

RULE 59

INSTRUCTIONS TO JURY AND DELIBERATION

A. Proposed instructions. Unless otherwise requested by the trial judge on timely notice to counsel, proposed instructions shall be submitted at the commencement of the trial. Proposed instructions upon questions of law developed by the evidence, which could not be reasonably anticipated, may be submitted at any time before the court has instructed the jury. The number of copies of proposed instructions and their form shall be governed by local court rule.

B. Charging the jury. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict. Whenever the knowledge of the court is by statute made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it as conclusive. If in the opinion of the court it is desirable, the charge shall be reduced to writing, and then ^{read} given to the jury by the court, ~~as written, without any oral explanation or addition.~~ The jury shall take such written instructions with it while deliberating upon the verdict, and then return them to the clerk immediately upon conclusion of its deliberations. The clerk shall file the instructions in the court file of the case.

C. Deliberation.

C.(1) Exhibits. Upon retiring for deliberation the jury may take with them all exhibits received in evidence, except depositions. Pleadings shall not go to the jury room.

C.(2) Written statement of issues. The court may, in its discretion, submit to the jury an impartial written statement ^{summarizing} the issues to be decided by the jury.

C.(3) Copies of documents. Copies may be substituted for any parts of

public records of private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

C.(4) Notes. Jurors who have taken notes of the testimony or other proceeding on the trial may take such notes into the jury room.

C.(5) Custody of and communications with jury. After hearing the charge, the jury ~~may either decide in the jury box or~~ ^{shall} retire for deliberation. If they retire, they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of such officer's ability, keep the jury together, separate from other persons, without drink, except water, and without food, except ordered by the court. The officer must not suffer any communication to be made to them, nor make any personally, unless by the order of the court, except to ask them if they have agreed upon their verdict, and the officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on. Before any officer takes charge of a jury, this section shall be read to the officer who shall be then sworn to conduct himself according to its provisions to the utmost of his ability.

C.(6) Juror's use of private knowledge or information. A juror shall not communicate any private knowledge or information that the juror may have of the matter in controversy to fellow-jurors, except when called as a witness, nor shall the juror be governed by the same in giving his or her verdict.

C.(7) Food and lodging for jurors. If, while the jury are kept together, either during the progress of the trial or after their ¹⁰³retirement for deliberation, the court orders them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county.

D. Further instructions. After retirement for deliberation, if the jury desires to be informed on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given in the presence of, or after notice to, the parties or their counsel.

either orally or in writing

E. Comments upon evidence. Judge shall not instruct with respect to matters of fact, nor comment thereon.

F. Discharge of jury without verdict.

F.(1) The jury shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court unless:

F.(1)(a) At the expiration of such period as the court deems proper, it satisfactorily appears that there is no probability of an agreement; or

F.(1)(b) An accident or calamity requires their discharge;

F.(1)(c) A juror becomes ill as provided in Rule 58 D.

F.(2) Where jury is discharged without giving a verdict, either during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

G. Return of jury verdict.

G.(1) Declaration of verdict. When the jury have agreed upon their verdict, they shall be conducted into court by the officer ^{or} having them in charge. The court shall inquire whether they have agreed upon their verdict.

~~If the foreperson answers in the affirmative, he or she shall, on being required, declare the same. The verdict shall be in writing.~~

if shall be read

G.(2) Number of jurors concurring. In civil cases three-fourths of the jury may render a verdict.

G.(3) Polling the jury. When the verdict is given and before it is

filed, the jury may be polled on the request of a party, for which purpose each juror shall be asked whether it is his or her verdict. If a less number of jurors answer in the affirmative than the number required to render a verdict, the jury shall be sent out for further deliberations.

G.(4) Informal or insufficient verdict. If the verdict is informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be required to deliberate further.

G.(5) Completion of verdict, form and entry. When a verdict is given and is such as the court may receive, the clerk shall file the verdict. Then the jury shall be discharged from the case. ~~The verdict, under direction of the court, shall be substantially entered in the journal as of the day's proceedings on which it was given.~~

COMMENT

This is Committee Rule F. The second section of section B. was inserted. It is the second sentence of ORS 17.245. See comment to Rule 58. ORS 17.305, 17.310 and 17.315 were inserted in section C. as subsections (5), (6) and (7). ORS 17.340 was dropped. ORS 17.355(3), which was Committee Rule F(g)(3)(a), will have to remain as a statute as it relates to criminal procedure. One thing not covered by this Rule which was suggested at the public hearing is whether the judge should settle the instructions before the jury argument. See Federal Rule 51, second sentence.

Rule 59.

Background note.

ors. sections superseded.

17. 255, 17. 305, 17. 310, 17. 315., 17. 320, 17. 325,

17. 330, 17. 335, 17. 340, 17. 345, 17. 350.

17. 355, 17. 360.

COMMENT:

This rule is based upon ~~ORXXXX~~ existing ORS sections. Some archaic language was ~~changed to~~ clarified in most sections. In Section A the provision requiring submission of instructions at commencement of trial was added. Section B changes OR⁹ 17.255(2) to provide that instructions will be given to the jury in writing entirely at the discretion of the court and to specify that ~~XX~~ the written instructions shall be read to the jury by the court before being submitted to them. ~~XX~~ Subsection C(2) changes 17.320 to make the written statement of the issues at the discretion of the court. Subsection C (5) changes ORS 17.305 to require that the jury must retire before announcing a verdict. Section E was added to ~~X~~codify the existing rule.

~~ORXX~~ The language of ORS 17.340 was eliminated as unnecessary.

RULE 59

INSTRUCTIONS TO JURY AND DELIBERATION

A. Proposed instructions. Unless otherwise requested by the trial judge on timely notice to counsel, proposed instructions shall be submitted at the commencement of the trial. Proposed instructions upon questions of law developed by the evidence, which could not be reasonably anticipated, may be submitted at any time before the court has instructed the jury. The number of copies of proposed instructions and their form shall be governed by local court rule.

B. Charging the jury. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict. Whenever the knowledge of the court is by statute made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it as conclusive. If in the opinion of the court it is desirable, the charge shall be reduced to writing, and then read to the jury by the court. The jury shall take such written instructions with it while deliberating upon the verdict, and then return them to the clerk immediately upon conclusion of its deliberations. The clerk shall file the instructions in the court file of the case.

C. Deliberation.

C.(1) Exhibits. Upon retiring for deliberation the jury may take with them all exhibits received in evidence, except depositions. Pleadings shall not go to the jury room.

C.(2) Written statement of issues. The court may, in its discretion, submit to the jury an impartial written statement summarizing

summarizing the issues to be decided by the jury.

C.(3) Copies of documents. Copies may be substituted for any parts of public records of private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

C.(4) Notes. Jurors who have taken notes of the testimony or other proceeding on the trial may take such notes into the jury room.

C.(5) Custody of and communications with jury. After hearing the charge, the jury shall retire for deliberation. If they retire, they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of such officer's ability, keep the jury together, separate from other persons, without drink, except water, and without food, except ordered by the court. The officer must not suffer any communication to be made to them, nor make any personally, unless by the order of the court, except to ask them if they have agreed upon their verdict, and the officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on. Before any officer takes charge of a jury, this section shall be read to the officer who shall be then sworn to conduct himself according to its provisions to the utmost of his ability.

C.(6) Juror's use of private knowledge or information. A juror shall not communicate any private knowledge or information that the juror may have of the matter in controversy to fellow jurors,

except when called as a witness, nor shall the juror be governed by the same in giving his or her verdict.

C.(7) Food and lodging for jurors. If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court orders them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county.

D. Further instructions. After retirement for deliberation, if the jury desires to be informed on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given either orally or in writing in the presence of, or after notice to, the parties or their counsel.

E. Comments upon evidence. Judge shall not instruct with respect to matters of fact, nor coment thereon.

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F.(1) The jury shall not be discharged after the cause is submitted to them until they have agreed upon a ver dict and given it in open court unless:

F.(1)(a) At the expiration of such period as the court deems proper, it satisfactorily appears that there is no probability of an agreement; or

F.(1)(b) An accident or calamity requires their discharge;

F.(1)(c) A juror becomes ill as provided in Rule 58 D.

F.(2) Where jury is discharged without giving a verdict, either during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

G. Return of jury verdict.

G.(1) Declaration of verdict. When the jury have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. The court shall inquire whether they have agreed upon their verdict. If the foreperson answers in the affirmative, it shall be read.

G.(2) Number of jurors concurring. In civil cases three-fourths of the jury may render a verdict.

G.(3) Polling the jury. When the verdict is given and before it is filed, the jury may be polled on the request of a party, for which purpose each juror shall be asked whether it is his or her verdict. If a less number of jurors answer in the affirmative than the number required to render a verdict, the jury shall be sent out for further deliberations.

G.(4) Informal or insufficient verdict. If the verdict is informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be required to deliberate further.

G.(5) Completion of verdict, form and entry. When a verdict is given and is such as the court may receive, the clerk shall file the verdict. Then the jury shall be discharged from the case.

BACKGROUND NOTE

ORS sections superseded: ^{17.245,} 17.255, 17.305, 17.310, 17.315, 17.320, 17.325, 17.330, 17.335, 17.340, 17.345, 17.350, 17.355, 17.360.

COMMENT

This rule is based upon existing ORS sections. Some archaic language was clarified in most sections. In section A. the provision requiring submission of instructions at commencement of trial was added. Section B. changes ORS 17.255(2) to provide that instructions will be given to the jury in writing entirely at the discretion of

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will be given to the jury in writing entirely at the discretion of the court and to specify that the written instructions shall be read to the jury by the court before being submitted to them. Subsection C.(2) changes 17.320 to make the written statement of the issues at the discretion of the court. Subsection C.(5) changes ORS 17.305 to require that the jury must retire before announcing a verdict. Section E. was added to codify the existing rule.

59

The language of ORS 17.340 was eliminated as unnecessary.

RULE 59

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A. Proposed instructions. Unless otherwise requested by the trial judge on timely notice to counsel, proposed instructions shall be submitted at the commencement of the trial. Proposed instructions upon questions of law developed by the evidence, which could not be reasonably anticipated, may be submitted at any time before the court has instructed the jury. The number of copies of proposed instructions and their form shall be governed by local court rule.

B. Charging the jury. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict. Whenever the knowledge of the court is by statute made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it as conclusive. If in the opinion of the court it is desirable, the charge shall be reduced to writing, and then read to the jury by the court. The jury shall take such written instructions with it while deliberating upon the verdict, and then return them to the clerk immediately upon conclusion of its deliberations. The clerk shall file the instructions in the court file of the case.

C. Deliberation.

C.(1) Exhibits. Upon retiring for deliberation the jury may take with them all exhibits received in evidence, except depositions.

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C.(2) Written statement of issues. Pleadings shall not go to the jury room. The court may, in its discretion, submit to the jury an impartial written statement summarizing the issues to be decided by the jury.

C.(3) Copies of documents. Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

C.(4) Notes. Jurors who have taken notes of the testimony or other proceeding on the trial may take such notes into the jury room.

C.(5) Custody of and communications with jury. After hearing the charge, the jury shall retire for deliberation. If they retire, they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of such officer's ability, keep the jury together, separate from other persons, without drink, except water, and without food, except ordered by the court. The officer must not suffer any communication to be made to them, nor make any personally, unless by the order of the court, except to ask them if they have agreed upon their verdict, and the officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on. Before any officer takes charge of a jury, this section shall be read to the officer who shall be then

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Revision
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H. Necessity of noting exception on error in statement of issues or instruction; all other exceptions automatic. No statement of issues submitted to the jury pursuant to subsection C.(2) of this rule and no instruction given to a jury shall be subject to review upon appeal unless its error, if any, was pointed out to the judge who gave it and unless a notation of an exception is made immediately after the court instructs the jury. It shall be unnecessary to note an exception in court to any other ruling made. All adverse rulings, including failure to give a requested instruction, except those contained in instructions given shall import an exception in favor of the party against whom the ruling was made.

BACKGROUND NOTE

ORS sections superseded: 17.245, 17.255, 17.305, 17.310, 17.315, 17.320, 17.325, 17.330, 17.335, 17.340, 17.345, 17.350, 17.355, 17.360, 17.505, 17.510, 17.515, 46.160.

COMMENT

This rule is based upon existing ORS sections. Some archaic language was clarified in most sections. In section A. the provision requiring submission of instructions at commencement of trial was added. Section B. changes ORS 17.255(2) to provide that instructions will be given to the jury in writing entirely at the discretion of the court and to specify that the written instructions shall be read to the jury by the court before being submitted to them. Subsection C.(2) changes 17.320 to make the written statement of the issues at the discretion of the court. Subsection C.(5) changes ORS 17.305 to require that the jury must retire before announcing a verdict. Section 59 E. was added to codify the existing rule. In section G.(2) the rule does not cover application to 6-person juries in district court under ORS 46.180. It has generally been assumed that five jurors must agree on a verdict in order to have three-fourths of a six-person jury render a verdict.

Section 59 H. is based on ORS 17.510.

The language of ORS 17.340, 17.505 and 17.515 was eliminated as unnecessary.

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C.(6) Juror's use of private knowledge or information. A juror shall not communicate any private knowledge or information that the juror may have of the matter in controversy to fellow jurors,

except when called as a witness, nor shall the juror be governed by the same in giving his or her verdict.

C.(7) Food and lodging for jurors. If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court orders them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county.

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E. Comments upon evidence. Judge shall not instruct with respect to matters of fact, nor comment thereon.

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F.(1)(b) An accident or calamity requires their discharge;

F.(1)(c) A juror becomes ill as provided in Rule 58 D.

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G. Return of jury verdict.

G.(1) Declaration of verdict. When the jury have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. The court shall inquire whether they have agreed upon their verdict. If the foreperson answers in the affirmative, it shall be read.

G.(2) Number of jurors concurring. In civil cases three-fourths of the jury may render a verdict.

G.(3) Polling the jury. When the verdict is given and before it is filed, the jury may be polled on the request of a party, for which purpose each juror shall be asked whether it is his or her verdict. If a less number of jurors answer in the affirmative than the number required to render a verdict, the jury shall be sent out for further deliberations.

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BACKGROUND NOTE

ORS sections superseded: 17.245, 17.255, 17.305, 17.310, 17.315, 17.320, 17.325, 17.330, 17.335, 17.340, 17.345, 17.350, 17.355, 17.360.

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will be given to the jury in writing entirely at the discretion of the court and to specify that the written instructions shall be read to the jury by the court before being submitted to them. Subsection C.(2) changes 17.320 to make the written statement of the issues at the discretion of the court. Subsection C.(5) changes ORS 17.305 to require that the jury must retire before announcing a verdict. Section 59 E. was added to codify the existing rule.

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G.(5) Completion of verdict, form and entry. When a verdict is given and is such as the court may receive, the clerk shall file the verdict. Then the jury shall be discharged from the case.

H. Necessity of noting exception on error in statement of issues or instruction; all other exceptions automatic. No statement of issues submitted to the jury pursuant to subsection C.(2) of this rule and no instruction given to a jury shall be subject to review upon appeal unless its error, if any, was pointed out to the judge who gave it and unless a notation of an exception is made immediately after the court instructs the jury. It shall be unnecessary to note an exception in court to any other ruling made. All adverse rulings, including failure to give a requested instruction, except those contained in instructions given shall import an exception in favor of the party against whom the ruling was made.

BACKGROUND NOTE

ORS sections superseded: 17.245, 17.255, 17.305, 17.310, 17.315, 17.320, 17.325, 17.330, 17.335, 17.340, 17.345, 17.350, 17.355, 17.360, 17.505, 17.510, 17.515, 46.160.

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Section 59 H. is based on ORS 17.510.

The language of ORS 17.340, 17.505 and 17.515 was eliminated as unnecessary.

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C. Deliberation.

C.(1) Exhibits. Upon retiring for deliberation the jury may take with them all exhibits received in evidence, except depositions.

C.(2) Written statement of issues. Pleadings shall not go to the jury room. The court may, in its discretion, submit to the jury an impartial written statement summarizing the issues to be decided by the jury.

C.(3) Copies of documents. Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

C.(4) Notes. Jurors ~~who have taken~~ ^{may take} notes of the testimony or other proceeding on the trial ^{and} may take such notes into the jury room.

C.(5) Custody of an communications with jury. After hearing the charge, the jury shall retire for deliberation. When they retire, they must be kept together in some convenient place, under the charge of an officer, until they agree upon their verdict or are discharged by the court. Unless by order of the court, the officer must not suffer any communication to be made to them, or make any personally, except to ask them if they are agreed upon a verdict, and the officer must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. Before any officer takes charge of a jury, this section shall be read to the officer who shall be then sworn to follow its provisions to the utmost of such officer's ability.

C.(6) Juror's use of private knowledge or information. A juror shall not communicate any private knowledge or information that the juror may have of the matter in controversy to ~~other~~ ^{other} jurors, except when called as a witness, nor shall the juror be governed by the same in giving his or her verdict.

D. Further instructions. After retirement for deliberation, if the jury ~~desires to be informed~~ ^{requests information} on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given either orally or in writing in the presence of, or after notice to, the parties or their counsel.

E. Comments upon evidence. The judge shall not instruct with respect to matters of fact, nor comment thereon.

F. Discharge of jury without verdict.

F.(1) The jury shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court unless:

F.(1)(a) At the expiration of such period as the court deems proper, it satisfactorily appears that there is no probability of an agreement; or

F.(1)(b) An accident or calamity requires their discharge;

F.(1)(c) A juror becomes ill as provided in Rule 58 D.

~~F.(2) Where jury is discharged without giving a verdict,~~

F.(2) Where ^{the} jury is discharged without giving a verdict, either during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

G. Return of jury verdict.

G.(1) Declaration of verdict. When the jury have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. The court shall inquire whether they have agreed upon their verdict. If the foreperson answers in the affirmative, it shall be read.

G.(2) Number of jurors concurring. In civil cases three-fourths of the jury may render a verdict.

G.(3) Polling the jury. When the verdict is given and before it is filed, the jury may be polled on the request of a party, for which purpose each juror shall be asked whether it is his or her verdict. If a less number of jurors answer in the affirmative than the number required to render a verdict, the jury shall be sent out for further deliberations.

G.(4) Informal or insufficient verdict. If the verdict is informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be required to deliberate further.

G.(5) Completion of verdict, form and entry. When a verdict is given and is such as the court may receive, the clerk shall file the verdict. Then the jury shall be discharged from the case.

H. Necessity of noting exception on error in statement of issues or instruction; all other exceptions automatic. No statement of issues submitted to the jury pursuant to subsection C.(2) of this rule and no instruction given to a jury shall be subject to review upon appeal unless its error, if any, was pointed out to the judge who gave it and unless a notation of an exception is made immediately after the court instructs the jury. Any point of an exception shall be particularly stated and taken down by the reporter or delivered in writing to the judge. It shall be unnecessary to note an exception in court to any other ruling made. All adverse rulings, including failure to give a requested instruction, or a requested statement of issues, except those contained in instructions and statements of issues given, shall import an exception in favor of the party against whom the ruling was made.

COMMENT

This rule is based upon existing ORS sections. Some archaic language was clarified in most sections. In section A. the provision requiring submission of instructions at commencement of trial was added. Section B. changes ORS 17.255(2) to provide that instructions will be given to the jury in writing entirely at the discretion of the court and to specify that the written instructions shall be read to the jury by the court before being submitted to them. Subsection C.(2) changes 17.320 to make the written statement of the issues at the discretion of the court. Subsection C.(5) changes ORS 17.305 to require that the just must retire before announcing a verdict and has been redrafted. Section 59 E. was added to codify the existing rule. In section G.(2) the rule does not cover application to 6-person juries in district court under ORS 46.180. It has generally been assumed that 5 jurors must agree on a verdict in order to have three-fourths of a 6-person jury render a verdict.

Section 59 H. is based on ORS 17.510 and 17.515 (1) and (2). The section is included as it does describe conduct in the trial court. It also provides a basis for new trial in ORCP 64 B.(7). The Council cannot make rules of appellate procedure, and the question of preserving error on appeal is one determined by the appellate courts. On the question of whether failure to give a requested instruction preserves error in instructions given, see Holland v. Sisters of Saint Joseph, Seely, 270 Or 129 (1974), and Becker v. Beaverton School District, 25 Or App 879 (1976).

RULE 59

INSTRUCTIONS TO JURY AND DELIBERATION

A. Proposed instructions. Unless otherwise requested by the trial judge on timely notice to counsel, proposed instructions shall be submitted at the commencement of the trial. Proposed instructions upon questions of law developed by the evidence, which could not be reasonably anticipated, may be submitted at any time before the court has instructed the jury. The number of copies of proposed instructions and their form shall be governed by local court rule.

B. Charging the jury. In charging the jury, the court shall state to them all matters of law necessary for their information in giving their verdict. Whenever the knowledge of the court is by statute made evidence of a fact, the court shall declare such knowledge to the jury, who are bound to accept it as conclusive. If in the opinion of the court it is desirable, the charge shall be reduced to writing, and then read to the jury by the court. The jury shall take such written instructions with it while deliberating upon the verdict, and then return them to the clerk immediately upon conclusion of its deliberations. The clerk shall file the instructions in the court file of the case.

C. Deliberation.

C.(1) Exhibits. Upon retiring for deliberation the jury may take with them all exhibits received in evidence, except depositions.

C.(2) Written statement of issues. Pleadings shall not go to the jury room. The court may, in its discretion, submit to the jury an impartial written statement summarizing the issues to be decided by the jury.

C.(3) Copies of documents. Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

C.(4) Notes. Jurors may take notes of the testimony or other proceeding on the trial and may take such notes into the jury room.

C.(5) Custody of and communications with jury. After hearing the charge, the jury shall retire for deliberation. When they retire, they must be kept together in some convenient place, under the charge of an officer, until they agree upon their verdict or are discharged by the court. Unless by order of the court, the officer must not suffer any communication to be made to them, or make any personally, except to ask them if they are agreed upon a verdict, and the officer must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. Before any officer takes charge of a jury, this section shall be read to the officer who shall be then sworn to follow its provisions to the utmost of such officer's ability.

C.(6) Juror's use of private knowledge or information.

A juror shall not communicate any private knowledge or information that the juror may have of the matter in controversy to other jurors, except when called as a witness, nor shall the juror be governed by the same in giving his or her verdict.

D. Further instructions. After retirement for deliberation, if the jury requests information on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given either orally or in writing in the presence of, or after notice to, the parties or their counsel.

E. Comments on evidence. The judge shall not instruct with respect to matters of fact, nor comment thereon.

F. Discharge of jury without verdict.

F.(1) When jury may be discharged. The jury shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court unless:

F.(1)(a) At the expiration of such period as the court deems proper, it satisfactorily appears that there is no probability of an agreement; or

F.(1)(b) An accident or calamity requires their discharge; or

F.(1)(c) A juror becomes ill as provided in Rule 58 D.

F.(2) New trial when jury discharged. Where the jury is discharged without giving a verdict, either during the progress of the trial or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

G. Return of jury verdict.

G.(1) Declaration of verdict. When the jurors have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. The court shall inquire whether they have agreed upon their verdict. If the foreperson answers in the affirmative, it shall be read.

G.(2) Number of jurors concurring. In civil cases three-fourths of the jury may render a verdict.

G.(3) Polling the jury. When the verdict is given, and before it is filed, the jury may be polled on the request of a party, for which purpose each juror shall be asked whether it is his or her verdict. If a less number of jurors answer in the affirmative than the number required to render a verdict, the jury shall be sent out for further deliberations.

G.(4) Informal or insufficient verdict. If the verdict is informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be required to deliberate further.

G.(5) Completion of verdict; form and entry. When a verdict is given and is such as the court may receive, the clerk shall file the verdict. Then the jury shall be discharged from the case.

H. Necessity of noting exception on error in statement of issues or instruction; all other exceptions automatic. No statement of issues submitted to the jury pursuant to subsection C.(2) of this rule and no instruction given to a jury shall be subject to review upon appeal unless its error, if any, was pointed out to the judge who gave it and unless a notation of an exception is made immediately after the court instructs the jury. Any point of exception shall be particularly stated and taken down by the reporter or delivered in writing to the judge. It shall be unnecessary to note an exception in court to any other ruling made. All adverse rulings, including failure to give a requested instruction or a requested statement of issues given, shall contained in instructions and statements of issues given, shall import an exception in favor of the party against whom the ruling was made.

COMMENT

This rule is based upon existing ORS sections. Some archaic language was clarified in most sections. Section 59 A. is new and requires submission of instructions at the commencement of trial. Section 59 B. changes ORS 17.255(2) to provide that instructions will be given to the jury in writing entirely at the discretion of the court and to specify that the written instructions shall be read to the jury by the court before being submitted to them. The second sentence of section B. comes from ORS 17.245. Section 59 C. is based on ORS 17.305, 17.310, and

17.320. Subsection C.(2) changes 17.320 to make the written statement of the issues at the discretion of the court. Subsection C.(5) changes ORS 17.305 to require that the jury must retire before announcing a verdict. Section 59 D. is based on ORS 17.325. Section 59 E. was added to codify the existing rule. Section F. is based on ORS 17.330 and ORS 17.335. ORS 17.340 and 17.345 were eliminated as unnecessary. Section G. is based on ORS 17.350 through 17.360. In section G.(2) the rule does not state how to compute three-fourths of a six-person jury in district court under ORS 46.180. It has generally been assumed that five jurors must agree on a verdict in order to have three-fourths of a six-person jury render a verdict.

Section 59 H. is based on ORS 17.505 through 17.515. The section is included as it does describe conduct in the trial court. It also provides a basis for new trial in ORCP 64 B.(7). The Council cannot make rules of appellate procedure, and the question of preserving error on appeal is one determined by the appellate courts. On the question of whether failure to give a requested instruction preserves error in instructions given, see Holland v. Sisters of Saint Joseph, 270 Or 129 (1974), and Becker v. Beaverton School District, 25 Or App 879 (1976).

ORS 17.315 was left as a statute. Note, ORS 46.160, referring to instructions in district court, is superseded.