NOTICE OF CORRECTION TO CRIMINAL JURY INSTRUCTION

The Nebraska Supreme Court Committee on Practice and Procedure submitted proposed changes to the Nebraska Jury Instructions, Second Edition, NJI2d Civ. 1.00 *Preliminary Instructions to Jury Before Civil Trial* and NJI2d Crim. 1.0, *Function of Judge, Jury, Counsel; Evidence* to include language on bias. The Nebraska Supreme Court approved the proposed changes to both NJI2d Civ. 1.00 and NJI2d Crim. 1.0 for inclusion in the Fall 2026 publication of the Nebraska Jury Instructions, Second Edition.

The Supreme Court recently learned that the approved bias language was omitted from NJI2d Crim. 1.0. in the online and printed volume of the Nebraska Jury Instructions, Second Edition. Thomson Reuters, the publisher of the Nebraska Jury Instructions, has now included the approved language in the online version of the NJI2d Crim. 1.0. Corrections to the printed volume are under discussion.

The Supreme Court now informs the Nebraska bench and bar about the omission and provides the language of the approved NJI2d Crim. 1.0. instruction so that judges and counsel are aware of the change and can utilize the updated instruction accordingly.

CHAPTER 1

PRELIMINARY INSTRUCTIONS;
INSTRUCTION AT RECESS

TABLE OF INSTRUCTIONS

Subject Matter

Instruction Number

1.0 Function of Judge, Jury, Counsel; Evidence

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COMMENT

Chapter 1 contains preliminary instructions and an instruction to be given at recesses. Although preliminary instructions are not required by Nebraska law, the Committee recommends giving them as they provide a framework by which the jury may better do its job. However, if preliminary instructions are given they must strictly state the law. Judicial comment about, or explanation of, given instructions that creates potential juror confusion regarding the meaning of

the instructions themselves may constitute reversible error. State v. McHenry, 247 Neb. 167, 525 N.W.2d 620 (1995); State v. Drinkwalter, 242 Neb. 40, 493 N.W.2d 319 (1992).

NJI2d Crim. 9.1 (FUNCTION OF JUDGE, JURY, COUNSEL; EVIDENCE) is the closing instruction that parallels NJI2d Crim. 1.0. Similarly, NJI2d Crim. 9.2 (NATURE OF CASE; PRESUMPTION OF INNOCENCE; CHARGE NOT EVIDENCE) is the closing instruction that parallels NJI2d Crim. 1.1.

NJI2d Crim. 1.0
FUNCTION OF JUDGE, JURY, COUNSEL; EVIDENCE

Members of the jury, before we go any further, I would like to make a few remarks about what we are going to do.

Near the end of the trial, I will give you detailed instructions explaining the rules of law that apply to this case. What I say now is not a substitute for those more detailed instructions, but only an introduction to this trial.

(1) It is my duty to see that this trial is conducted fairly and efficiently and in a manner consistent with Nebraska law. As part of that duty, I will rule upon objections and other legal questions that come up during the trial.

(2) It is the duty of the attorneys for the state and the defendant to use all honorable means to protect the interests of the state and defendant respectively.

(3) It is your duty to determine what the facts are. You, and you alone, are the judges of the facts.

(4) In determining what the facts are, you must rely solely upon the evidence that is presented here within the four walls of this courtroom and that general knowledge that everyone has. Other than that general knowledge that everyone has, you must disregard any other personal knowledge you may have of any of the facts in this case.

Do not use any electronic device in any way to discover or share any information about this case. This includes cell phones, smartwatches, computers, and other electronic devices. This includes searching, blogging, emailing, texting, messaging, using Facebook, X (formerly Twitter), YouTube, TikTok, Snapchat, Instagram, LinkedIn, or any other social network or internet application or service.

Do not conduct any of your own independent research about this case. Do not consult

dictionaries, other reference materials, or electronic devices to obtain any information about this case—about the parties, the issues, the locations, or anything else that has to do with this case. [Do not go near any of the places discussed in this case.]

Do not pay any attention to any news reports regarding this case.

Any information obtained outside of this courtroom, whether through reference materials, newspapers, television, [or] computers or other electronic devices, [or visits to the places involved in this case,] could be misleading, inaccurate, or incomplete. For example, information found in newspapers or books, or on the internet, may be wrong. [The places involved in this case may have changed.] In addition, relying on any of this information would be unfair because the parties would not have the opportunity to refute, explain, or correct it.

(5) You are not allowed to use a computer, cell phone, or other electronic device at all while you are in the courtroom and during your deliberations near the end of the trial. You may use such devices during breaks or recesses, but you may not use them to obtain or disclose information about this case or any of the people involved in this case

(6) The evidence in this trial will consist of exhibits and the testimony of witnesses; any facts that have been stipulated—that is, formally agreed to by the parties—and any facts that I say you may accept but are not required to accept.

Statements and arguments by the lawyers for the state and for the defendant are not evidence. Objections to questions are not evidence. Do not be influenced by any objection. If I sustain an objection, disregard the question and do not speculate as to what the answer might have been. Testimony that I tell you to disregard is not evidence and you must not consider it.

(7) Do not take anything I say or do as expressing my opinion as to how this case should come out or how you should resolve any issue of fact.
Do not allow sympathy or prejudice to influence you. Do not indulge in any speculation, guess, or conjecture. Do not make any inferences that are not supported by the evidence.

Do not make up your minds in this case until it is submitted to you for your verdict.

(8) All people have feelings, assumptions, perceptions, fears, and/or stereotypes about others. These are called biases. Biases may affect how one reacts, favorably or unfavorably, towards another person.

As jurors you are being asked to make very important decisions in this case. You must resist jumping to conclusions based on personal likes or dislikes concerning the parties or witnesses in

this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party or witness.

It is the duty of every juror to determine the facts based upon the evidence presented at trial. Do not allow bias to influence your findings in the case. When you begin deliberations, your conclusions in this case should be based on a fair and unbiased consideration of the evidence presented after carefully evaluating the evidence and applying the law as given.[1]

(9) You alone will decide the credibility, that is, the believability, of the witnesses. You alone will decide how much weight to give each piece of evidence and how to resolve any conflicts in the evidence.

In determining all of this, you may consider: the sources of the witness's testimony, including the witness's ability to have seen, or heard, or known the things about which he or she testifies; the witness's ability to remember and to communicate accurately; the conduct and demeanor of the witness while testifying; whether the witness has an interest in the outcome of this case, a relationship to the parties, or any bias or prejudice; any previous statement or conduct of the witness that tends to support or to contradict the witness's testimony at this trial; the reasonableness of the testimony of the witness; and any other evidence that affects the credibility of the witness or that tends to support or contradict the testimony of the witness.

(10) At the end of the trial you will have to make your decision based on what you remember of the evidence. You will not have a written transcript to consult.

If you wish, you can take notes during the trial. Whenever you leave the courtroom you must leave your notes in the jury room. After I have received your verdict, your notes will be destroyed.

(11) You shall not discuss this case with anyone, including the other members of the jury, until the case is submitted to you for your verdict. After that, and until the court has accepted your verdict, you may only discuss the case with other members of the jury during deliberations [in the jury room] [with all members present]. Do not let others talk to you about this case, and do not listen to any conversations on the subject.

If anyone speaks to you about this case, tell that person that you are on the jury and that you are not allowed to talk about the case. If anyone keeps trying to talk to you about this case, you must let me know.

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[1] Proposed language in (8) regarding bias approved by Nebraska Supreme Court for inclusion in 2026-2027 Volume of Nebraska Jury Instructions, Second Edition.

During this trial, you must not talk with the lawyers, witnesses, or parties in this case. If you see any of them and they do not speak to you, do not think they are being rude.

Again, I admonish you not to discuss this case, even with each other, until such time as I instruct you to do so, and not to make up your minds regarding this case until it is submitted to you for your verdict.

[(12) And finally, ... (if it has not already been done, introduce members of the court staff and describe briefly the function each performs.)]

COMMENT

NJI2d Crim. 1.0 was drafted for use in criminal trials. A parallel instruction for civil trials may be found in NJI2d Civ. 1.00.

A judge must instruct the jury after closing arguments of counsel (or after the conclusion of the evidence if there are no closing arguments). Neb. Rev. Stat. §29-2016 (Reissue 2008). There is no obligation to provide an opening instruction comparable to NJI2d Crim. 1.0. *See id.*

Although not required, NJI2d Crim. 1.0 *is* recommended. Its purpose is to put the jurors in the best possible position to perform the tasks assigned to them. It makes little sense to have jurors listen to days of testimony only then to be told, for example, that they are the sole judges of the facts.

The practice of charging the entire jury panel varies from district to district. Some districts provide jurors printed handbooks. Others use a videotape to explain the trial process and the jury's role. Whatever else is done, it is felt that there is no substitute for the live, face-to-face instruction and explanation from the judge on the bench.

As drafted, NJI2d Crim. 1.0 is to be given immediately after the jury is sworn and in the presence of a court reporter. Instructing the entire jury panel at some previous time may be acceptable or even preferred. Alternatively, it may be that parts of this instruction will be given to the entire panel and other parts to individual juries.

Some of the subparagraphs of NJI2d Crim. 1.0 contain shortened versions of instructions to be given after the close of the evidence and before the jury retires to consider the verdict. Ordinarily, NJI2d Crim. 1.0 will be given in addition to and not as a substitute for those closing instructions.

Regarding paragraph (10) of the instruction, Nebraska "jurors shall be permitted, but not required, to take notes." Neb. Rev. Stat. §29-2011. Jurors that take notes must leave them in the jury room during any breaks and when the trial concludes. It is the responsibility of the trial judge to "ensure the confidentiality of the notes during the course of the trial and the jury's deliberations" and to "instruct the bailiff to immediately mutilate and destroy such notes upon return of the verdict."

While paragraph (10) specifies that the jury will not receive a transcript at the close of the evidence, the jury may, nevertheless, under certain circumstances be permitted access to particular witness testimony during its deliberations. As a general rule a jury should not be allowed to rehear any portion of the evidence once deliberations have commenced, but exceptions can be made within the discretion of the trial court. State v. Dixon, 259 Neb. 976, 614 N.W.2d 288 (2000). If the jury requests to rehear certain evidence, the court must discover the exact nature of the jury's difficulty, isolate the precise testimony which can solve it, and weigh the probative value of the testimony against the danger that its rehearing might cause the jury to place undue emphasis on the reheard evidence. *Id.* If after this analysis the court finds it permissible for the jury to rehear the requested evidence, the rehearing should take place in open court in the presence of the parties or their counsel or under other strictly controlled procedures of which the parties have been notified. *Id.* The heightened procedures set forth in State v. Dixon, 259 Neb. 976, 614 N.W.2d 288 (2000), for recorded testimonial evidence do not apply to recorded nontestimonial evidence. State v. Vandever, 287 Neb. 807, 844 N.W.2d 783 (2014).

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