

Table of Contents

PART I. FEDERAL JURY PRACTICE

CHAPTER 1. HISTORY OF TRIAL BY JURY

A. INTRODUCTION

- § 1:1 Generally
- § 1:2 Origins of trial by jury

B. ENGLISH ROOTS

- § 1:3 Generally
- § 1:4 The Magna Carta
- § 1:5 History of the English jury

C. AMERICAN ROOTS

- § 1:6 Generally
- § 1:7 Early American laws
- § 1:8 The Seventh Amendment
- § 1:9 The jury as judges of legal and factual questions;
Verdicts of conscience

D. JURY OF TWELVE

- § 1:10 Generally

CHAPTER 1A. RIGHT TO A JURY TRIAL

A. CIVIL ACTIONS

1. INTRODUCTION

- § 1A:1 Generally

2. APPLICABLE LAW

- § 1A:2 Generally

3. SUITS AT COMMON LAW AND CASES OF AN EQUITABLE NATURE

- § 1A:3 Suits triable at common law
- § 1A:4 Cases of an equitable nature

§ 1A:5 Joinder of legal and equitable claims

4. VERDICTS

§ 1A:6 Generally

B. CRIMINAL CASES

§ 1A:7 Generally

§ 1A:8 Limitations on right to jury trial

§ 1A:9 Delinquency proceedings

§ 1A:10 Verdicts

C. ROLE OF JUDGE

§ 1A:11 Generally

CHAPTER 1B. OBTAINING A JURY TRIAL

A. CIVIL CASES

§ 1B:1 Generally

§ 1B:2 Persons entitled to make demand

§ 1B:3 Cover sheet notation

§ 1B:4 Contents of demand

§ 1B:5 Indorsement upon pleading

§ 1B:6 Service of demand

§ 1B:7 Reliance upon demand

§ 1B:8 Removed cases

§ 1B:9 Order striking demand

B. CRIMINAL CASES

§ 1B:10 Generally

CHAPTER 2. WAIVER OF JURY TRIAL

A. WAIVER OF JURY TRIAL IN CIVIL CASES

1. INTRODUCTION

§ 2:1 Generally

§ 2:2 Presumption against waiver

2. REASONS FOR WAIVER

§ 2:3 Failure to serve timely demand

§ 2:4 Contractual agreement

TABLE OF CONTENTS

- § 2:5 Parties' conduct
- § 2:6 Withdrawal of demand

B. DISCRETIONARY RELIEF FROM WAIVER IN CIVIL CASES

- § 2:7 Generally
- § 2:8 Discretion of court
- § 2:9 Court's power to order jury trial

C. CRIMINAL CASES

- § 2:10 Generally
- § 2:11 Knowingly and voluntarily
- § 2:12 Exception to writing requirement
- § 2:13 Colloquy
- § 2:14 Stipulations
- § 2:15 Withdrawal of waiver

Appendix A. Preliminary Questions for Defendant

Appendix B. Questions for Counsel

Appendix C. Form of Waiver and Oral Finding

CHAPTER 2A. IMPROVING EFFECTIVENESS OF TRIAL BY JURY

- § 2A:1 Generally
- § 2A:2 Juror note taking
- § 2A:3 Use of masters
- § 2A:4 Courtroom technology
- § 2A:5 Jury selection
- § 2A:6 Jury instructions—Role of jury instructions
- § 2A:7 —Written copies of instructions to jurors
- § 2A:8 —Federal Rule of Civil Procedure 51
- § 2A:9 —Crafting jury instructions
- § 2A:10 —Using model instructions
- § 2A:11 —Instructions at trial

CHAPTER 2B. FAIR TRIAL—FREE SPEECH

A. INTRODUCTION

- § 2B:1 Generally
- § 2B:2 Sixth Amendment requirements and First Amendment guarantees

B. DEFENDANTS RIGHT TO FAIR AND PUBLIC TRIAL

- § 2B:3 Generally
- § 2B:4 Waiver of right to public trial
- § 2B:5 Right to impartial jury
- § 2B:6 Public opinion polls
- § 2B:7 Prejudice—Generally
- § 2B:8 —Defined
- § 2B:9 —Court control

C. MEDIA’S RIGHT TO A PUBLIC TRIAL

- § 2B:10 Generally
- § 2B:11 Requirements for closing criminal trial
- § 2B:12 Scope of closure
- § 2B:13 Process for determining whether to order closure

D. FAIR TRIAL AND FREE PRESS

- § 2B:14 Generally

E. LAWYERS AND COURT STAFF

- § 2B:15 Generally
- § 2B:16 Rules of professional conduct
- § 2B:17 Judicial Conference Guidelines
- § 2B:18 Miscellaneous guidelines

F. GAG ORDERS

- § 2B:19 Generally
- § 2B:20 Scope
- § 2B:21 Appellate review

G. CAMERAS IN THE COURTROOM

- § 2B:22 Generally
- § 2B:23 History of cameras in the courtroom
- § 2B:24 Legislation and court rules

Appendix A. Sample Decorum Order

Appendix B. Sample Media Advisory Regarding
Announcement of Verdict

Appendix C. Revised Report of the United States Judicial
Conference Committee on the Operation of the
Jury System on the “Free Press-Fair Trial”
Issue

TABLE OF CONTENTS

CHAPTER 3. SELECTION OF FEDERAL JURY PANELS

A. INTRODUCTION

§ 3:1 Generally

B. JURY SELECTION AND SERVICE ACT OF 1968

§ 3:2 Generally

§ 3:3 Random selection—Generally

§ 3:4 —Minimum provisions

§ 3:5 —Elimination of “key man” or “suggestor” system

§ 3:6 Selection of names

§ 3:7 Master jury wheel

§ 3:8 Random drawing

§ 3:9 Excuse from service—Generally

§ 3:10 —Exemption

§ 3:11 Geographical limitation

§ 3:12 Implementation of Act by district courts

C. JUROR QUESTIONNAIRE FORMS

§ 3:13 Generally

§ 3:14 Failure to return questionnaire

D. JUROR QUALIFICATIONS

§ 3:15 Generally

§ 3:16 Citizenship and age

§ 3:17 English literacy

§ 3:18 Mental or physical infirmity

§ 3:19 Criminal activity

§ 3:20 Other competent evidence

E. SELECTING AND SUMMONING JURORS

§ 3:21 Generally

§ 3:22 After issuance of summons

F. PERIOD OF SERVICE AND COMPENSATION

§ 3:23 Generally

G. DISCRIMINATION IN SELECTION

§ 3:24 Generally

- § 3:25 Claim of discrimination
- § 3:26 Discriminatory selection process

H. JURY SELECTION CHALLENGE

- § 3:27 Generally
- § 3:28 Presentation of evidence
- § 3:29 Substantial failure to comply with Act

Appendix A. Jury Selection Plan

Appendix B. Jury Questionnaire

CHAPTER 3A. SELECTING JURORS

A. INTRODUCTION

- § 3A:1 Generally

B. EFFICIENT USE OF JURORS

- § 3A:2 Generally
- § 3A:3 Pooling
- § 3A:4 Bunching
- § 3A:5 Staggering
- § 3A:6 Multiple voir dire

C. JUROR ORIENTATION

- § 3A:7 Generally
- § 3A:8 Preliminary juror orientation
- § 3A:9 Detailed orientation

D. NUMBER OF JURORS

- § 3A:10 Generally
- § 3A:11 Determining number of jurors needed
- § 3A:12 High profile cases

E. INFORMATION REGARDING PANEL

- § 3A:13 Generally
- § 3A:14 Internet research

F. ANONYMOUS JURIES

- § 3A:15 Generally
- § 3A:16 Deciding whether to use anonymous jury
- § 3A:17 Factors to be considered

TABLE OF CONTENTS

G. ANALYZING THE JURY POOL

- § 3A:18 Generally
- § 3A:19 Objectives of jury selection
- § 3A:20 Trial consultants
- § 3A:21 Jury surveys or studies
- § 3A:22 Jury profiling
- § 3A:23 Mock jury
- § 3A:24 Shadow jury
- Appendix A. Informational Mailing from the Clerk's Office to Prospective Jurors
- Appendix B. Juror Questionnaire
- Appendix C. Juror Questionnaire with Information for Prospective Jurors
- Appendix D. Pre-Screening Jury Questionnaire for Jury Duty Requiring Sequestration and Anonymity
- Appendix E. Juror Questionnaire for a Criminal Case

CHAPTER 3B. ADMINISTRATION OF OATH AND PRELIMINARY MATTERS

A. INTRODUCTION

- § 3B:1 Generally

B. PRELIMINARY COMMENTS

- § 3B:2 Generally

C. VOIR DIRE

- § 3B:3 Generally
- § 3B:4 Questioning by judge
- § 3B:5 Questioning by magistrate judges
- § 3B:6 Scope of questioning
- § 3B:7 Compound questions
- § 3B:8 Submission of questions by counsel
- § 3B:9 Testimony of law enforcement officers
- § 3B:10 Race or ethnic issues
- § 3B:11 Presence during voir dire
- Appendix A. Statement to Venire and Questionnaire in Anonymous Jury Case
- Appendix B. Standard Voir Dire Questions—Criminal
- Appendix C. Standard Voir Dire Questions—Civil

CHAPTER 4. CHALLENGES

A. INTRODUCTION

- § 4:1 Generally
- § 4:2 Challenges to jury array
- § 4:3 Challenges to individual jurors

B. CHALLENGES FOR CAUSE

- § 4:4 Generally
- § 4:5 Bias
- § 4:6 Assurances by jurors
- § 4:7 Discretion of court
- § 4:8 Financial interest
- § 4:9 Prior jury service
- § 4:10 Knowledge of case or participants
- § 4:11 Government employees
- § 4:12 Opposition to death penalty

C. PEREMPTORY CHALLENGES

- § 4:13 Generally
- § 4:14 Criminal cases
- § 4:15 Civil cases
- § 4:16 Using peremptory challenge to dismiss unqualified juror

D. EXCLUSION OF JURORS BECAUSE OF RACE, SEX, OR ETHNICITY

1. INTRODUCTION

- § 4:17 Generally
- § 4:18 Extending scope of *Batson*
- § 4:19 Who may make *Batson* claims

2. RAISING *BATSON* OBJECTIONS

- § 4:20 Generally
- § 4:21 Prima facie case of discrimination
- § 4:22 Neutral explanation for challenge
- § 4:23 Purposeful discrimination

3. SPECIFIC CHARACTERISTICS OR CIRCUMSTANCES OF PROSPECTIVE JURORS

- § 4:24 Attitude, appearance, or demeanor

TABLE OF CONTENTS

- § 4:25 Occupations
- § 4:26 Connection to legal system or process
- § 4:27 Miscellaneous circumstances

E. IMPANELING JURORS

- § 4:28 Generally
- § 4:29 Accommodating use of peremptory challenges
- § 4:30 Blind strike
- § 4:31 Backstriking
- § 4:32 Use it or lose it

CHAPTER 4A. ALTERNATE JURORS AND PRELIMINARY INSTRUCTIONS

A. ALTERNATE JURORS

- § 4A:1 Introduction
- § 4A:2 Impaneling a jury
- § 4A:3 Role of alternates after jury retires to deliberate
- § 4A:4 Criminal jury of less than twelve

B. SWEARING OF PANEL

- § 4A:5 Generally
- § 4A:6 Sample oaths

C. DESIGNATION OF FOREPERSON

- § 4A:7 Generally

D. PRELIMINARY INSTRUCTIONS

- § 4A:8 Generally
- § 4A:9 Desirability of preliminary instructions

Appendix A. Preliminary Jury Instructions—Criminal Case

Appendix B. Preliminary Jury Instructions—Civil Case

Appendix C. Preliminary Instructions From Eastern District
of Michigan Criminal Case

CHAPTER 4B. TRIAL MANAGEMENT

- § 4B:1 Generally
- § 4B:2 Judge's conduct
- § 4B:3 Introducing evidence
- § 4B:4 Questioning witnesses

- § 4B:5 Comments by judge
- § 4B:6 Control of conduct of parties, counsel, and spectators
- § 4B:7 Scheduling
- § 4B:8 Comments by judge
- § 4B:9 Order of trial
- § 4B:10 Making the record

Appendix A. Cautionary Instruction in Case with Repeated
 Exchanges Between Court and Counsel

CHAPTER 5. JOINT TRIALS AND SEVERANCE—CRIMINAL CASES

A. INTRODUCTION

- § 5:1 Generally
- § 5:2 Standard of review

B. JOINT TRIALS

- § 5:3 Generally
- § 5:4 Preference for joint trials
- § 5:5 Determining whether joinder proper
- § 5:6 Timely filing of motion to sever

C. BURDEN OF ESTABLISHING PREJUDICE FROM JOINT TRIAL

- § 5:7 Generally
- § 5:8 Blaming co-defendant
- § 5:9 Defendant charged in several counts
- § 5:10 Need for co-defendant's testimony
- § 5:11 Mutually antagonistic defenses
- § 5:12 Discontinuance of trial as to some defendants

D. CONFESSION BY CO-DEFENDANT

- § 5:13 Generally
- § 5:14 Confession by one defendant implicating co-defendant
- § 5:15 Dual juries
- § 5:16 Bifurcated trials
- § 5:17 Review of denial of motion to sever

E. CAUTIONARY INSTRUCTIONS

- § 5:18 Generally

TABLE OF CONTENTS

**CHAPTER 5A. BIFURCATION AND
CONSOLIDATION—CIVIL CASES**

A. BIFURCATION

- § 5A:1 Generally
- § 5A:2 Federal Rules of Civil Procedure
- § 5A:3 Use of bifurcation
- § 5A:4 Decision to bifurcate

B. CONSOLIDATION

- § 5A:5 Generally
- § 5A:6 Cases suitable for consolidation
- § 5A:7 Motion to consolidate
- § 5A:8 Effect of consolidation
- § 5A:9 Reviewing decisions to consolidate

CHAPTER 5B. CRIMINAL DEFENDANTS

A. INTRODUCTION

- § 5B:1 Generally

B. PRESENCE OF CRIMINAL DEFENDANT

1. FEDERAL RULES OF CRIMINAL PROCEDURE

- § 5B:2 Generally

2. MEANINGFUL STAGES OF TRIAL

- § 5B:3 Generally
- § 5B:4 Presence during impanelment of jury
- § 5B:5 Sentencing
- § 5B:6 Conferences

**3. EX PARTE COMMUNICATION BETWEEN
COURT AND JURY**

- § 5B:7 Generally

4. WAIVER OF RIGHT TO BE PRESENT

- § 5B:8 Generally

**5. DECIDING WHETHER TO PROCEED WITH
TRIAL IN ABSENTIA**

- § 5B:9 Generally

C. DEFENDANT IN CUSTODY

- § 5B:10 Generally
- § 5B:11 Prison clothes
- § 5B:12 Shackling and handcuffing
- § 5B:13 Stun belts
- § 5B:14 Restraining defendant while being conducted to and from courtroom
- § 5B:15 Determining whether to allow restraints
- § 5B:16 Cautionary instructions

D. DISRUPTIVE DEFENDANTS

- § 5B:17 Generally
- § 5B:18 Warnings
- § 5B:19 Exclusion from courtroom
- § 5B:20 Shackling or handcuffing
- § 5B:21 Forfeiture of right to testify
- § 5B:22 Mistrial

CHAPTER 6. REPRESENTATION OF CRIMINAL DEFENDANTS

A. DEFENDANT'S RIGHT OF SELF-REPRESENTATION

- § 6:1 Generally
- § 6:2 Capital punishment cases
- § 6:3 Request to self-represent
- § 6:4 Court's decision to permit self-representation
- § 6:5 Adequate representation
- § 6:6 Request to discharge counsel
- § 6:7 Standby and hybrid representation
- § 6:8 Judicial review

B. DEFENDANT'S REPRESENTATION BY COUNSEL

- § 6:9 Generally
- § 6:10 Duty of trial court
- § 6:11 Federal Rules of Criminal Procedure
- § 6:12 Constitutional requirements
- § 6:13 Conflicts—Generally
- § 6:14 —Waiver
- § 6:15 Delays in progression of case

TABLE OF CONTENTS

CHAPTER 6A. MISTRIAL

A. INTRODUCTION

§ 6A:1 Generally

B. CRIMINAL PROCEEDINGS

1. INTRODUCTION

§ 6A:2 Generally

§ 6A:3 Federal Rules of Criminal Procedure

2. DOUBLE JEOPARDY

§ 6A:4 Generally

§ 6A:5 Goaded by prosecutor

3. MOTION BY PROSECUTION OR BY SOME DEFENDANTS

§ 6A:6 Generally

4. MANIFEST NECESSITY

§ 6A:7 Generally

§ 6A:8 Definition

§ 6A:9 What constitutes manifest necessity

§ 6A:10 Appellate review

§ 6A:11 Jury unable to reach verdict

5. CONSENT OF DEFENDANT

§ 6A:12 Generally

§ 6A:13 Defendant who did not join in motion

6. IMPROPER TACTICS OF DEFENSE

§ 6A:14 Generally

7. JUROR MISCONDUCT

§ 6A:15 Generally

§ 6A:16 Bible in jury room

§ 6A:17 Contact with juror

8. WITNESS CONDUCT

§ 6A:18 Generally

9. JUDICIAL REVIEW

§ 6A:19 Generally

C. CIVIL CASES

§ 6A:20 Generally

§ 6A:21 Judicial review

CHAPTER 6B. OPENING STATEMENTS

A. INTRODUCTION

§ 6B:1 Generally

§ 6B:2 Critical nature

§ 6B:3 Purpose

§ 6B:4 Nature

B. IMPROPER OPENING STATEMENTS

§ 6B:5 Making arguments

§ 6B:6 Referring to evidence that will not be forthcoming

§ 6B:7 Referring to inadmissible evidence

§ 6B:8 Inflammatory statements

§ 6B:9 Appeals for sympathy and Golden Rule arguments

§ 6B:10 Referring to defendant's failure to take the stand

C. ORDER OF PROCEEDING

§ 6B:11 Generally

§ 6B:12 Delaying giving of opening statement

D. VISUAL AIDS

§ 6B:13 Generally

E. READING FROM PLEADINGS OR DEPOSITIONS

§ 6B:14 Generally

F. JOINT TRIALS

§ 6B:15 Joint trials

TABLE OF CONTENTS

**CHAPTER 7. DIRECT EXAMINATION AND
CROSS-EXAMINATION**

A. DIRECT EXAMINATION

1. INTRODUCTION

§ 7:1 Direct examination

2. SCOPE OF DIRECT EXAMINATION

§ 7:2 Generally

3. LEADING QUESTIONS

§ 7:3 Generally

§ 7:4 Exception—Generally

§ 7:5 —Child witness

§ 7:6 —Persons who do not speak sufficient English

§ 7:7 —Hostile witnesses

§ 7:8 —Adverse witness

4. PRIOR CONDUCT

§ 7:9 Generally

5. BOLSTERING

§ 7:10 Generally

6. PRIOR INCONSISTENT STATEMENTS

§ 7:11 Generally

7. DECORUM

§ 7:12 Generally

B. CROSS EXAMINATION

1. INTRODUCTION

§ 7:13 Generally

§ 7:14 Federal Rule of Evidence 611

§ 7:15 Leading questions

2. CONFRONTATION CLAUSE

§ 7:16 Generally

- § 7:17 Violations
- § 7:18 Inflammatory or irrelevant testimony

3. TESTIMONIAL STATEMENTS

- § 7:19 Generally
- § 7:20 Distinguishing testimonial from nontestimonial statements

4. FIFTH AMENDMENT

- § 7:21 Generally
- § 7:22 Civil cases
- § 7:23 Striking testimony?

5. DEFENDANT'S TESTIMONY

- § 7:24 Generally
- § 7:25 Doctrine of specific contradiction
- § 7:26 Commenting on defendant's right not to testify

6. CHARACTER EVIDENCE

- § 7:27 Generally
- § 7:28 Proof of character
- § 7:29 Opinion of character trait
- § 7:30 Proof of specific acts
- § 7:31 Past crimes
- § 7:32 Child molestation
- § 7:33 Impeachment by contradiction

7. CONVICTION OF A CRIME

- § 7:34 Generally
- § 7:35 Witness and defendant witness
- § 7:36 Crimes of fraud or dishonesty
- § 7:37 Inadmissible evidence of conviction
- § 7:38 Limits on cross-examination

8. DID YOU KNOW QUESTIONS

- § 7:39 Generally

CHAPTER 7A. OBJECTIONS AND OFFERS OF PROOF

A. INTRODUCTION

- § 7A:1 Generally

TABLE OF CONTENTS

B. OBJECTIONS

- § 7A:2 Timeliness
- § 7A:3 Specificity
- § 7A:4 Pretrial rulings regarding admissibility
- § 7A:5 Motions to strike
- § 7A:6 Form of the question
- § 7A:7 Local rules

C. OFFERS OF PROOF

- § 7A:8 Generally
- § 7A:9 Making an offer of proof
- § 7A:10 Timeliness
- § 7A:11 Excusing offer of proof

D. MOTIONS IN LIMINE

- § 7A:12 Generally
- § 7A:13 Definitive ruling
- § 7A:14 Renewing motion in limine

E. JUDICIAL REVIEW

- § 7A:15 Generally

CHAPTER 7B. EXHIBITS

A. INTRODUCTION

- § 7B:1 Generally

B. LAYING A FOUNDATION

- § 7B:2 Generally
- § 7B:3 Illustrations
- § 7B:4 Rational basis for authenticity
- § 7B:5 Self-authenticating exhibits
- § 7B:6 Authentication through stipulation
- § 7B:7 Authenticity and admissibility

C. INTRODUCTION OF EVIDENCE

- § 7B:8 Generally
- § 7B:9 Business records
- § 7B:10 Summaries and charts
- § 7B:11 Photocopies
- § 7B:12 Diaries

- § 7B:13 In-court demonstrations or experiments
- § 7B:14 Use of technology

D. LOCAL RULES

- § 7B:15 Generally
- § 7B:16 Marking exhibits
- § 7B:17 Expediting introduction of exhibits
- § 7B:18 Judicial review

CHAPTER 8. CLOSING ARGUMENTS

A. INTRODUCTION

- § 8:1 Generally
- § 8:2 Waiver

B. LIMITS ON SCOPE AND NATURE

1. GENERALLY

- § 8:3 Introduction
- § 8:4 Inferences
- § 8:5 Application of law to facts
- § 8:6 Evidence
- § 8:7 Personal opinions

2. VOUCHING

- § 8:8 Generally
- § 8:9 Advocate-witness rule
- § 8:10 Pointing out unavoidable contradictions
- § 8:11 Reversal for improper vouching

3. COMMENTING ON DEFENDANT'S FAILURE TO TESTIFY

- § 8:12 Generally
- § 8:13 Failure to offer witnesses or evidence
- § 8:14 Failure to make statement to police
- § 8:15 Silence as demeanor evidence

4. LACK OF EVIDENCE RELATING TO CONSPIRACY

- § 8:16 Generally

5. APPEALS TO SYMPATHY OR PREJUDICE

- § 8:17 Generally

TABLE OF CONTENTS

- § 8:18 Religious-based arguments
- § 8:19 Send a message
- § 8:20 Golden rule

6. IMPUGNING INTEGRITY OF OPPOSING COUNSEL

- § 8:21 Generally

C. INVITED ERROR

- § 8:22 Generally
- § 8:23 Ethical duties
- § 8:24 Prejudice

D. JUDICIAL DISCRETION

- § 8:25 Generally
- § 8:26 Improper argument
- § 8:27 Time limits
- § 8:28 Judicial review
- § 8:29 Standard of review

E. REBUTTAL ARGUMENT

- § 8:30 Generally

CHAPTER 8A. COMPUTER TECHNOLOGY AND TRIAL AND TRIAL PROCEDURE

A. INTRODUCTION

- § 8A:1 Generally
- § 8A:2 Courtroom equipment
- § 8A:3 Benefits of courtroom electronic presentation systems
- § 8A:4 Function of courtroom staff
- § 8A:5 Assistance to attorneys
- § 8A:6 Available technology
- § 8A:7 Stipulations

B. COMPUTER ANIMATIONS

1. INTRODUCTION

- § 8A:8 Generally

2. CRIMINAL PROCEEDINGS

§ 8A:9 Computer animations in criminal proceedings

3. CIVIL PROCEEDINGS

§ 8A:10 Generally

§ 8A:11 Accident reconstruction

§ 8A:12 Medical malpractice

§ 8A:13 Patent infringement

C. COSTS

§ 8A:14 Generally

D. FAIRNESS

§ 8A:15 Generally

§ 8A:16 Undue influence on jurors

§ 8A:17 Assuming information

§ 8A:18 Alienating jury

§ 8A:19 Acceptance of technology in courtroom

E. COMPUTER TECHNOLOGY AND THE FEDERAL RULES OF EVIDENCE

§ 8A:20 Generally

§ 8A:21 Charts, graphs, and diagrams

§ 8A:22 Printouts and data generated in ordinary course of business

§ 8A:23 Admissions

F. TRUSTWORTHINESS

§ 8A:24 Generally

§ 8A:25 Hearsay

§ 8A:26 Authentication

§ 8A:27 Verifiability of results

§ 8A:28 Catch-all exceptions

§ 8A:29 Admission of scientific or technical evidence

§ 8A:30 Undue influence

G. DISCOVERY ISSUES INVOLVING COMPUTER-GENERATED EVIDENCE

§ 8A:31 Generally

§ 8A:32 Categories of computer evidence

TABLE OF CONTENTS

CHAPTER 8B. JURY INSTRUCTIONS

A. INTRODUCTION

§ 8B:1 Generally

B. PREPARATION OF INSTRUCTIONS

§ 8B:2 Generally

§ 8B:3 Pattern instructions

§ 8B:4 Argumentative instructions

§ 8B:5 “If the jury finds”

§ 8B:6 Verbatim quote from opinion

§ 8B:7 Legal terminology

C. REQUESTS FOR INSTRUCTIONS

§ 8B:8 Generally

§ 8B:9 Time for requests

§ 8B:10 Form of requests

§ 8B:11 Charge conferences

§ 8B:12 Limiting number of requests for instructions

§ 8B:13 Pertinent to issues

§ 8B:14 Accuracy

§ 8B:15 Fundamental rules of law

§ 8B:16 Lesser included offenses

§ 8B:17 Additional instructions in criminal prosecutions

§ 8B:18 Reasonable doubt

§ 8B:19 Flight

D. CRIMINAL DEFENDANT’S DEFENSE THEORIES

§ 8B:20 Generally

§ 8B:21 Good faith

§ 8B:22 Entrapment

§ 8B:23 Necessity

§ 8B:24 Advice of counsel

§ 8B:25 Intoxication

§ 8B:26 Justification

§ 8B:27 Accomplice

§ 8B:28 Conspiracy

§ 8B:29 Duress

§ 8B:30 Potential sentence

E. OBJECTIONS TO INSTRUCTIONS

§ 8B:31 Generally

- § 8B:32 Specificity
- § 8B:33 Tendering proposed instruction
- § 8B:34 Changing basis for objection
- § 8B:35 Invited error
- § 8B:36 Timeliness
- § 8B:37 Exceptions to ruling

F. COMMENTING ON THE EVIDENCE

- § 8B:38 Generally
- § 8B:39 Impartiality
- § 8B:40 Deciding whether to comment
- § 8B:41 Process of summarizing and commenting
- § 8B:42 Province of the jury

G. FORM OF INSTRUCTIONS

- § 8B:43 Generally
- § 8B:44 Suggested terminology
- § 8B:45 Case coverage
- § 8B:46 Repetitive instructions

H. DELIVERY OF INSTRUCTIONS

- § 8B:47 Generally
- § 8B:48 When instructions may be given

Appendix A. Drafting Jury Instructions

CHAPTER 9. USE OF SPECIAL VERDICTS AND INTERROGATORIES

A. INTRODUCTION

- § 9:1 In general
- § 9:2 Law governing
- § 9:3 Discretionary power of court
- § 9:4 Nature, scope, and form
- § 9:5 Instructions by the court

B. GENERAL VERDICTS

- § 9:6 Generally

C. SPECIAL VERDICTS

- § 9:7 Generally
- § 9:8 Use of special verdict procedure

TABLE OF CONTENTS

- § 9:9 Application in criminal cases
- § 9:10 Purpose
- § 9:11 Advantages
- § 9:12 Informing jury of legal effect of verdict
- § 9:13 Generally
- § 9:14 Sufficiency of special verdict
- § 9:15 Inconsistencies in verdict
- § 9:16 Partially completed verdict form

D. GENERAL VERDICT WITH INTERROGATORIES

1. INTRODUCTION

- § 9:17 Generally

2. SUBMISSION OF INTERROGATORIES

- § 9:18 Generally
- § 9:19 No interrogatory submitted

3. WITHDRAWAL OF INTERROGATORIES

- § 9:20 Generally

4. HARMONIOUS ANSWERS

- § 9:21 Generally
- § 9:22 Inconsistent answers
- § 9:23 Reconciling answers

E. WHEN TO USE SPECIAL VERDICTS AND WRITTEN INTERROGATORIES

- § 9:24 Generally
- § 9:25 Complex cases

F. SPECIAL VERDICTS AND INTERROGATORIES IN CRIMINAL CASES

- § 9:26 Generally
- § 9:27 Forfeiture cases
- § 9:28 Complex criminal cases
- § 9:29 Crimes charged in conjunctive
- § 9:30 Type and amount of drugs
- § 9:31 Conspiracies
- § 9:32 Other cases
- § 9:33 Review of refusal to order special verdict

CHAPTER 9A. JURY DELIBERATIONS

A. JURY DELIBERATIONS

1. INTRODUCTION

§ 9A:1 Generally

§ 9A:2 Jury room

2. MATERIAL IN JURY ROOM

§ 9A:3 Generally

§ 9A:4 Exhibits and papers

§ 9A:5 Dictionaries

§ 9A:6 Criminal Indictment or information

§ 9A:7 Civil pleadings

§ 9A:8 Jury instructions

§ 9A:9 Judge's summary of testimony and comments on evidence

§ 9A:10 Verdict forms

3. PRESENCE OF UNAUTHORIZED PERSONS

§ 9A:11 Generally

4. TIME

§ 9A:12 Generally

§ 9A:13 Time limits

5. DISBANDING JURY DURING DELIBERATIONS

§ 9A:14 Generally

§ 9A:15 Criminal cases

§ 9A:16 Information coming to attention of jurors

6. COMMUNICATIONS BETWEEN COURT AND JURY

§ 9A:17 Generally

§ 9A:18 Jury requests

§ 9A:19 Rereading jury instructions

§ 9A:20 Supplemental instructions

7. PRESENCE IN COURTROOM

§ 9A:21 Counsel

§ 9A:22 Judge

TABLE OF CONTENTS

8. TRANSCRIPTS

- § 9A:23 Generally
- § 9A:24 Reading back testimony
- § 9A:25 Summarizing testimony

9. SUBSTITUTION OR DISMISSAL OF JUROR DURING DELIBERATIONS

- § 9A:26 Generally
- § 9A:27 Dismissal of juror
- § 9A:28 Inquiry by court

10. FAILURE TO AGREE

- § 9A:29 Questioning jury
- § 9A:30 Determining whether to discharge jury
- § 9A:31 Coercion

11. *ALLEN* CHARGE

- § 9A:32 Generally
- § 9A:33 Avoiding coercion

12. RECEPTION OF THE VERDICT

- § 9A:34 Generally
- § 9A:35 Sealed verdicts
- § 9A:36 Death of juror
- § 9A:37 Presence of defendant
- § 9A:38 Unanimity of verdict
- § 9A:39 Returning verdict

13. POLLING JURY

- § 9A:40 Generally
- § 9A:41 Form of poll

CHAPTER 9B. POST-VERDICT

A. POST-VERDICT COMMUNICATION WITH JURORS

- § 9B:1 Generally
- § 9B:2 Federal Rule of Evidence 606(b)
- § 9B:3 Restrictions on post-trial interviews
- § 9B:4 Advising the jury

B. IMPEACHING THE VERDICT

- § 9B:5 Generally
- § 9B:6 Hearing
- § 9B:7 Impeachment by juror
- § 9B:8 Juror racial bias
- § 9B:9 Extraneous information

C. POST-VERDICT MOTIONS

- § 9B:10 Generally
- Appendix A. Sample Instruction Post-Trial Debriefing
- Appendix B. Jury Service Exit Questionnaire