practice that violated** (describe law, rule, or regulation)] **[or] [refusing to participate in** (defendant's) **activity, policy or practice that violated (describe law, rule, or regulation)] [or] [would have violated]** (describe law, rule or regulation), **had** (plaintiff) **participated-].**

#### NOTES ON USE FOR 415.5

1. The bracketed language is derived from *F.S.* 448.102(1), (2) and (3).
2. As to whether, under *F.S.* 448.102(3), a claimant must prove an actual violation of law as opposed to a reasonable, good faith belief that a violation of law has occurred, all three federal district courts sitting in Florida have held that the plaintiff must prove an actual violation of law. *See, e.g., Paulet v. Farlie, Turner & Co., LLC*, 2010 WL 2232662, at \*2 (S.D. Fla. June 2, 2010); *Smith v. Psychiatric Solutions, Inc.*, 2009 WL 903624, at \*7 (N.D. Fla. Mar. 31, 2009); *White v. Purdue Pharma, Inc.*, 369 F. Supp. 2d 1335, 1336 (M.D. Fla. 2005); *but see Padron v. BellSouth Telecomms., Inc.*, 196 F. Supp. 2d 1250, 1255 (S.D. Fla. 2002) (in dicta, court noted that plaintiff's reasonable belief that violation of law occurred is sufficient).

#### **415.10 ISSUES ON PLAINTIFF'S CLAIM**

**The law prohibits an employer from retaliating against an employee for engaging in protected activity.**

**The [next] issue(s) you must decide on the claim**

**of** (claimant) **against** (defendant) **are whether** (defendant) **retaliated against** (claimant) **by [discharging] [suspending] [demoting] [him] [her] [or] [(describe adverse employment action)] because** (claimant) **engaged in protected activity and, if so, whether the [discharge] [suspension] [demotion]**

**[or:] [(describe adverse employment action)] was a legal cause of [loss] [injury] or [damage] to (claimant).**

#### NOTE ON USE FOR 415.10

If there are issues concerning vicarious liability that require a preemptive instruction or jury resolution, see (and modify, as necessary) instructions 401.13, 401.14, and 401.17.

#### **415.12 UNLAWFUL RETALIATION DAMAGES**

**If you find for (defendant), you will not consider the matter of damages. But if you find for (claimant), you should award (claimant) an amount of money that the greater weight of the evidence shows will fairly and adequately compensate [him] [her] for such damage, including any such damage as (claimant) is reasonably certain to incur in the future. You shall consider the following elements:**

**[any] [the difference between] lost wages and benefits to the date of trial [and what (claimant) earned during that time].**

**[any wages and benefits to be lost in the future.]**

(other compensatory damages allowable at law.)

**[any emotional pain and mental anguish experienced in the past or to be experienced in the future. There is no exact standard for measuring such damages. The amount should be fair and just in the light of the evidence.]**

#### NOTES ON USE FOR 415.12

1. As to whether future lost wages, (*i.e.*, ‘front pay’) are awardable in a jury trial pursuant to *F.S.* 448.103(2), see *U.S. E.E.O.C. v. W & O, Inc.*, 213 F.3d 600, 619 (11th Cir. 2000) (front pay is equitable remedy in Title VII case and is not decided by jury); *O’Neal v. Fla. A&M Univ.*, 989 So.2d 6 (Fla. 1st DCA 2008) (under Florida’s Whistle-blower Act, front pay is equitable relief).
2. As to whether emotional damages are awardable in a jury trial pursuant to *F.S.* 448.103(2), see *McIntyre v. Delhaize America, Inc.*, 2009 WL 161708 (M.D. Fla. January 22, 2009) and *Wood v. Cellco P’ship.*, 2007 WL 917300 (M.D. Fla. March 23, 2007) (damages for emotional distress recoverable in whistle-blower action pursuant to *F.S.* 448.103); *Scott v. Otis Elevator Co.*, 572 So.2d 902 (Fla. 1990) (damages for emotional distress recoverable in retaliatory discharge action pursuant to provision of workers’ compensation act, *F.S.* 440.205).

#### **MODEL INSTRUCTION NO. 1**

**Automobile collision; comparative negligence; single claimant and defendant; no counterclaim; no-fault issue; witnesses testifying in foreign language; instructions for beginning and end of case; use of special verdict in burden of proof and damage instructions**

*Facts of the hypothetical case:*

John Doe was injured when the automobile he was driving collided with one driven by Rachel Rowe. After obtaining medical attention, including a course of treatment by Dr. Dubious, John Doe sued Rachel Rowe. Rachel Rowe pleaded comparative negligence. Further, her medical expert opined that Dr. Dubious's treatment was not reasonable or necessary, and may actually have harmed John Doe. Questions of negligence, comparative negligence, causation, permanency of John Doe's injuries and damages are to be submitted to the jury. Traffic Accident Reconstruction experts testified in the case. There is no *Fabre* issue. Several witnesses will testify in Spanish.

*The court's instruction:*

*These instructions illustrate: (1) instructions to be given at the beginning of the case, (2) instructions to be given before final argument and the closing instructions to be given after final argument. Instruction number (2), to be given before final argument, also illustrates how the court could utilize the Special Verdict questions in the burden of proof portion of the instruction.*

*(1) Instruction for the beginning of the case:*

**[101.2] Members of the jury, do you solemnly swear or affirm that you will well and truly try this case between John Doe and Rachel Rowe, and a true verdict render according to the law and evidence?**

**[202.1] You have now taken an oath to serve as jurors in this trial. Before we begin, I am going to tell you about the rules of law that apply to this case. It is my intention to give you [all] [most] of the rules of law but it might be that I will not know for sure all of the law that might apply in this case until all of the evidence is presented. However, I can anticipate most of the law and give it to you at the beginning of the trial so that you can better understand what to be looking for as the evidence is presented. If I later decide that different law applies to the case, I will call that to your attention. In any event, at the end of the evidence I will give you the final instructions that you must use to decide this case and it is those instructions on which you must base your verdict. At that time, you will have a complete written set of the instructions so you do not have to memorize what I am about to tell you.**

**[401.2] The claims and defenses in this case are as follows. John Doe claims that Rachel Rowe was negligent in the operation of the vehicle she was driving which caused him harm.**

**Rachel Rowe denies that claim and also claims that John Doe was himself negligent in the operation of his vehicle, which caused his harm.**

**The parties must prove their claims by the greater weight of the evidence. I will now define some of the terms you will use in deciding this case.**

[401.3] “Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire *evidence* in the case.

[401.4] Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

*If there is an issue about the applicability of a statute this instruction would be omitted at this time.*

[401.9] *(Read or paraphrase the applicable statute or refer to the ordinance or regulation admitted in evidence.)* **Violation of this statute is evidence of negligence. It is not, however, conclusive evidence of negligence. If you find that Rachel Rowe violated this statute, you may consider that fact, together with the other facts and circumstances, in deciding whether *she* was negligent.**

[401.12(a)] Negligence is a legal cause of loss, injury, or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury, or damage, so that it can reasonably be said that, but for the negligence, the loss, injury, or damage would not have occurred.

[401.12(b)] In order to be regarded as a legal cause of loss, injury, or damage negligence need not be the only cause. Negligence may be a legal cause of loss, injury, or damage even though it operates in combination with some other cause if the negligence contributes substantially to producing such loss, injury, or damage.

[401.18] The issues you must decide on John Doe’s claim against Rachel Rowe are whether Rachel Rowe was negligent in the operation of her vehicle, and, if so, whether that negligence was a legal cause of the loss, injury, or damage to John Doe.

[401.21] If the greater weight of the evidence does not support John Doe’s claim, your verdict should be for Rachel Rowe.

[401.22] If, however, the greater weight of the evidence supports John Doe’s claim, then you shall consider the defense raised by Rachel Rowe.

[401.22(a)] On *that* defense, the issue for you to decide is whether John Doe was himself negligent in the operation of his vehicle and, if so, whether that negligence was a contributing legal cause of injury or damage to John Doe.

[401.23] If the greater weight of the evidence does not support Rachel Rowe’s defense and the greater weight of the evidence supports John Doe’s claim, then your verdict should be for John Doe in the total amount of his damages.

**If, however, the greater weight of the evidence shows that both John Doe and Rachel Rowe were negligent and that the negligence of each contributed as a legal cause of loss, injury, or damage sustained by John Doe, you should decide and write on the verdict form, *which I will give you at the end of the case*, what percentage of the total negligence of both parties to this action was caused by each of them.**

**[501.3] If your verdict is for Rachel Rowe, you will not consider the matter of damages. But, if the greater weight of the evidence supports John Doe’s claim, you should determine and write on the verdict form, in dollars, the total amount of money that the greater weight of the evidence shows will fairly and adequately compensate John Doe for the following elements of damage to the extent that they have not been paid and are not payable by personal injury protection benefits, including damage that John Doe is reasonably certain to incur in the future:**

**The reasonable expense of hospitalization and medical care and treatment necessarily or reasonably obtained by John Doe in the past, or to be so obtained in the future.**

**Any earnings lost in the past, and any loss of ability to earn money in the future.**

**You must next decide whether John Doe’s injury, resulting from the incident in this case, is permanent. An injury is permanent if it, in whole or in part, consists of an injury that the evidence shows is permanent to a reasonable degree of medical probability.**

**If the greater weight of the evidence does not establish that John Doe’s injury is permanent, then your verdict is complete. If, however, the greater weight of the evidence shows that John Doe’s injury is permanent, you should also award damages for this additional element of damage:**

**Any bodily injury sustained by John Doe and any resulting pain and suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience or loss of capacity for the enjoyment of life experienced in the past, or to be experienced in the future. There is no exact standard for measuring such damage. The amount should be fair and just, in the light of the evidence.**

**[501.45] In determining the total amount of damages, you should not make any reduction because of the negligence, if any, of John Doe. The court will enter a judgment based on your verdict and, if you find that John Doe was negligent in any degree, the court, in entering judgment, will reduce the total amount of damages by the percentage of negligence, which you find was caused by John Doe.**

**[501.5c] If you find that Rachel Roe caused loss, injury, or damage to John Doe, then Rachel Roe is also responsible for any additional loss, injury, or damage caused by medical care or treatment reasonably obtained by John Doe.**

**[501.6] If the greater weight of the evidence shows that John Doe has been permanently injured, you may consider his life expectancy. Mortality tables *may be* received in evidence and, if they are, you may consider *them* in determining how long John Doe may be expected to live. Mortality tables are not binding on you, but may be considered together with other evidence in the case bearing on John Doe’s health, age and physical condition, before and after the injury, in determining the probable length of his life.**

**[501.7] Any amount of damages, which you allow for future medical expenses or loss of ability to earn money in the future, should be reduced to its present money value, and only the present money value of these future economic damages should be included in your verdict. The present money value of future economic damages is the sum of money needed now which, together with what that sum will earn in the future, will compensate John Doe for these losses as they are actually experienced in future years.**

**[601.1] In deciding this case, it is your duty as jurors to decide the issues, and only those issues, that I submit for your determination *at the end of the case* and to answer certain questions I *will* ask you to answer on a special form, called a special verdict. You must come to an agreement about what your answers will be. Your agreed-upon answers to my questions are called your jury verdict.**

**In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. And, you must always apply the law as I *finally* explain it to you *at the end of the case*.**

**[601.2(a)] Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.**

**[601.2(b)] Some of the testimony *you hear may be* in the form of opinions about certain technical subjects.**

**You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.**

**[202.2] Now that you have heard the law, I want to let you know what you can expect as the trial proceeds.**

**Opening Statements: In a few moments, the attorneys will each have a chance to make what are called opening statements. In an opening statement, an attorney is allowed to give you [his] [her] views about what the evidence will be in the trial and what you are likely to see and hear in the testimony.**

**Evidentiary Phase: After the attorneys' opening statements the plaintiff will bring his witnesses and evidence to you, followed by the defendant.**

**Evidence: Evidence is the information that the law allows you to see or hear in deciding this case. Evidence includes the testimony of the witnesses, documents, and anything else that I instruct you to consider.**

**Witnesses: A witness is a person who takes an oath to tell the truth and then answers attorneys' questions for the jury. The answering of attorneys' questions by witnesses is called "giving testimony." Testimony means statements that are made when someone has sworn an oath to tell the truth.**

**The plaintiff's lawyer will normally ask a witness the questions first. That is called direct examination. Then the defense lawyer may ask the same witness additional questions about whatever the witness has testified to. That is called cross-examination. Certain documents or other evidence may also be shown to you during direct or cross-examination. After the plaintiff's witnesses have testified, the defendant will have the opportunity to put witnesses on the stand and go through the same process. Then the plaintiff's lawyer gets to do cross-examination. The process is designed to be fair to both sides.**

**It is important that you remember that testimony comes from witnesses. The attorneys do not give testimony and they are not themselves witnesses.**

**Objections: Sometimes the attorneys will disagree about the rules for trial procedure when a question is asked of a witness. When that happens, one of the lawyers may make what is called an "objection." The rules for a trial can be complicated, and there are many reasons for the attorneys to object. You should simply wait for me to decide how to proceed. If I say that an objection is "sustained," that means you should disregard the question and the witness may**

**not answer the question. If I say that the objection is “overruled,” that means the witness may answer the question.**

**When there is an objection and I make a decision, you must not assume from that decision that I have any particular opinion other than that the rules for conducting a trial are being correctly followed. If I say a question may not be asked or answered, you must not try to guess what the answer would have been. That is against the rules, too.**

**Side Bar Conferences: Sometimes I will need to speak to the attorneys about legal elements of the case that are not appropriate for the jury to hear. The attorneys and I will try to have as few of these conferences as possible while you are giving us your valuable time in the courtroom. But, if we do have to have such a conference during testimony, we will try to hold the conference at the side of my desk so that we do not have to take a break and ask you to leave the courtroom.**

**Recesses: Breaks in an ongoing trial are usually called “recesses.” During a recess you still have your duties as a juror and must follow the rules, even while having coffee, at lunch, or at home.**

**Instructions Before Closing Arguments: After all the evidence has been presented to you, I will *again* instruct you on the law that you must follow. At that time you will have a written set of the instructions for your use.**

**Closing Arguments: The attorneys will then have the opportunity to make their final presentations to you, which are called closing arguments.**

**Final Instructions: After you have heard the closing arguments, I will instruct you further in the law as well as explain to you the procedures you must follow to decide the case.**

**Deliberations: After you hear the final jury instructions, you will go to the jury room and discuss and decide the questions I have put on your verdict form. [You will have a copy of the jury instructions to use during your discussions.] The discussions you have and the decisions you make are usually called “jury deliberations.” Your deliberations are absolutely private and neither I nor anyone else will be with you in the jury room.**

**Verdict: When you have finished answering the questions, you will give the verdict form to the bailiff, and we will all return to the courtroom where your verdict will be read. When that is completed, you will be released from your assignment as a juror.**

*What are the rules?*

**Finally, before we begin the trial, I want to give you just a brief explanation of rules you must follow as the case proceeds.**

**Keeping an Open Mind. You must pay close attention to the testimony and other evidence as it comes into the trial. However, you must avoid forming any final opinion or telling anyone else your views on the case until you begin your deliberations. This rule requires you to keep an open mind until you have heard all of the evidence and is designed to prevent you from influencing how your fellow jurors think until they have heard all of the evidence and had an opportunity to form their own opinions. The time and place for coming to your final opinions and speaking about them with your fellow jurors is during deliberations in the jury room, after all of the evidence has been presented, closing arguments have been made, and I have instructed you on the law. It is important that you hear all of the facts and that you hear the law and how to apply it before you start deciding anything.**

**Consider Only the Evidence. It is the things you hear and see in this courtroom that matter in this trial. The law tells us that a juror can consider only the testimony and other evidence that all the other jurors have also heard and seen in the presence of the judge and the lawyers. Doing anything else is wrong and is against the law. That means that you cannot do any work or investigation of your own about the case. You cannot obtain on your own any information about the case or about anyone involved in the case, from any source whatsoever, including the Internet, and you cannot visit places mentioned in the trial.**

**Do not provide any information about this case to anyone, including friends or family members. Do not let anyone, including the closest family members, make comments to you or ask questions about the trial. Similarly, it is important that you avoid reading any newspaper accounts or watching or listening to television or radio comments that have anything to do with this case or its subject.**

**No Mid-Trial Discussions. When we are in a recess, do not discuss anything about the trial or the case with each other or with anyone else. If attorneys approach you, don't speak with them. The law says they are to avoid contact with you. If an attorney will not look at you or speak to you, do not be offended or form a conclusion about that behavior. The attorney is not supposed to interact with jurors outside of the courtroom and is only following the rules. The attorney is not being impolite. If an attorney or anyone else does try to speak with you or says something about the case in your presence, please inform the bailiff immediately.**

**Only the Jury Decides. Only you get to deliberate and answer the verdict questions at the end of the trial. I will not intrude into your deliberations at all. I am required to be neutral. You should not assume that I prefer one decision over another. You should not try to guess what my opinion is about any part of the**

case. It would be wrong for you to conclude that anything I say or do means that I am for one side or another in the trial. Discussing and deciding the facts is your job alone.

*\*\*The trial judge should select one of the two alternative instructions in [202.2] explaining the rules governing jurors' use of electronic devices. This model instruction uses Alternative A.*

**[202.2] Alternative A: [All cell phones or other types of electronic devices must be turned off while you are in the courtroom. Turned off means that the phone or other electronic device is actually off and not in a silent or vibrating mode. You may use these devices during recesses, but even then you may not use your phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or your fellow jurors. After each recess, please double check to make sure your device is turned off. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. You cannot have in the jury room any cell phones, computers, or other electronic devices. If there are breaks in the deliberations, I may allow you to communicate with your family or friends, but do not communicate about the case or your deliberations. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. The court's phone number will be provided to you.]**

[202.3] If you would like to take notes during the trial, you may do so. On the other hand, of course, you are not required to take notes if you do not want to. That will be left up to you individually.

You will be provided with a note pad and a pen for use if you wish to take notes. Any notes that you take will be for your personal use. However, you should not take them with you from the courtroom. During recesses, the bailiff will take possession of your notes and will return them to you when we reconvene. After you have completed your deliberations, the bailiff will deliver your notes to me. They will be destroyed. No one will ever read your notes.

If you take notes, do not get so involved in note-taking that you become distracted from the proceedings. Your notes should be used only as aids to your memory.

Whether or not you take notes, you should rely on your memory of the evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than each juror's memory of the evidence.

[202.4] During the trial, you may have a question you think should be asked of a witness. If so, there is a procedure by which you may request that I ask the witness a question. After all the attorneys have completed their questioning of the

witness, you should raise your hand if you have a question. I will then give you sufficient time to write the question on a piece of paper, fold it, and give it to the bailiff, who will pass it to me. You must not show your question to anyone or discuss it with anyone.

I will then review the question with the attorneys. Under our law, only certain evidence may be considered by a jury in determining a verdict. You are bound by the same rules of evidence that control the attorneys' questions. If I decide that the question may not be asked under our rules of evidence, I will tell you. Otherwise, I will direct the question to the witness. The attorneys may then ask follow-up questions if they wish. If there are additional questions from jurors, we will follow the same procedure again.

By providing this procedure, I do not mean to suggest that you must or should submit written questions for witnesses. In most cases, the lawyers will have asked the necessary questions.

**[202.5] *During the trial*, some witnesses may testify in Spanish which will be interpreted in English.**

The evidence you are to consider is only that provided through the official court interpreters. Although some of you may know Spanish, it is important that all jurors consider the same evidence. Therefore, you must accept the English interpretation. You must disregard any different meaning.

If, however, during the testimony there is a question as to the accuracy of the English interpretation, you should bring this matter to my attention immediately by raising your hand. You should not ask your question or make any comment about the interpretation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

***The attorneys will now present their opening statements after which you will begin hearing the evidence.***

*(2) Instruction before final argument:*

**[401.1] Members of the jury, you have now heard and received all of the evidence in this case. I am now going to tell you about the rules of law that you must use in reaching your verdict. You will recall at the beginning of the case I told you that if, at the end of the case I decided that different law applies, I would tell you so. These instructions are, *however, the same as* [if different explain how] what I gave you at the beginning and it is these rules of law that you must now follow.**

**When I finish telling you about the rules of law, the attorneys will present their final arguments and you will then retire to decide your verdict.**

**[401.2] The claims and defenses in this case are as follows. John Doe claims that Rachel Rowe was negligent in the operation of the vehicle she was driving which caused him harm.**

**Rachel Rowe denies that claim and also claims that John Doe was himself negligent in the operation of his vehicle, which caused his harm.**

**The parties must prove their claims by the greater weight of the evidence. I will now define some of the terms you will use in deciding this case.**

**[401.3] “Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.**

**[401.4] Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.**

**[401.9] (*Read or paraphrase the applicable statute or refer to the ordinance or regulation admitted in evidence.*) Violation of this statute is evidence of negligence. It is not, however, conclusive evidence of negligence. If you find that Rachel Rowe violated this statute, you may consider that fact, together with the other facts and circumstances, in deciding whether she was negligent.**

**[401.12(a)] Negligence is a legal cause of loss, injury, or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury, or damage, so that it can reasonably be said that, but for the negligence, the loss, injury, or damage would not have occurred.**

**[401.12(b)] In order to be regarded as a legal cause of loss, injury, or damage negligence need not be the only cause. Negligence may be a legal cause of loss, injury, or damage even though it operates in combination with some other cause if the negligence contributes substantially to producing such loss, injury, or damage.**

**[401.18] The issues you must decide on John Doe’s claim against Rachel Rowe are whether Rachel Rowe was negligent in the operation of her vehicle, and, if so, whether that negligence was a legal cause of the loss, injury, or damage to John Doe.**

***You will be given a Special Verdict to use in this case. The first question in the Special Verdict is:***

***1. Was there negligence on the part of Defendant, RACHEL ROWE, which was a legal cause of damage to Plaintiff, JOHN DOE?***

**YES NO**

**[401.21, 22] If the greater weight of the evidence supports John Doe’s claim, you will answer that question “YES.” If, however, your answer to question 1 is “NO,” your verdict is for the Defendant, and you should not proceed further, except to date and sign the Special Verdict and return it to the courtroom.**

**If you answered the first question YES, then you shall consider the defense raised by Rachel Rowe.**

**[401.22(a)] On that defense, the issue for you to decide is whether John Doe was himself negligent in the operation of his vehicle and, if so, whether that negligence was a contributing legal cause of injury or damage to John Doe. In connection with that defense, the second question in the Special Verdict is:**

**2. Was there negligence on the part of Plaintiff, JOHN DOE, which was a legal cause of his damage?**

**YES NO**

**[401.23] If the greater weight of the evidence supports Rachel Rowe’s defense, you will answer that question “Yes.” If, however, your answer to that question is “NO” and the greater weight of the evidence supports John Doe’s claim, then your verdict should be for John Doe in the total amount of his damages and you will skip the third question in the Special Verdict and proceed directly to the questions concerning damages.**

**If, however, the greater weight of the evidence shows that both John Doe and Rachel Rowe were negligent and that the negligence of each contributed as a legal cause of loss, injury, or damage sustained by John Doe, you should decide and write on the verdict form what percentage of the total negligence of both parties to this action was caused by each of them. In that connection, the third question in the Special Verdict is:**

**3. State the percentage of negligence which was a legal cause of damage to Plaintiff, JOHN DOE, that you charge to:**

**RACHEL ROWE %**

**JOHN DOE %**

**[501.3] If your verdict is for Rachel Rowe, you will not consider the matter of damages. But, if the greater weight of the evidence supports John Doe’s claim and you answered the first question “YES,” you should determine and write on the verdict form, in dollars, the total amount of money that the greater weight of the evidence shows will fairly and adequately compensate John Doe for the following elements of damage to the extent that they have not been paid and are not**

payable by personal injury protection benefits, including damage that John Doe is reasonably certain to incur in the future:

The reasonable expense of hospitalization and medical care and treatment necessarily or reasonably obtained by John Doe in the past, or to be so obtained in the future:

Any earnings lost in the past, and any loss of ability to earn money in the future.

*These appear as questions 4 and 5 in the Special Verdict.*

You must next decide whether John Doe's injury, resulting from the incident in this case, is permanent. An injury is permanent if it, in whole or in part, consists of an injury that the evidence shows is permanent to a reasonable degree of medical probability.

If the greater weight of the evidence does not establish that John Doe's injury is permanent, then your verdict is complete. If, however, the greater weight of the evidence shows that John Doe's injury is permanent, you should also award damages for this additional element of damage:

Any bodily injury sustained by John Doe and any resulting pain and suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience or loss of capacity for the enjoyment of life experienced in the past, or to be experienced in the future. There is no exact standard for measuring such damage. The amount should be fair and just, in the light of the evidence.

*This appears as question 6 in the Special Verdict.*

[501.4] In determining the total amount of damages, you should not make any reduction because of the negligence, if any, of John Doe. The court will enter a judgment based on your verdict and, if you find that John Doe was negligent in any degree, the court, in entering judgment, will reduce the total amount of damages by the percentage of negligence which you find was caused by John Doe.

[501.6] If the greater weight of the evidence shows that John Doe has been permanently injured, you may consider his life expectancy. The mortality tables received in evidence may be considered in determining how long John Doe may be expected to live. Mortality tables are not binding on you, but may be considered together with other evidence in the case bearing on John Doe's health, age and physical condition, before and after the injury, in determining the probable length of his life.

[501.7] Any amount of damages which you allow for future medical expenses or loss of ability to earn money in the future should be reduced to its present money value, and only the present money value of these future economic damages should

be included in your verdict. The present money value of future economic damages is the sum of money needed now which, together with what that sum will earn in the future, will compensate John Doe for these losses as they are actually experienced in future years.

[601.1] In deciding this case, it is your duty as jurors to decide the issues, and only those issues, that I submit for your determination and to answer the questions I *have asked* you to answer on the special verdict. You must come to an agreement about what your answers will be. Your agreed-upon answers to my questions are called your jury verdict.

In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. And, you must always apply the law as I have explained it to you.

[601.2(a)] Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

[601.2(b)] Some of the testimony before you was in the form of opinions about certain technical subjects.

You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

[601.3] Some witnesses testified in Spanish during this trial, which had to be interpreted into English. The evidence you are to consider is only that provided through the official court interpreters. Although some of you may know Spanish, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must disregard any different meaning.

**[601.5] That is the law you must follow in deciding this case. The attorneys for the parties will now present their final arguments. When they are through, I will have a few final instructions about your deliberations.**

*(3) Instruction following closing arguments:*

**[700] Members of the jury, you have now heard all the evidence, my instructions on the law that you must apply in reaching your verdict, and the closing arguments of the attorneys. You will shortly retire to the jury room to decide this case. Before you do so, I have a few last instructions for you.**

**You will have in the jury room all of the evidence that was received during the trial. In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial.**

**Any notes you have taken during the trial may be taken to the jury room for use during your discussions. Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. Your notes are not a substitute for your own memory or that of other jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial.**

**At the conclusion of the trial, the bailiff will collect all of your notes and immediately destroy them. No one will ever read your notes.**

**In reaching your verdict, do not let bias, sympathy, prejudice, public opinion or any other sentiment for or against any party to influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you.**

**Reaching a verdict is exclusively your job. I cannot participate in that decision in any way and you should not guess what I think your verdict should be from something I may have said or done. You should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you.**

**Pay careful attention to all the instructions that I gave you for that is the law that you must follow. You will have a copy of my instructions with you when you go to the jury room to deliberate. All the instructions are important and you must consider all of them together. There are no other laws that apply to this case and**

even if you do not agree with these laws, you must use them in reaching your decision in this case.

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. You must consider each question separately. Please answer the questions in the order they appear. After you answer a question, the form tells you what to do next. I will now read the form to you: *(read form of verdict)*

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you. When you are finished filling out the form, your presiding juror must write the date and sign it at the bottom. Return the form to the bailiff.

If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split or the reason for the communication.

You may now retire to decide your verdict.

*Special Verdict Form*

**VERDICT**

**We, the jury, return the following verdict:**

**1. Was there negligence on the part of Defendant, RACHEL ROWE, which was a legal cause of damage to Plaintiff, JOHN DOE?**

YES NO

If your answer to question 1 is NO, your verdict is for the Defendant, and you should not proceed further, except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

**2. Was there negligence on the part of Plaintiff, JOHN DOE, which was a legal cause of his damage?**

YES NO

**If your answer to question 2 is YES, please answer question 3. If your answer to question 2 is NO, please skip question 3 and answer questions 4 and 5.**

**3. State the percentage of negligence which was a legal cause of damage to Plaintiff, JOHN DOE, that you charge to:**

**RACHEL ROWE %**

**JOHN DOE %**

**Total must be 100%**

**In determining the amount of any damages, do not make any reduction because of the negligence, if any, of Plaintiff, JOHN DOE. If you find Plaintiff, JOHN DOE, negligent in any degree, the court, in entering judgment, will reduce JOHN DOE'S total amount of damages (100%) by the percentage of negligence that you find was caused by JOHN DOE.**

**Please answer questions 4 and 5.**

**4. What is the total amount of JOHN DOE'S damages for medical expenses incurred in the past, and medical expenses to be incurred in the future? \$**

**5. What is the total amount of JOHN DOE'S damages for lost earnings in the past and loss of earning capacity in the future? \$**

**If the greater weight of the evidence shows that JOHN DOE'S injuries were in whole or in part permanent within a reasonable degree of medical probability, please answer question 6:**

**6. What is the total amount of JOHN DOE'S damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life sustained in the past and to be sustained in the future? \$**

**TOTAL DAMAGES OF JOHN DOE  
(add lines 1, 2, and, if applicable, 3) \$**

**SO SAY WE ALL, this day of , 2**

FOREPERSON

**FORM 4. MODEL FORM OF VERDICT FOR STATUTE OF LIMITATIONS DEFENSE IN A  
MEDICAL NEGLIGENCE CASE  
VERDICT**

**We, the Jury, return the following verdict:**

**1. Was there negligence on the part of (defendant) which was a legal cause of [loss] [injury] [or] [damage] to (claimant)?**

**YES NO**

**If your answer to question 1 is NO, your verdict is for (defendant) and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.**

**2. Did (claimant) know, or by the use of reasonable care should [he] [she] have known, on or before (date), that (claimant or person for whose injury or death claim is made) had sustained injury or damage and that there was a reasonable possibility that the injury or damage was caused by medical negligence?**

**YES NO**

**If your answer to question 2 is YES, then your verdict is for (defendant) and you should not proceed further except to date and sign the verdict form and return it to the courtroom. If your answer to question 2 is NO, please answer question 3.**

**3. Was there negligence on the part of (claimant) which was a legal cause of [his] [her] [loss] [injury] [or] [damage]?**

**YES NO**

**If your answer to question 3 is YES, please answer question 4. If your answer to question 3 is NO, skip question 4 and proceed to question 5.**

**4. State the percentage of any negligence which was a legal cause of [loss] [injury] [or] [damage] to (claimant) that you charge to:**

(defendant) \_\_\_\_\_%

(~~plaintiff~~claimant) \_\_\_\_\_%

**Total must be 100%**

~~**Please answer question 5.**~~

**In determining the amount of damages, do not make any reduction because of the negligence, if any, of (claimant)(decedent) or the [negligence] [(specify other type of conduct)], if any, of (identify additional person(s) or entit(y)(ies)). If you find that (claimant) (decedent) or (identify additional person(s) or entit(y)(ies)) [was] [were] negligent [or at fault], the court in entering judgment will make an appropriate reduction in the damages awarded.**

**Please answer question 5.**

*Select the appropriate damage questions from Forms 2(a) and (b).*

**SO SAY WE ALL, this day of , 2**

**FOREPERSON**