

23 Tips for Improved Jury Instructions

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Jury instructions are important in winning the case before the jury. They can also provide grounds for appeal if errors are properly preserved. The following points address the most common problems we [appellate lawyers](#) see regarding preservation of jury instructions.

1. Always ask for instructions on the law supporting your theory of the case. If you do not request instructions consistent with your theory, you will be deemed to have waived the need for such instructions.
2. Never simply assume that if an instruction is not in the standard instructions, it should not be requested. Request it, and explain how it is relevant to your theory of the case and how it will provide the jury with a clearer understanding of the law to be applied to the facts.
3. Always request instructions that address all claims and defenses in the case.
4. Never simply request instructions that track the current law if you have a legitimate basis to seek a change in the law from the appellate court following trial. Request instructions under your theory (while obviously disclosing that it is contrary to existing law), and then submit alternative instructions under the current law.
5. Never agree to a standard instruction if it incorrectly states the law as it applies to your case.
6. Always fill in all blanks and remove inapplicable bracketed options in standard instructions.
7. Always file a complete, numbered set of your requested instructions in the court file. Never assume that a copy provided to the judge will be filed in the court file. In our experience, this is the most violated commandment of all, and it can create serious problems for appeal.
8. Always state on the record when you are amending your proposed instructions based on rulings made at trial, and state that you do so in light of such rulings and do not waive your objections to those rulings.

9. Never agree to hold a charge conference off the record. If the court requires you to do so, always state your objection on the record and, as soon as possible, recite on the record what objections you made, what arguments each side made, and how the court ruled.
10. Always refer to a proposed instruction at the charge conference by the appropriate number or other identifying term. The appellate court will need to know exactly what was being addressed.
11. Always make sure any stipulations regarding instructions are confirmed on the record.
12. Always state on the record if you are adopting a co-defendant's positions on instructions, and request to be excused from joining the co-defendant in every instance. Obtain that ruling or join each time.
13. Always check and then object to any requested instruction that cites a law or standard instruction but does not track it.
14. Always make objections as specific and comprehensive as possible, though at least object generally when instructions are confusing or misleading. If you offer a solution to address your objection, always maintain on the record that the instruction should not be given at all.
15. Always file written objections if possible. In doing so, you will likely be more thorough than if you simply object on the fly at the charge conference.
16. Always be careful what you say at the charge conference. Beware saying "ok" or "alright" or otherwise agreeing to modifications to instructions to which you object and thereby waiving your original objection. Always renew your original objection.
17. Always ensure that your position and the court's rulings at the charge conference will be clear when the transcript is later read by someone who was not present. If something is unclear, clarify it.
18. Always renew your objections to the instructions to be given over your objection, and to the refusal to give instructions you requested, at the conclusion of the charge conference. Request a ruling that you need not renew those objections again when the instructions are given to the jury, and if that ruling is not made, renew your objections at the bench when the instructions are read.
19. Never tell the judge you are doing something simply "for the record."
20. Always listen when the instructions are read to the jury to ensure they are given as the court ruled.
21. Always make sure a written copy of the instructions read to the jury is filed, too.
22. Always use a question by a juror that relates to prior objections or requests as an opportunity to renew your objections or to request previously denied instructions, and request new instructions that address the juror's questions.

23. Never forget about the verdict form and potential two-issue rule concerns. But that is a whole new set of commandments for a different day!

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