



# **SUPREME COURT OF MISSOURI**

## **en banc**

November 23, 2009

Effective July 1, 2010

IN RE: REVISIONS TO MAI-CIVIL

### TABLE OF INSTRUCTIONS

MAI 2.01 EXPLANATORY INSTRUCTION FOR ALL CASES  
(Instruction – Revision)  
(Committee Comment - Revision)

### **ORDER**

1. Revisions of previously approved MAI-CIVIL Instructions and Committee Comments as listed above, having been prepared by the Committee on Jury Instructions - Civil and reviewed by the Court, are hereby adopted and approved.

2. The Instructions and Committee Comments revised as set forth in the specific exhibits attached hereto must be used on and after July 1, 2010, and may be used prior thereto; any such use shall not be presumed to be error.

3. It is further ordered that this order and the specific exhibits attached hereto shall be published in the South Western Reporter and the Journal of The Missouri Bar.

Day - to – Day

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WILLIAM RAY PRICE, JR.  
Chief Justice

## **2.01 [2010 Revision] Explanatory Instruction for All Cases**

(Approved November 23, 2009; Effective July 1, 2010)

### **(1) GENERAL - JURY INSTRUCTIONS**

This instruction and other instructions that I will read to you near the end of the trial are in writing. All of the written instructions will be handed to you for guidance in your deliberation when you retire to the jury room. They will direct you concerning the legal rights and duties of the parties and how the law applies to the facts that you will be called upon to decide.

### **(2) OPENING STATEMENTS**

The trial may begin with opening statements by the lawyers as to what they expect the evidence to be. What is said in opening statements is not to be considered as proof of a fact. However, if a lawyer admits some fact on behalf of a client, the other party is relieved of the responsibility of proving that fact.

### **(3) EVIDENCE**

After the opening statements, the plaintiff(s) will introduce evidence.<sup>1</sup> The defendant(s) may then introduce evidence. There may be rebuttal evidence after that. The evidence may include the testimony of witnesses who may appear personally in court, the testimony of witnesses who may not appear personally but whose testimony may be read or shown to you, and exhibits, such as pictures, documents and other objects.

### **(4) OBJECTIONS**

There may be some questions asked or evidence offered by the parties to which objections may be made. If I overrule an objection, you may consider that evidence

when you deliberate on the case. If I sustain an objection, then that matter and any matter I order to be stricken is excluded as evidence and must not be considered by you in your deliberations.

#### (5) RULINGS OF LAW AND BENCH CONFERENCES

While the trial is in progress, I may be called upon to determine questions of law and to decide whether certain matters may be considered by you under the law. No ruling or remark that I make at any time during the trial will be intended or should be considered by you to indicate my opinion as to the facts. There may be times when the lawyers come up to talk to me out of your hearing. This will be done in order to permit me to decide questions of law. These conversations will be out of your hearing to prevent issues of law, which I must decide, from becoming mixed with issues of fact, which you must decide. We will not be trying to keep secrets from you.

#### (6) OPEN MINDS AND NO PRELIMINARY DISCUSSIONS

Justice requires that you keep an open mind about the case until the parties have had the opportunity to present their cases to you. You must not make up your mind about the case until all evidence, and the closing arguments of the parties, have been presented to you. You must not comment on or discuss with anyone, not even among yourselves, what you hear or learn in trial until the case is concluded and then only when all of you are present in the jury room for deliberation of the case under the final instructions I give to you.

#### (7) OUTSIDE INFLUENCES

During the trial, you should not remain in the presence of anyone who is discussing the case when the court is not in session. Otherwise, some outside influence

or comment might influence a juror to make up his or her mind prematurely and be the cause of a possible injustice. For this reason, the lawyers and their clients are not permitted to talk with you until the trial is completed.

**(8) PROHIBITION OF JUROR RESEARCH OR COMMUNICATION ABOUT THIS CASE**

Your deliberations and verdict must be based only on the evidence and information presented to you in the proceedings in this courtroom. Rules of evidence and procedure have developed over many years to make sure that all parties in all cases are treated fairly and in the same way and to make sure that all jurors make a decision in this case based only on evidence allowed under those rules and which you hear or see in this courtroom. It would be unfair to the parties to have any juror influenced by information that has not been allowed into evidence in accordance with those rules of evidence and procedure or to have a juror influenced through the opinion of someone who has not been sworn as a juror in this case and heard evidence properly presented here.

Therefore, you must not conduct your own research or investigation into any issues in this case. You must not visit the scene of any of the incidents described in this case. You must not conduct any independent research or obtain any information of any type by reference to any person, textbooks, dictionaries, magazines, the use of the Internet, or any other means about any issues in this case or any witnesses, parties, lawyers, medical or scientific terminology, or evidence that is in any way involved in this trial. You are not permitted to communicate, use a cell phone, record, photograph, video, e-mail, blog, tweet, text, or post anything about this trial or your thoughts or opinions about any issue in this case to any other person or to the Internet, “facebook”,

“myspace”, “twitter”, or any other personal or public web site during the course of this trial or at any time before the formal acceptance of your verdict by me at the end of the case.

If any of you break these rules, it may result in a miscarriage of justice, and a new trial may be required.

#### (9) FINAL INSTRUCTIONS

After all of the evidence has been presented, you will receive my final instructions. They will guide your deliberations on the issues of fact you are to decide in arriving at your verdict.

#### (10) CLOSING ARGUMENTS

After you have received my final instructions, the lawyers may make closing arguments. In closing arguments, the lawyers have the opportunity to direct your attention to the significance of evidence and to suggest the conclusions that may be drawn from the evidence.

#### (11) DELIBERATIONS

You will then retire to the jury room for your deliberations. It will be your duty to select a foreperson, to decide the facts, and to arrive at a verdict. When you enter into your deliberations, you will be considering the testimony of witnesses as well as other evidence. In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude, and behavior of the witness, the interest of the witness in the outcome of the case, the relation of the witness to any of the parties, the inclination of the witness to speak truthfully or untruthfully, and the probability or improbability of the witness' statements. You may give any evidence or the testimony of

any witness such weight and value as you believe that evidence or testimony is entitled to receive.

#### [(12) NOTETAKING

Each of you may take notes in this case, but you are not required to do so. I will give you notebooks. Any notes you take must be in those notebooks only. You may not take any notes out of the courtroom before the case is submitted to you for your deliberations. No one will read your notes while you are out of the courtroom. If you choose to take notes, do not allow your notetaking to interfere with your ability to observe the evidence and witnesses as they are presented.

Do not discuss or share your notes with anyone until you begin your deliberations. During the deliberations, if you choose to do so, you may use your notes and discuss them with other jurors. Notes taken during trial are not evidence. You should not assume that your notes, or those of other jurors, are more accurate than your own recollection or the recollection of other jurors.

After you reach your verdict, your notes will be collected and destroyed. No one will be allowed to read them.]<sup>2</sup>

#### [(13) JUROR QUESTIONS

After all parties have completed questioning each witness, any juror may anonymously submit written questions to me for my review. You may not ask questions orally or out loud. I may limit the number of questions or revise the form of any question. You must not draw any adverse inference against any party if I decide not to allow one or more of your questions for legal reasons. If I decide to allow any of your

questions, I will read them to the witness and allow the witness to answer. I may then allow follow-up questions of that witness by the attorneys.]<sup>3</sup>

**Committee Comment (2009 Revision)**

(Approved November 23, 2009; Effective July 1, 2010)

Directions or admonitions:

a. When MAI 2.01 is read to the jury at the beginning of the case, and when it is given in writing along with the other instructions at the end of the case, it should be given "as is" without further embellishment or explanation by the trial judge.

b. However, directions or admonitions given by a trial judge to a jury during the course of trial are not instructions. Examples of such directions or admonitions include a direction not to visit the scene of an accident or an oral repetition of the admonition to refrain from discussing the case during a recess. Considerable discretion is afforded to the trial judge, subject to appropriate requests or objections of counsel, to determine the scope and frequency of such directions or admonitions.

c. Directions or admonitions may be derived from parts of MAI 2.01, as may be appropriate under the circumstances of a particular case, or may be otherwise fashioned by the court with assistance of counsel. The trial court should make a record of proposed admonitions or directions intended to be given to the jury, and an opportunity should be afforded to counsel to make requests, objections, or other record for appeal.

d. Such directions or admonitions may be used at the beginning of a case, before jury selection, throughout the trial, at each break in trial proceedings, and at the conclusion of each day. The trial court may decide that some directions or admonitions

may be best delivered orally, by standardized typed cards for each juror, as a page in juror notebooks, by some combination thereof, or by some other method in the exercise of sound discretion. The Committee does not intend rigorous requirements for the use of directions or admonitions, for the frequency of delivery thereof, nor for occasional omission thereof. The guiding principles should always be the efficient administration of justice, fairness to the parties, and imparting to the jurors the importance of their individual and group roles in participating in our system of justice.

e. The following directions or admonitions may be of assistance to the bench and bar, but are not intended by the Committee to be mandatory, exclusive or exhaustive. Other directions or admonitions may also be appropriate under the circumstances of a given case.

1. Justice requires that you not make up your mind about the case until all of the evidence has been seen and heard. You must not discuss this case among yourselves or with anyone else or comment on anything you hear or learn in this trial until the case is concluded and you retire to the jury room for your deliberations. Also, you must not remain in the presence of anyone who is discussing the case when the court is not in session.

2. You must not conduct your own research or investigation into any issues in this case. You must not visit the scene of any of the incidents described in this case. You must not conduct any independent research or obtain any

information of any type by reference to any person, textbooks, dictionaries, magazines, the use of the Internet, or any other means, about any issues in this case or any witnesses, parties, lawyers, medical or scientific terminology, or evidence that is in any way involved in this trial. You are not permitted to communicate, use a cell phone, record, photograph, video, e-mail, text message, instant message, blog, tweet, or post anything about this trial or your thoughts or opinions about any issue in this case to any other person or to the Internet, “facebook”, “myspace”, “twitter”, or any other personal or public web site during the course of this trial or at any time before the formal acceptance of your verdict by me at the end of the case.

Cell phones, other electronic devices:

The trial court has considerable discretion regarding the use of cell phones or other electronic devices in the courthouse and during trial. Judicial discretion may be exercised by oral admonition, the addition of a paragraph regarding such devices at the end of MAI 2.01, or using a separate instruction.

Other appropriate admonitions or directions to the jury may be formulated and given by the trial judge as determined in light of the particular facts or circumstances of a given case.

### Juror notetaking:

Rule 69.03 provides:

Upon the court's own motion or upon the request of any party, the court shall permit jurors to take notes. If jurors are permitted to take notes, the court shall supply each juror with suitable materials.

Jurors shall not take their notes out of the courtroom except to use their notes during deliberations immediately before discharge of the jury.

The court should collect all juror notes.

After the jury is discharged, the court shall destroy the notes promptly without permitting their review by the court or any other person.

Juror notes shall not be used to impeach a verdict.

### Juror questions

Rule 69.04 provides:

(a) Upon the court's own motion or upon motion of any party, the court may permit jurors to submit questions to witnesses. The court shall resolve any such motion before the jury is impaneled.

(b) If the court permits jurors to submit questions:

(1) The court shall instruct the jurors:

(A) On the procedure to be followed for asking such questions; and

(B) That no adverse inference is to be drawn against any party if any juror question is not allowed;

(2) After all parties have completed examination of each witness, any juror may submit written, anonymous questions;

(3) All parties shall be given an opportunity outside the hearing of the jurors to object to the substance or the form of any question;

(4) The court may limit the number of questions;

(5) The court may revise any question's form and shall read the question to the witness or the parties may stipulate to the answer; and

(6) The court may allow any party to ask follow-up questions after consideration of the juror questions.

Distribution of instructions:

Rule 70.02(f) requires that the final instructions of the court be given to the jury in writing. While Rule 70.02 does not explicitly require that each juror be provided with a copy of the final instructions, such approach is implicitly permitted. In its report to the Supreme Court of October 2000, the Civil Jury Study Committee recommended “that

each juror be given a copy of the instructions before instruction reading, final argument, and deliberation.” (Emphasis supplied.) That committee also noted that juror “understanding increased significantly when each juror received his or her own copy of the instructions.” The MAI Committee encourages compliance with this recommendation whenever feasible.