

Written Final Instructions to Jury

Introduction

"The submission of a written jury charge could be a very significant aid to jury comprehension. Carefully designed procedures could adequately protect the defendant against the danger of prejudice that may arise in any written jury submission." Susan R. Schwaiger, The Submission of Written Instructions and Statutory Language to New York Criminal Juries, 56 Brooklyn L. Rev 1353, 1380 (Winter 1991).

Thus far, the Court of Appeals has held that it is error to provide a deliberating jury with a written copy of a complete final charge, or portions thereof, over a defendant's objection. People v. Johnson, 81 N.Y.2d 980, 982(1993); People v. Owens, 69 N.Y.2d 585, 591–592 (1987).

A defendant may, however, consent, or impliedly consent by failing to timely object, to the submission of a written copy of the court's entire final instructions to the jury. People v. Muhammad, ___ N.Y.3d___, 2020 WL 96666 (2020). If the court does provide a copy of its written final instructions, it needs to instruct the jury on the use of the written instructions. The following model is thus provided.

Model Instruction

As you know, I have distributed a written copy of my instructions to each juror and alternate juror.

[You are free to read along if you wish as I read my instructions orally, although you are not required to do so.]

[You will (also) be permitted to take the written copy of my instructions with you into the jury room when you deliberate.]

You must abide by the following rules on how to use the written copy of my instructions.

First, I have provided you with a written copy of my instructions simply as an aid to your remembering the instructions. My oral instructions are the binding instructions in the case. My intent [was/is] to give you oral instructions which are identical with the written copy you have received. If, however, I deviate[d] in my oral instructions from the written copy, it is the oral instructions you must follow.

Second, I have not provided each of you with a written copy of the various oral instructions I gave you at the outset of the trial and at various points during the witnesses' testimony and other stages of the trial. Those instructions, however, continue to apply at this stage of the proceedings, and you must therefore continue to follow those instructions as well.

Third, be sure to follow my instructions in their entirety. Having a written copy does not permit you to choose which instructions to follow. You may not ignore any of the instructions.

Fourth, if, during your deliberations, your memory of the oral instructions is inconsistent with what you see in the written copy, then advise me of that by sending a written note, and I will address the discrepancy with you.

Similarly, if, during your deliberations, you notice any ambiguity in the meaning of my instructions, or you are not confident that you comprehend them fully, or you believe that you may require further legal guidance of any kind, you must advise me of this in a written note, and I will bring you back into the courtroom and address these issues with you.

Your receipt of a written copy of my oral instructions does not mean that you may interpret the meaning of legal concepts on your own and those written instructions must not deter you from seeking further legal guidance from me, as necessary.

Finally, if I give you additional legal instructions during the period of your deliberations, I may be unable to prepare a written copy of those instructions to distribute to you. You must, however, follow any such additional instructions whether I am able to provide a written copy of them or not.