

101.01

JURY HANDBOOK USAGE RECOMMENDED

The Committee recommends that judges orient the jurors as they are notified to report by enclosing a copy of a properly drawn Jury Handbook with their Summons and Jury Information Sheet.

Most people called for jury duty are unsure of what inconvenience they face and what burdens may follow. A Jury Handbook affords such a person the opportunity for some knowledge and comfort as to what lies ahead.

While some judges might believe prospective jurors would not read a Jury Handbook in advance of reporting for trial, committee members' experience is that a good majority of jurors both read and report that they greatly appreciated receiving the advance information.

A sample Jury Handbook is set out in PIK 4th 101.02, Handbook for Jurors.

101.01

JURY HANDBOOK USAGE RECOMMENDED

In the summer of 2006, the Committee reorganized and updated the handbook for jurors that follows as PIK 4th 101.02. The handbook is intended to provide basic information about the jury trial process in an effort to anticipate and answer many of the questions that prospective jurors often have. It can be mailed to prospective jurors with their summons, handed to them as they arrive at the courthouse, or the judge may choose to read all or parts of it to prospective jurors before or during jury selection. However the individual judicial district judges choose to approach jury orientation and jury selection, the Committee simply recommends that the handbook be utilized in some fashion.

When orienting or selecting a jury, the trial judge must take care to be accurate when describing the law or trial procedure and to avoid any comment(s) that might be perceived as indicating bias or a suggestion as to how the judge would resolve any of the factual issues in the case.

101.02

HANDBOOK FOR JURORS

Purpose of this Handbook

The purpose of this handbook is to acquaint jurors with a few of the methods of procedure in district court, to tell them something about the nature of their work and its importance, their duties, responsibilities, and the meaning of the terms used in court. Nothing in this handbook is to be regarded by jurors as instructions of law to be applied by them in any case in which they serve. The judge will instruct the jury in each separate case as to the law of that case. Jurors must follow only the instructions of law given to them by the trial judge in each particular case.

Selection of the Jury Panel

The jury panel, of which you are a member, is selected by lot from all the names of registered voters.

[In jurisdictions where a different method is employed to select the jury panel, the above paragraph should be replaced with a brief narrative as to the method there used.]

Excuses from Jury Service

Most of you must serve at a financial sacrifice, but few who read this handbook and thoroughly consider the privilege available to them will ask to be excused from service. In fairness to any who feel they must be excused, however, the system is as follows:

101.02

HANDBOOK FOR JURORS

I. The importance of jury service

Jury service is a serious obligation of all qualified citizens, and is a vital part of our American system of justice. By carrying out their task well and faithfully, jurors help resolve controversies, enforce our laws, and preserve the legal rights of our citizens.

II. Excuses from jury duty

Excuses from jury duty should be sought only for reasons of compelling personal hardship or because requiring jury service would be contrary to the public health, safety or welfare. Although jury service can be inconvenient or financially burdensome, experience has shown that most jurors feel that any such inconvenience or personal expense is far outweighed by the value and importance of jury service to the community at large. If you believe that you cannot or should not be required to serve as a juror in this case, you will have the opportunity to state your reasons to the judge.

III. Composition of jury panel

Parties have the right to juries selected from a fair cross section of the county in which the court convenes. Therefore, prospective jurors are selected at random from county voter registration records or lists of licensed drivers or persons holding state-issued identification cards who reside in the county.

If you believe you must be excused _____ (fill in the appropriate procedure in your judicial district).

Importance of Jury Service

Jurors perform a vital role in the American system of justice. The protection of our rights and liberties is achieved largely through the teamwork of judge and jury who, working together in a common effort, put into practice the principles of our great heritage of freedom. The judge determines the law to be applied in the case while the jury decides the facts. Thus, in a very important way, jurors become a part of the court itself.

Efficient jurors are men and women of sound judgment, absolute honesty, and a complete sense of fairness. Jury service is a high duty of citizenship. The juror aids in the maintenance of law and order and upholds justice among fellow citizens. The juror's greatest reward is the knowledge that this duty has been discharged faithfully, honorably, and well. In addition to determining and adjusting property rights, jurors may also be asked to decide questions involving a crime for which a person may be confined in prison. In a very real sense, therefore, the people must rely upon jurors for the protection of life, liberty, and the pursuit of happiness.

A Civil Case

Let us suppose you are called to help decide the case of John White vs. Tom Green. John White would be the person who begins the case and he is called the plaintiff. Tom Green would be called the defendant.

IV. Civil and criminal cases

In civil cases, parties generally claim that their person or property has been injured or damaged by the wrongful act of another. Money is normally sought as compensation for the claimed injury. Parties in civil cases may also seek a court order establishing or enforcing contractual or other legal rights or obligations. Examples of civil cases would be motor vehicle accident cases or real estate contract disputes. The person bringing the suit is the plaintiff, and the party being sued is the defendant.

Criminal cases are those in which the plaintiff is generally the State of Kansas and is represented by the prosecuting attorney who starts the case by filing a complaint alleging that the defendant has violated the law in some respect. The defendant is presumed to be innocent of all charges. The prosecutor must establish the defendant's guilt by proof beyond a reasonable doubt. The defendant is not required to present evidence.

V. Role of the attorneys, judge and jury

Attorneys have the obligation to represent their clients in a competent and professional manner. They present evidence to support the claims of their clients. They may challenge or question the evidence presented by other parties to the lawsuit. At times they will object to certain evidence offered by the other parties if they believe that such evidence should not be admitted.

The judge has the duty to decide what evidence may be received and considered by the jury; to control the progress of the trial; to rule on all questions of law; and to instruct the jury on the law that applies to a given case.

The Voir Dire Examination

The case is called for trial after the pleadings are prepared. The plaintiff, the defendant, and their lawyers are in the courtroom. A panel of jurors is called. This panel may include a number of jurors from whom 12 will be selected to try the case. However, in some cases, the parties may agree to have less than 12 jurors. In others, alternate jurors in addition to the 12 may be chosen to take the place of jurors who may become ill during the trial.

The panel members are sworn to answer questions about their qualifications to sit as jurors in the case. This questioning process is called the voir dire. This is an examination conducted by the judge or by counsel and sometimes both. A deliberately untruthful answer to any fair question could result in serious punishment to the person making it.

The voir dire examination opens with a short statement about the case. The purpose is to inform the jurors of what the case is about and to identify the parties and their lawyers.

Questions are then asked to find out whether anyone on the panel has any personal interest in the case or knows of any reason why he cannot return an impartial verdict. The court also wants to know whether any member of the panel is related or personally acquainted with the parties. Other questions will determine whether any panel member has a prejudice or feeling that might influence him. Any juror having knowledge of the case should tell the judge.

Parties on either side may ask that a member of the panel be excused. These requests, or demands, are called challenges.

A person may be challenged for cause if the examination shows that person might be prejudiced. The judge will excuse the person from

The jury has the duty to listen closely to all of the evidence presented by any party; to determine from that evidence what the facts of the case are; to apply those facts to the law as instructed by the judge; and thus to arrive at a verdict in the case.

At times during the trial the judge and attorneys may discuss matters at the bench or otherwise outside your view or hearing. These conferences are necessary for various reasons, such as to resolve issues concerning the admissibility of certain evidence. Judges try to keep these conferences as few and possible and brief.

VI. Jury selection process

On the first day of trial, prospective jurors are given an oath to honestly answer questions concerning their qualifications to sit as jurors in the case. This questioning process is called *voir dire*, a French term meaning “to speak the truth.” The questioning is done by the judge or by the attorneys, and sometimes both, and is intended to determine if prospective jurors have any personal interest in or knowledge of the case; whether they are related to or personally acquainted with the parties or their attorneys; or whether they, for whatever reason, have a personal feeling or bias that would make it difficult for them to be fair and impartial to both sides of the case.

During the questioning of prospective jurors, a person may be challenged for cause if it is shown that he or she would not be an appropriate juror for the particular case. The judge will excuse the person from the panel if the cause given is deemed sufficient. Once the questioning of prospective jurors is complete, the parties will then exercise a certain number of challenges for which no cause is necessary. These are known as peremptory challenges. The peremptory challenge is a legal right long recognized as a means of giving both sides some choice in the make-up of the jury. Jurors

the panel if the cause given in the challenge is sufficient. There is no limit to the number of challenges for cause which either party may make.

The parties also have a right to a certain number of challenges for which no cause is necessary. These are peremptory challenges. In a civil case each side usually has three peremptory challenges. The peremptory challenge is a legal right long recognized by law as a means of giving both sides some choice in the make-up of a jury. Jurors should understand clearly that being eliminated from the jury panel by a peremptory challenge is no reflection upon their ability or integrity.

In some cases the peremptory challenges are made openly in the hearing of the jury. In others they are made from the jury list out of the jury's hearing.

The Juror's Oath

After the jurors are selected, they are sworn to try the case according to the evidence given by the witnesses and the instructions that will be given by the court.

The Seven Stages of Trial

The trial proceeds when the jury has been sworn. There are usually seven stages of trial in civil cases. They are:

- (1) The opening statements of the lawyers. Sometimes the opening statements are omitted.
- (2) Plaintiff calls witnesses and produces evidence to prove the case.

should understand that being removed from the jury panel for cause or by a peremptory challenge is no reflection upon their ability or integrity.

VII. Stages of the trial

- A. Opening statement.** Once the jury has been selected, the attorneys are entitled to make opening statements outlining what they believe the evidence in the case will be. These statements are intended to help the jury in following and understanding the evidence as it is presented.
- B. Presentation of evidence.** Following opening statements, the parties then present the testimony of witnesses and other forms of evidence in an effort to prove their claims in the lawsuit, or in an effort to disprove the claims of the other party. Defendants are not required to present evidence.
- C. Instructions by the judge.** Once the parties have presented all of their evidence, the judge will then prepare and read to the jury a set of instructions outlining the law that applies to the particular case. The jurors will take these instructions with them to the jury room to serve as their guide in the deliberation process.
- D. Final arguments.** Following the reading of the jury instructions by the judge, the attorneys are then entitled to make final arguments in which they state what they believe the evidence has been and how the evidence should be viewed and applied in light of the judge's

Current Instruction

(3) Defendant may call witnesses and produce evidence to disprove the Plaintiff's claims.

(4) Plaintiff may call witnesses to disprove what was said by the defendant's witnesses.

(5) Defendant may call witnesses to disprove this last testimony.

(6) The judge instructs the jury as to the law.

(7) Closing arguments are made by the lawyers on each side.

During the trial, witnesses called by either side may be cross-examined by the lawyers on the other side.

Throughout the trial, the judge may be asked in the presence of the jury to decide questions of law. Usually these questions concern objections to testimony that either side wants to present. The law requires that the judge decide such questions.

A ruling by the judge does not indicate he or she is taking sides. The judge is merely saying, in effect, that the law does, or else does not, permit that question to be asked.

The Instructions to the Jury

The instructions of a judge to a jury are statements of the rules of law. It is the jury's duty to reach its own conclusion upon the evidence. As to the law, the judge's instructions control. You will apply the law, as given, to the facts as you find them to be from the evidence.

Plain English Revision

instructions.

E. Deliberation and verdict. The jury will first select one of its members as presiding juror to sign the verdict form and to speak for the jury in open court. In a criminal case, the jury's verdict as to any crime charged must be unanimous, that is, all jurors must agree upon the verdict. In a civil case, the agreement of 10 out of 12 jurors is sufficient.

VIII. Courtroom etiquette

The courtroom is a place where all persons should conduct themselves with dignity, courtesy and proper respect for the court and everyone present. Noisy or disruptive conduct is not allowed. The clothing worn by jurors may be casual but should be appropriate for the serious business of the court. Hats and caps should be removed upon entering the courtroom. If cellular phones are allowed in the courthouse, they must be turned off at all times in the courtroom. Newspapers, magazines, books, etc. should be put away. Quiet and close attention to the proceedings at hand is the order of the day.

IX. Conduct of the jury during trial

Each juror must pay close attention to the testimony and keep an open mind throughout the trial. Jurors can and should use the knowledge they possess in common with persons in general. Jurors are encouraged to use their common sense.

Until all of the evidence has been presented and the final instructions given by the judge, jurors must not discuss the case among themselves or with anyone else, including anyone outside the

The Arguments of Counsel

After the evidence is completed and the judge instructs the jury, the lawyers discuss the evidence in their arguments. This helps the jurors recall testimony that might have slipped from their memory. The chief purpose of the argument is to arrange the evidence in logical order. The lawyers fit the different parts of the testimony together and connect up the facts. It must be remembered that each attorney may present the view of the case that is most favorable to his or her own client. The lawyer's statement may be balanced by the statement of the lawyers on the other side.

The Criminal Case

The person charged with violating the law is the defendant. The case may arise from an alleged violation of ordinances of a city or from a claimed violation of the laws of the State of Kansas. In the first instance, the prosecution would be based upon a complaint signed by some officer or citizen. Where the laws of the state are claimed to have been broken, the prosecution would be based upon either a written accusation by a grand jury, which is called an indictment, or, more commonly, upon a written accusation by a county attorney, which is called an information. If more than one offense is charged, each will be set forth in a separate count.

After the indictment or information is filed, the defendant appears in open court and the charge is made known to the defendant. The defendant is asked whether he or she pleads "guilty" or "not guilty." This procedure is called the arraignment.

No trial is needed if the defendant pleads "guilty" and says he or

courthouse. If anyone attempts to talk with a juror about the case, the juror should tell this person that such conversation is not proper and should cease. The juror should also report the matter to the bailiff at the earliest opportunity.

Jurors must receive all of their information about the case from the trial itself, and must not rely on any other source of information. Jurors must not search for, read or listen to any information from the internet relating in any way to the case. Jurors must avoid listening to, reading or viewing any media coverage of the case. If during the trial a juror learns some information about the case outside the trial, the juror should inform the judge. He or she must not mention any such information to other jurors. Jurors must never inspect the scene where the events occurred. If such an inspection is necessary, the judge will have the jurors go as a group to the scene.

Once the case has been submitted to the jury for deliberation of a verdict, jurors should freely exchange their views and should give proper consideration to the views of other jurors. No juror is required to abandon any opinion which the juror believes is correct, but jurors should be willing to change their opinion if they become convinced by other jurors that such opinion is not correct.

X. Accommodating the needs and concerns of jurors

Understanding that jury service can at times be a burden, the judge and staff will make every effort to minimize any inconveniences. Depending on the particular county in which the case is handled, information regarding parking, dining establishments, cellular phone use, disability accommodations, etc. may be separately provided.

Current Instruction

she committed the crime. But if the plea is "not guilty" the defendant will be placed on trial.

Except for capital cases, the jury in a criminal case has only to determine whether the defendant is guilty or not guilty as to each charge against him. The jury in determining guilt finds the facts and the judge tells the jury what is the law. What happens after the verdict is not for the jury but is the sole responsibility of the judge.

The jury must consider separately each of the charges against the defendant. It may find him not guilty of any of the charges, or guilty of all of the charges, or guilty of some of the charges and not guilty of others.

Courtroom Etiquette

A court session begins when the bailiff calls for order. Everyone in the court arises. The judge takes his or her place on the bench and the bailiff announces the opening of court. When court adjourns, a similar procedure may be used.

Common courtesy and politeness are safe guides as to the way jurors should act. Of course, no juror will read a newspaper or magazine in the courtroom. Jurors will not carry on a conversation with another juror in the courtroom during the trial.

Jurors should not loiter in the corridors or vestibules. Embarrassing contacts may occur there with persons interested in the case.

Plain English Revision

Although some cases are shorter in duration and some can be much longer, the average jury trial takes 2-3 days. Except in very rare instances, you will be allowed to return home each evening.

During the trial, if you cannot hear the proceeding, or need to take a restroom break, just raise your hand and let the judge know. If you have other concerns regarding your comfort or convenience or that of other jurors, do not hesitate to express that concern to the bailiff during a break in the proceedings.

Conduct of the Jury During the Trial

Each juror should give close attention to the testimony. The juror is sworn to follow the court's instructions, and must render a verdict according to his or her best judgment.

Jurors should keep an open mind. They should not discuss the case before the testimony is completed and the case is submitted to them. Human experience shows that once a person expresses his or her views he or she hesitates to change them. Therefore, it is wise for a juror not to express his or her views until the entire story has been told.

During the trial, the jury may hear references to the rules of evidence. Some of these rules may appear strange to a person who is not a lawyer. However, each rule has a purpose. The rules are the result of hundreds of years of experience in the trial of cases.

Jurors are expected to use knowledge they possess in common with persons in general. But they are not to rely on any private source of information. Thus they should be careful, during the trial, not to discuss the case at home or elsewhere.

If it develops during the trial that a juror learns out of court of some fact about the case, he or she should inform the judge. He or she should not mention any such fact in the jury room.

Individual jurors should never inspect the scene of an accident or of any event in the case. If an inspection is necessary, the judge will have the jurors go as a group to the scene.

Jurors must not talk about the case with others not on the jury and must not read about the case in the newspapers. They should avoid radio and television broadcasts that might mention the case. The jury's verdict must be based on nothing else but the evidence before the court.

If any outsider attempts to talk with a juror about a case in which he or she is sitting, the juror should do the following:

- (1) Tell the person it is improper for a juror to discuss the case or receive information except in the courtroom.
- (2) Refuse to listen if the outsider persists.
- (3) Report the incident at once to the judge.

In the Jury Room

After the jurors hear the evidence, the instructions of the court and the arguments of counsel, they retire to their jury room and first elect their presiding juror. They should then enter upon their discussion with open minds. They should freely exchange views and should not hesitate to change their opinions if they are shown to be wrong.

The jurors have a duty to give full consideration to the opinion of their fellow jurors. They should try to reach a verdict whenever possible. However, no juror is required to give up any opinion which he or she is convinced is correct.

You will assume that in all cases all jurors must agree upon the verdict. Should there be instances when less than a unanimous verdict is required, you will be specifically so instructed by the court in the judge's written instructions.

The members of the jury are sworn to pass judgment on the facts in a particular case. They have no concern beyond that case. They violate their oath if they render their decision on the basis of the effect their verdict may have on other situations.

After the Trial

Ordinarily, the jurors need not tell anyone how they arrive at a verdict. What occurs in the jury room may remain secret. Only if the judge orders a juror to reveal such matters need there be a disclosure.

Convenience of Jurors

It is intended that your service be as enjoyable as possible. The court and the lawyers attempt to have only such delay as the necessities of their duties require. Occasionally matters of law have to be discussed between them. When it appears that only brief discussions are required, they may be done quietly at the bench. In this manner you are saved the inconvenience of going to your jury room.

If you cannot hear a witness or need to go to the rest room, feel free to raise your hand and let the judge know. If in doubt about your rights, present your question to the bailiff so that the bailiff can pass it on to the judge.

Ordinarily, cases will be scheduled so that you will not be asked to serve on more than *(here state number of cases)* cases in one term. The average case does not take more than two days for trial and, except in rare instances, you will be allowed to return home each evening.

Conclusion

The performance of jury service is the fulfillment of a most important civic obligation. Conscientious service brings its own reward in the satisfaction of a significant task well done. Jury work is the most valuable public service that the average citizen has an opportunity to perform.

You should now have a good understanding of how the courts do their work and of the privilege you have to participate in the administration of justice.

Any juror should realize a quiet importance and pride from jury service. The juror should decide the facts and apply the law impartially, treat alike the rich and the poor, men and women, corporations and individuals. The juror should render justice without any regard to race, color, or creed.

101.03

IMPORTANCE OF JURY SERVICE

You have been drawn as a jury panel to serve in this court for _____ (*term, period, or probable number of cases*).

Under certain circumstances, parties are entitled to a jury trial when they are not otherwise able to settle their controversies.

To serve as a juror is to fulfill one of the citizenship's most important responsibilities. You should not, therefore, ask to be excused except for compelling reasons.

101.04

METHOD OF SELECTING JURY PANEL

Our jury system rests upon the belief that several persons of different and varying backgrounds and experiences will be more able to arrive at the truth than a single person whose experiences are necessarily more limited. Your name was drawn by lot from [(*the*) (*a combination of*)] [(*voter registration records of the county*) (*driver's license records maintained by the State*)].

101.03

This instruction has been deleted and is now incorporated in 101.02.

101.04

This instruction has been deleted and is now incorporated in 101.02.

101.05

EXCUSES FROM JURY DUTY

Jury service is a fundamental part of our system of law. Responsible people believe that the inconvenience and financial sacrifice that attend jury service is a small price to pay for the protection of our liberties.

Believing in these principles as I do, knowing that most jurors receive permanent gratification from their service, I will excuse prospective jurors only for compelling reasons. If you believe that you should not be required to serve, you will have the opportunity to state your reasons to me and I will consider them.

If you are selected to serve, you should advise the bailiff of any personal problem that you think might arise. The bailiff will either assist you or report it for my help.

101.05

This instruction has been deleted and is now incorporated in 101.02.

Current Instruction

101.06

TYPES OF CASES

Jury cases are either civil or criminal.

(A) Civil cases are controversies between private individuals or companies and usually are actions for claimed injury to person or property. The person bringing the suit is the plaintiff and the party being sued is the defendant.

(B) Criminal cases are those in which the defendant is charged with a crime. The plaintiff is either the State or a city.

Plain English Revision

101.06

This instruction has been deleted and is now incorporated in 101.02.

Current Instruction

101.07

TRIAL PROCEDURES

To help you understand your duties as jurors the Court will outline the procedure followed in the Kansas district courts. First, a number of prospective jurors are called for a particular case. They are often questioned that their qualifications to serve as jurors in the case may be determined. The questions, which must be answered frankly, are not formulated to embarrass and they are not asked with a purpose of prying into anyone's personal affairs. They are asked, rather, to help the Court and attorneys obtain fair and impartial jurors. If you believe that any answer you would give to a question asked would be embarrassing to you or derogatory, inflammatory or prejudicial to either party, you should advise the judge by raising your hand before publicly stating your answer in the presence of other prospective jurors.

Any prospective juror found to be not qualified is excused from the case. At the conclusion of the questioning, a number of other prospective jurors are dismissed to reduce the number of those qualified to twelve. If a juror is excused at such a time it is no reflection upon the juror and none is intended by the Court or lawyers. It is simply the method provided by law for arriving at a jury of twelve to try a case.

After the jury is sworn, the lawyers make opening statements outlining what they expect the evidence will be. These statements are not evidence, but are, rather, a preview of the claims of the parties designated to help you follow and understand the case.

Plain English Revision

101.07

This instruction has been deleted and is now incorporated in 101.02.

Current Instruction

The Court will then give you instructions setting forth principles of law that *(he)(she)* believes you should have in mind as you listen to the evidence.

Following the opening statements each side offers evidence to support its claims, the plaintiff first, followed by the defendant.

101.08

FUNCTIONS OF JUDGE, COUNSEL, AND JURY

The rules governing the trial of lawsuits have evolved through hundreds of years of judicial experience and are designed to insure fair and orderly trials through which parties may obtain justice. If counsel believe matters offered in evidence violate any of these rules, they owe their client the duty of making objections. The judge has the duty of deciding what matter may be received as evidence and considered by you. The judge must also rule on all questions of law and control the progress of the trial.

Further, the judge must instruct you on the law that applies to a given case. Such law you must follow and you must not substitute for it opinions of your own as to what the law should be.

As jurors it is your duty to hear the evidence and to determine the facts from that evidence. You are then obliged to apply the law as given to the facts as you find them and thus to arrive at your verdict.

Plain English Revision

101.08

This instruction has been deleted and is now incorporated in 101.02.

101.09

JURY DELIBERATIONS

In order to return a verdict, *(all jurors)* (at least _____ of you *jurors*) need to agree upon the verdict. Your deliberations should be conducted in a businesslike manner. You should first select a presiding juror who should assure that your discussion moves sensibly and orderly with each juror given the opportunity to discuss the issues fully and fairly.

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely helpful for a juror, upon entering the jury room, to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. The result of conduct of this nature might be that a juror because of personal pride would hesitate to recede from an announced position when shown that it is fallacious.

It is natural that differences of opinion will arise. When they do, each juror should not only express his or her opinions but the reasons upon which he or she bases them.

Although a juror should not hesitate to change his or her vote when his or her reason and judgment are changed, each juror should vote according to his or her honest judgment, applying the law from the instructions to the facts as proved. If every juror is fair and reasonable, a jury can almost always agree.

101.09

GUIDELINES FOR JURY DELIBERATIONS

When you retire to the jury room you should first select one of your members as presiding juror. The presiding juror will sign the verdict(s) upon which you agree and will speak for the jury in open court. In order to return a verdict(s), *(all jurors)* (at least _____ of you *jurors*) must agree upon the verdict(s).

The presiding juror should strive to assure that deliberations are conducted in a professional and courteous manner, and that each juror is given the opportunity to discuss the issues fully and fairly. Jurors are encouraged to express their view regarding the facts of the case, and they should listen to and carefully consider the views of the other jurors.

It is natural that differences of opinion will arise. No juror is required to abandon any opinion which the juror believes is correct, but jurors should be willing to change any opinion if they become convinced by other jurors that it is not correct. As long as you vote according to your honest judgment, applying the law from the instructions to the facts as you find them, a verdict almost always can be reached.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment.

101.10

CONDUCT OF JURORS

There are a few general rules of conduct with which all members of the jury panel should be familiar.

(a) Keep an open and attentive mind throughout the trial. Do not make up your mind or attempt to reach a decision until the conclusion of the entire case and its submission to you for deliberation. Before that time do not discuss the case among yourselves. At no time discuss the case with anyone else or permit others to discuss it in your presence. As an additional precaution, do not converse with the attorneys, parties, or witnesses during the trial. Should anyone attempt to discuss the case with you, report the incident to the bailiff.

(b) To keep an open mind, do not listen to or read news accounts of the trial proceedings. Often such accounts are based upon incomplete information and give a distorted view of the case.

(c) Do not inspect any particular place or thing in controversy unless so directed by the Court. The scene or thing may have changed. You are to reach your verdict from the evidence and testimony presented in Court.

101.10

This instruction has been deleted and is now incorporated in 101.02.

(d) If you experience a personal problem, or are in doubt about your rights or duties, inform the bailiff.

(e) Some of you will not serve on a case. Even so your presence on the panel is necessary and valuable service. Others of you may serve on a case that will be settled or dismissed prior to verdict. Here again you will have performed an important and valuable service.

101.11

NOTE TAKING BY JURORS

Members of the jury, you will be permitted to take notes during the trial. Whether you do so is entirely up to you. However, do not allow the taking of notes to distract you from listening attentively to the testimony of a witness.

You may use your notes to refresh your memory as you deliberate. However, your deliberations must be based upon the collective memory and recollection of the entire jury as to the evidence admitted. Notes should be used only as an aid to this function and not as a substitute.

You must not remove any of your notes from the courthouse. At the beginning of a recess give your packet of notes to the bailiff. Your notes will be returned to you when court reconvenes.

At the conclusion of the trial, all notes must be given to the bailiff for immediate destruction.

(THERE HAS BEEN NO CHANGE TO THIS INSTRUCTION)

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Current Instruction

101.20

QUALIFYING THE JURY

I. IDENTIFICATION OF THE CASE

A. This is a civil action in which _____ is the plaintiff. The plaintiff sits _____, and is represented by _____ of _____, sitting _____. The defendant is _____ and is represented by _____ of _____, sitting _____. Briefly stated, this action arises out of an alleged _____.

B. This is a criminal case in which the plaintiff _____ (*State, City*) is represented by _____ of _____, sitting _____. The defendant _____, is sitting _____, and is represented by _____ of _____, sitting _____. The defendant is charged with _____.

II. PURPOSE OF VOIR DIRE

As prospective jurors you will be called and questioned so that the Court may determine your qualifications to serve in this case. The Court and the attorneys conduct this examination to obtain a fair and impartial jury and not to pry into your personal affairs. Because this is an important part of the trial, the law requires that prospective jurors be sworn before questions are asked. The Clerk will administer the oath.

Plain English Revision

101.20

QUALIFYING THE JURY

This instruction has been deleted and is now incorporated in 101.02.

Current Instruction

III. OATH FOR VOIR DIRE

You, and each of you, do solemnly swear that you will true answers make to all questions propounded to you by court or counsel, touching upon your qualifications to serve as jurors in this case, so help you God?

101.30

RECESS INSTRUCTIONS

During this recess you will please not confer about this case with any other person nor allow any other person to discuss the case with you. You will please not express any opinion about the case or form any fixed opinion until the case is finally submitted to you.

Plain English Revision

101.30

RECESS INSTRUCTIONS

During this recess you must not discuss this case with any other person nor allow any other person to discuss the case with you. You must not express any opinion about the case or form any fixed opinion until all of the evidence has been presented and the case has been submitted to you for deliberation.

101.40

VISITING SCENE OR AREA

You will be taken to the *(scene) (area)* involved in this case so that you may better understand the evidence that *(will come) (has come)* to you from the witness stand. You will be under the supervision of the *(bailiff) (sheriff)* at all times and will remain together until you are returned to the courtroom *(or are otherwise excused)*. Counsel may accompany you, but may not discuss this case or demonstrate anything relating to it. The *(bailiff) (sheriff)* may call to your attention certain features as previously requested by counsel. What you *(see) (have seen)* at the scene you may take into consideration in arriving at your verdict in so far as what you *(see) (have seen)* is supported by evidence coming to you in the courtroom.

101.50

WRITTEN STIPULATIONS OR AGREED EXHIBITS

Counsel have agreed upon *(written stipulations) (exhibits)* concerning _____. Because these *(stipulations) (exhibits)* may be difficult for you to remember, you will be able to have them with you during your deliberations. You should consider them as being true.

101.40

VISITING SCENE OR AREA

You will be taken to the *(scene) (area)* involved in this case to help you understand the evidence that *(will be) (has been)* presented in court. You will be under the supervision of the *(bailiff) (sheriff)* at all times and will remain together until you are returned to the courtroom *(or are otherwise excused)*. Counsel may accompany you, but are not allowed to discuss the case or demonstrate anything relating to it while outside the courtroom. The *(bailiff) (sheriff)* may call certain features to your attention as previously requested by counsel. In your deliberations, you may take into consideration what you *(see) (have seen)* at the scene if what you *(see) (have seen)* is supported by evidence presented in court.

101.50

WRITTEN STIPULATIONS OR AGREED EXHIBITS

All parties have agreed upon *(written stipulations) (exhibits)* concerning _____. You will be able to have these *(stipulations) (exhibits)* with you during your deliberations. You should consider them to be true.

102.01

CONSIDERATION AND APPLICATION OF INSTRUCTIONS

Members of the Jury: It is your duty as jurors to follow the law as I shall state it to you. You should construe each instruction in the light of and in harmony with the other instructions, and you should apply the instructions as a whole to the evidence.

102.02

EVIDENCE DEFINED

You should consider and weigh everything admitted into evidence. This includes testimony of witnesses, admissions or stipulations of the parties, and any admitted exhibits. You must disregard any testimony or exhibit which I did not admit into evidence.

102.01

CONSIDERATION AND APPLICATION OF INSTRUCTIONS

Members of the Jury: It is your duty to follow these instructions. These instructions are the law in this case and they should all be considered and applied to the evidence.

102.02

EVALUATION OF EVIDENCE, INCLUDING DEPOSITIONS

You must consider and weigh only evidence which was admitted during the trial, including exhibits, admissions, stipulations, and witness testimony either in person or by deposition.

[You must consider and weigh deposition testimony presented by an absent witness under oath using the same standards you apply to other testimony.]

102.03

OBJECTIONS TO EVIDENCE

At times during the trial the Court passes upon objections to the admission of certain things into evidence. Questions relating to the admissibility of evidence are solely questions of law for the Court and you must not concern yourselves with the reasons for its rulings. In your consideration of the case you must draw no inferences from these rulings and you must consider only the evidence which is admitted by the court.

102.04

STATEMENTS AND ARGUMENTS OF COUNSEL

Statements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law, but they are not evidence. If any statements are made that are not supported by evidence, they should be disregarded.

102.03

RULINGS AND ACTIONS OF THE COURT

During the trial I have ruled upon objections to the admission of evidence. You must not concern yourselves with the reasons for these rulings and you must consider only the evidence which is admitted. I have not intended to indicate any opinion as to what your verdict should be by any ruling that I have made or anything that I have said or done.

102.04

STATEMENTS AND ARGUMENTS OF COUNSEL

Statements and arguments of counsel are not evidence, but may help you understand the evidence and apply the law. However, you should disregard any comments of counsel that are not supported by evidence.

Current Instruction

102.05

SYMPATHY FOR OR AGAINST A PARTY

You must weigh and consider this case without favoritism for or prejudice against *(either) (any)* party. Sympathy should not enter into your deliberations.

102.06

CONSIDERATION OF CORPORATE PARTIES

The corporate *(plaintiff) (defendant)* in this case is entitled to the same fair and unprejudiced treatment as an individual under like circumstances.

102.07

JUDGE'S OPINION

Neither in these instructions nor in any ruling, action, or remark that I have made during the course of this trial have I intended to suggest how I would resolve any of the issues of this case.

Plain English Revision

102.05

SYMPATHY FOR OR AGAINST A PARTY

You must decide this case without favoritism for or prejudice against *(either) (any)* party. Sympathy should not influence your decision.

102.06

CONSIDERATION OF CORPORATE PARTIES

Corporations are entitled to the same fair and impartial treatment as individuals.

102.07

This instruction has been deleted and is now incorporated in 102.03.

102.08

**IF JURY RECEIVES INSTRUCTIONS
BEFORE CLOSE OF CASE**

As you may remember, the Court gave you certain general instructions and definitions before the presentation of any evidence in this case. The Court gave you those instructions to help you follow the case and to help you understand your duties better. The Court will repeat those previous instructions to refresh your memory. In addition it will give you instructions of a more specific nature. All of these instructions taken together constitute the law of this case and all are equally binding upon you. All are in writing and will be available to you in the jury room.

102.08

PRELIMINARY INSTRUCTIONS

A. PREFACE TO PRELIMINARY INSTRUCTIONS

Members of the Jury, I will now give you some preliminary instructions on the law that I believe will be helpful to you in listening to the case and understanding what issues you will be asked to decide at the end of the case. The instructions that I will give you now are not the complete instructions, and if the final instructions are different from these preliminary instructions, it is the final instructions that you must follow in reaching your verdict.

It sometimes happens that the attorneys and I believe at the beginning of the case that certain matters will be submitted to you for decision at the end of the case but the evidence is different from what the parties expected, or a party decides to abandon a claim or defense. That is why the final instructions are sometimes different from the preliminary instructions. Therefore, it is important that you understand that these instructions are only preliminary, and are meant to help you in listening to the evidence in the case.

B. IF JURY WAS GIVEN PRELIMINARY INSTRUCTIONS

As you remember, I gave you some general instructions before the attorneys presented any evidence. These preliminary instructions were meant to help you in listening to the case and understanding what issues you would have to decide to reach your verdict.

The instructions that I am giving you now are the complete and final instructions. It is these instructions on the law that you must use during your deliberations. If the final instructions are different from the preliminary instructions, you should disregard the preliminary instructions and follow these instructions.

The instructions are in writing and you will have them in the jury room for your use during deliberations.

102.09

FORM OF PRONOUN—SINGULAR AND PLURAL

Whenever the word "he" is used in these instructions, you may consider it as applying equally to a woman or an entity, such as a corporation. In like manner, the use of the singular of a word may be taken equally to mean the plural.

102.09

FORM OF PRONOUN—SINGULAR AND PLURAL

Whenever the word "he" is used in these instructions, you may consider it as applying equally to a woman or an entity, such as a corporation. Also, the use of the singular of a word may be taken equally to mean the plural.

102.10

MEANING OF BURDEN OF PROOF

Burden of proof means burden of persuasion. A party who has the burden of proof must persuade you that *(his)(her)* claim is more probably true than not true. In determining whether *(he)(she)* has met this burden you will consider all the evidence, whether produced by the plaintiff or defendant.

102.10

MEANING OF BURDEN OF PROOF

A party who has the burden to prove a claim must persuade you that the claim is more probably true than not true. In deciding whether this burden has been met, you must consider all the evidence, whether produced by the plaintiff or defendant.

102.11

BURDEN OF PROOF—CLEAR AND CONVINCING

Burden of proof means burden of persuasion. A party who has the burden of proof must persuade you of the truth of *(his)(her)* claim by clear and convincing evidence. In determining whether *(he)(she)* has met this burden you will consider all the evidence, whether produced by the plaintiff or the defendant.

[It is the law of this state that written instruments will be set aside or canceled only upon evidence that is clear and convincing.]

[It is the law of this state that to prove fraud it is necessary for the party claiming fraud to prove it by evidence that is clear and convincing.]

To be clear and convincing, evidence should be "clear" in the sense that it is certain, plain to understand, unambiguous, and "convincing" in the sense that it is so reasonable and persuasive as to cause you to believe it.

102.11

BURDEN OF PROOF—CLEAR AND CONVINCING

A party who has the burden to prove a claim must convince you of the truth of the claim by evidence that is clear and convincing evidence. In deciding whether this burden has been met, you must consider all the evidence, whether produced by the plaintiff or the defendant.

[It is the law in Kansas that punitive damages can be awarded to punish (willful)(wanton)(fraudulent)(malicious) conduct. (Willful) (Wanton) (Fraudulent) (Malicious) conduct must be proved by clear and convincing evidence.]

[It is the law in Kansas that written instruments will be set aside or canceled only when the evidence is clear and convincing.]

[It is the law in Kansas that fraud claims must be proved by clear and convincing evidence.]

[It is the law in Kansas that retaliatory discharge claims must be proven by clear and convincing evidence.]

Clear and convincing evidence is certain, plain to understand, and so reasonable and persuasive as to cause you to believe it.

102.20

CREDIBILITY OF WITNESSES

It is for you to determine the weight and credit to be given the testimony of each witness. You have a right to use common knowledge and experience in regard to the matter about which a witness has testified.

102.21

EVALUATION OF DEPOSITION EVIDENCE

During this trial, evidence was presented to you by the (showing) (reading) of a deposition. This was the testimony of an absent witness taken under oath.

This testimony is to be weighed by the same standards as other testimony.

102.20

EVALUATION OF TESTIMONY

You must decide whether the testimony of each witness is believable and what weight to give that testimony. In making these decisions, you have a right to use common knowledge and your experience.

102.21

This instruction has been deleted and is now incorporated in 102.02.

102.23

WITNESS TESTIFYING FALSELY

If you find that any witness has willfully testified falsely concerning any material matter, you have a right to distrust the testimony of that witness in other matters, and you may reject all or part of the testimony of that witness, or you may give it such weight as you think it deserves. You should not reject any testimony without cause.

102.30

IMPEACHMENT

In deciding the weight and credit to be given to the testimony of a witness, you may consider, in connection with all the other evidence, all evidence that affects the credibility of the witness, including:

[Evidence of prior conduct of the witness.]

[Evidence that on some former occasion the witness [*(made a statement) (acted in a manner) (testified)*] inconsistent with testimony of the witness in this case.]

[Evidence that the reputation of the witness for (*honesty*) (*veracity*) (*honesty or veracity*) is bad.]

[Evidence of (the interest the witness has in the result of the trial) (reasons the witness might favor one party over another).]

102.23

WITNESS TESTIFYING FALSELY

(Instruction Deleted)

102.30

IMPEACHMENT

In deciding the weight and credit you will give to the testimony of a witness, you may consider, along with all the other evidence, all evidence that affects the credibility of the witness, including:

[Evidence of prior conduct of the witness.]

[Evidence that on some former occasion the witness [*(made a statement) (acted in a manner) (testified)*] inconsistent with testimony the witness gave in this case.]

[Evidence that the reputation of the witness for (*honesty*) (*veracity*) (*honesty or veracity*) is bad.]

[Evidence of (the interest the witness has in the result of the trial) (reasons the witness might favor one party over another).]

Current Instruction

[Evidence that the witness has been convicted of a crime involving dishonesty or false statement.]

[You may consider this evidence only as it affects the credibility of the witness and may not consider it for other purposes.]

102.40

LIMITED ADMISSIBILITY OF EVIDENCE AS TO ONE PARTY OR PURPOSE

Whenever any evidence has been admitted limited *(to one party to one purpose)* the jury should not consider it *(as to any other party for any other purpose)*.

Plain English Revision

[Evidence that the witness has been convicted of a crime involving dishonesty or false statement.]

[You may consider this evidence only as it affects the credibility of the witness and may not consider it for other purposes.]

102.40

LIMITING ADMISSION OF EVIDENCE TO ONE PARTY OR PURPOSE

Whenever any evidence has been admitted only *(against one party for one purpose)* you should not consider it *(against any other party for any other purpose)*.

Current Instruction

102.50

EXPERT WITNESS

Certain testimony has been given in this case by experts; that is, by persons who are specially qualified by experience or training and possess knowledge on matters not common to mankind in general. The law permits such persons to give their opinions regarding such matters. The testimony of experts is to be considered like any other testimony and is to be tried by the same tests, and should receive such weight and credit as the jury deems it entitled to, when viewed in connection with all the other facts and circumstances, and its weight and value are questions for the jury.

102.72

PRESUMPTION AGAINST SUICIDE

Because of the instincts of self-preservation and love of life which are characteristic of the normal person, it is presumed that _____ died as a result of accidental causes (*natural causes*) rather than as a result of attempted suicide. This presumption may be overcome if you are persuaded by the evidence that _____ intended to take (*his*)(*her*) own life.

Plain English Revision

102.50

EXPERT WITNESS

Certain testimony has been given in this case by experts. Experts are persons who, from experience, education or training have specialized knowledge on matters not common to people in general. The law permits experts to give their opinions about such matters. The testimony of experts is to be considered like any other testimony and is to be evaluated by the same tests. You should consider it in connection with all the other facts and circumstances. You should give it the weight and credit you determine are appropriate.

102.72

PRESUMPTION AGAINST SUICIDE

You must presume that _____ died of (*accidental*) (*natural*) causes unless you are persuaded by the evidence that (*he*) (*she*) took (*his*) (*her*) own life.

Current Instruction

102.73

**INFERENCES ARISING FROM FAILURE TO PRODUCE
EVIDENCE**

If a party to this case has failed (*to offer evidence*) (*to produce a witness*) within (*his*)(*her*) power to produce, you may infer that the (*evidence*) (*testimony of the witness*) would have been adverse to that party, if you believe each of the following elements:

1. The (*evidence*) (*witness*) was under the control of the party and could have been produced by the exercise of reasonable diligence.
2. The (*evidence*) (*witness*) was not equally available to an adverse party.
3. A reasonably prudent person under the same or similar circumstances would have (*offered the evidence*) (*produced the witness*) if (*he*)(*she*) had believed (*it*) (*he*)(*she*) (*the testimony*) would be favorable to (*him*)(*her*).
4. No reasonable excuse for the failure has been shown.

Plain English Revision

102.73

**INFERENCES ARISING FROM FAILURE TO PRODUCE
EVIDENCE**

If you find there is evidence that would help explain an issue and that a party has control over that evidence, but has not presented it, you are to presume that the evidence is unfavorable to that party, unless you find that a reasonable excuse for not presenting the evidence has been shown.

Current Instruction

102.74

PRESUMPTION THAT MAIL WAS RECEIVED

If mailable material was properly addressed, was duly stamped with postage, and was deposited in the United States mails, it is presumed that those materials were delivered to the addressee in due course. This presumption is overcome if you are persuaded by evidence that the contrary was true.

103.01

NEGLIGENCE DEFINED

Negligence is the lack of ordinary care. It is the failure of a person to do something that an ordinary person would do, or the act of a person in doing something that an ordinary person would not do, measured by all the circumstances then existing.

Plain English Revision

102.74

PRESUMPTION THAT MAIL WAS RECEIVED

If mail was properly addressed, stamped, and deposited in the United States mails, you must presume that it was delivered to the addressee unless the evidence persuades you that it was not delivered.

103.01

NEGLIGENCE DEFINED

Negligence is the lack of reasonable care.

It is the failure of a person to do something that a reasonable person would do, or it is doing something that a reasonable person would not do, under the same circumstances.

Current Instruction

103.02

NEGLIGENCE OF CHILDREN

Negligence is the lack of ordinary care. It is the failure of a person to do something that an ordinary person would do, or the act of a person in doing something that an ordinary person would not do, measured by all the circumstances then existing.

A child may not be held to the same degree of care that is required of an adult, depending upon the circumstances. While there is no inflexible rule for determining a child's negligence, you should consider the caution ordinarily exercised by children of the same age, intelligence, capacity, and experiences under the circumstances then existing.

103.03

WANTON CONDUCT DEFINED

An act performed with a realization of the imminence of danger and a reckless disregard or complete indifference to the probable consequences of the act is a wanton act.

Plain English Revision

103.02

NEGLIGENCE OF CHILDREN

Negligence is the lack of reasonable care.

It is the failure of a person to do something that a reasonable person would do, or it is doing something that a reasonable person would not do, under the same circumstances.

When you decide whether a child is negligent, you must consider the child's age, intelligence, abilities and experiences.

103.03

WANTON CONDUCT DEFINED

Wanton conduct is doing something knowing that it is dangerous, and either being completely indifferent to the danger or recklessly disregarding the danger.

Current Instruction

103.04

WILLFUL CONDUCT DEFINED

An act performed with a designed purpose or intent on the part of a person to do wrong or to cause an injury to another is a willful act.

103.05

MALICE DEFINED

Malice is a state of mind characterized by an intent to do a harmful act without a reasonable justification or excuse.

103.06

NUISANCE

A person is liable in damages for the creation or maintenance of anything that unreasonably interferes with the rights of another, whether in person, or property, and thereby causes *(him)(her)* harm, inconvenience, or damage. *(A thing such as that just mentioned is sometimes called a nuisance.)*

Plain English Revision

103.04

WILLFUL CONDUCT DEFINED

Willful conduct is doing something with the intent of doing wrong or of causing injury to another person.

103.05

MALICE DEFINED

Malice is the intent to do harm without reasonable justification or excuse.

103.06

NUISANCE

A nuisance is the creation or maintenance of anything that unreasonably interferes with the rights of another, whether in person or property, and which causes harm, inconvenience, or damage.

Current Instruction

104.01

CAUSATION DEFINED

The Committee recommends that no instruction be given defining causation.

104.02

CONCURRENT CAUSES

There may be more than one cause of an injury; that is, there may be concurrent causes, occurring independently or together, which combine to produce the injury. A cause is concurrent if it was operative at the moment of injury and acted with another cause to produce the injury.

Concurrent causes do not always occur simultaneously. One cause may be continuous in operation and join with another cause occurring at a later time.

When the concurring negligence of two or more persons causes an injury, each such person is at fault.

If the negligence of only one person is the cause of the injury, then *(he)(she)* alone is at fault.

Plain English Revision

104.01

CAUSATION DEFINED

The Committee recommends that no instruction be given defining causation.

104.02

CONCURRENT CAUSES

An injury may be caused by more than one negligent act. Such acts are known as concurrent causes. Such acts may not occur at the same time. When concurrent negligent acts of two or more persons cause an injury, each person is at fault.

104.03

INTERVENING CAUSE

If an injury arises from two distinct causes which are independent and unrelated, then the causes are not concurrent. Consideration then must be given to the question of whether the causal connection between the conduct of the party responsible for the first cause and the injury was broken by the intervention of a new, independent cause which acting alone would have been sufficient to have caused the injury. If so, the person responsible for the first cause would not be at fault. If, however, the intervening cause was foreseen or should reasonably have been foreseen by the person responsible for the first cause, then such person's conduct would be the cause of the injury, notwithstanding the intervening cause, and *(he)(she)* would be at fault.

104.03

SUPERSEDING CAUSE

When an injury is caused by unrelated acts occurring at different times, you must consider whether the last act alone would have caused the injury. If so, the person committing the first act is not at fault, unless the last act could have reasonably been foreseen by the person responsible for the first act.

105.01

COMPARATIVE FAULT THEORY AND EFFECT

This case must be determined on the basis of comparative fault of the parties. In deciding the case, you will need to know the meaning of the terms "negligence" and "fault."

Negligence is the lack of ordinary care. It is the failure of a person to do something that an ordinary person would do, or the act of a person in doing something that an ordinary person would not do, measured by all the circumstances then existing.

A party is at fault when he or she is negligent and that negligence caused or contributed to the event which brought about the injury or damages for which claim is made.

The laws of Kansas applicable to this case require me to reduce the amount of damages you have awarded to any party by the percentage of fault that you find is attributable to that party.

A party will be entitled to recover damages if his or her fault is less than 50 percent of the total fault of all parties. A party will not be entitled to recover damages, however, if his or her fault is 50 percent or more.

105.01

COMPARATIVE FAULT THEORY AND EFFECT

You must decide this case by comparing the fault of the parties. In doing so, you will need to know the meaning of the terms "negligence" and "fault."

Negligence is the lack of reasonable care. It is the failure of a person to do something that a reasonable person would do, or it is doing something that a reasonable person would not do, under the same circumstances.

[When you decide whether a child is negligent, you must consider the child's age, intelligence, abilities and experiences.]

A party is at fault when he or she is negligent and that negligence caused or contributed to the event which brought about the claim(s) for damages.

I am required to reduce the amount of damages you may find for any party by the percentage of fault, if any, that you find is attributable to the party.

A party will be able to recover damages only if that party's fault is less than 50 percent of the total fault assigned. A party will not be able to recover damages, however, if his or her fault is 50 percent or more.

Current Instruction

105.02

**COMPARATIVE FAULT THEORY
AND EFFECT—CHILDREN**

This case must be determined on the basis of comparative fault of the parties. In deciding the case, you will need to know the meaning of the terms "negligence" and "fault."

Negligence is the lack of ordinary care. It is the failure of a person to do something that an ordinary person would do, or the act of a person in doing something that an ordinary person would not do, measured by all the circumstances then existing.

A child is not held to the same degree of care that is required of an adult, depending upon the circumstances. While there is no inflexible rule for determining a child's negligence, you should consider the caution ordinarily exercised by children of the same age, intelligence, capacity, and experience under the circumstances then existing.

A party is at fault when he or she is negligent and that negligence caused or contributed to the event which brought about the injury or damages for which claim is made.

The laws of Kansas applicable to this case require me to reduce the amount of damages you have awarded to any party by the percentage of fault that you find is attributable to that party.

A party will be entitled to recover damages if his or her fault is less than 50 percent of the total fault of all parties. A party will not be entitled to recover damages, however, if his or her fault is 50 percent or more.

Plain English Revision

105.02

**COMPARATIVE FAULT THEORY
AND EFFECT—CHILDREN**

(Instruction Deleted)

105.03

COMPARATIVE FAULT—EXPLANATION OF VERDICT

In interpreting the last instruction, it may help you to keep the following things in mind:

Your first obligation is to determine if any party is at fault.

Next, assign a percentage of fault to each party you find to be at fault.

For a party not at fault, show 0% on your verdict form.

For any party at fault, show 1% to 100%, depending on your finding, on your verdict form.

If any parties are found at fault, the fault of all parties, when added on your verdict form, must total 100%.

Next, determine the amount of damages sustained by any party claiming damages. Keep in mind that in setting forth damage amounts on your verdict form, you set out the full damage sustained by that party. I will make any reduction attributable to that party's fault, so you should not do so.

The parties to whom you have the discretion to assign fault are:

105.03

COMPARATIVE FAULT—EXPLANATION OF VERDICT

When answering questions on the verdict form, you should keep the following things in mind:

Fault

1. You must decide if any person is at fault.
2. If you decide that any person is at fault, you must then assign a percentage of fault to that person.
3. For a person not at fault, show 0% on the verdict form.
4. If you find any person at fault, show 1% to 100% on the verdict form for that person.
5. If one or more persons are assigned fault, the total of all fault must be 100%.

Amount of Damages

1. You are to determine the total amount of damages of each party claiming damages.
2. Your determination of damages must be made without regard to the percentage of fault you may have assigned to that party.
3. The Court will make any reduction of the damages necessary for the assigned percentage of fault. You should not do so.

Current Instruction

The parties you may find received damages are:

Plain English Revision

You may assign fault to:

The parties you may find received damages are:

105.04

**COMPARATIVE FAULT—WHERE CLAIM IS MADE
AGAINST ONE NOT JOINED AS A PARTY**

In this case it is claimed that _____ was at fault in the *(collision)* *(occurrence)* in question. Even though *(he has)* *(she has)* *(they have)* not appeared or offered evidence, it is necessary that you determine whether _____ was at fault in the *(collision)* *(occurrence)* and determine the percentage of fault, if any, attributable to *(him)* *(her)* *(them)*.

(THERE HAS BEEN NO CHANGE TO THIS INSTRUCTION)

105.04

**COMPARATIVE FAULT—WHERE CLAIM IS MADE
AGAINST ONE NOT JOINED AS A PARTY**

In this case it is claimed that _____ was at fault in the *(collision)* *(occurrence)* in question. Even though *(he has)* *(she has)* *(they have)* not appeared or offered evidence, it is necessary that you determine whether _____ was at fault in the *(collision)* *(occurrence)* and determine the percentage of fault, if any, attributable to *(him)* *(her)* *(them)*.

105.05

COMPARATIVE FAULT—BASIS OF COMPARISON

In making the apportionment of percentage of fault you should keep in mind that the percentage of fault attributable to a *(party) (person)* is not to be measured solely by the number of particulars in which a *(party) (person)* is found to have been at fault.

[Nor does the fact that both parties are claiming the same acts of negligence against each other necessarily mean that both must be equally at fault.]

You should weigh the respective contributions of the *(parties) (persons)* to the *(occurrence in question) (collision)* and considering the conduct of each as a whole, determine whether one made a larger contribution than the other(s), and if so, to what extent it exceeds that of the other(s).

105.05

COMPARATIVE FAULT—BASIS OF COMPARISON

The percentage of fault of a person is not determined merely by the number of negligent acts that person committed.

You must decide whether one person's negligence contributed more to the event that brought about damages than any negligence committed by another person.

Current Instruction

105.06

**COMPARATIVE FAULT—FAULT DIRECTED BY COURT—
ADMITTED OR STIPULATED ISSUE**

Under the evidence in this case, there is no dispute as to [the complete fault of

_____ (*party's name*)] [the complete freedom from fault of _____ (*party's name*)] [the amount of damages sustained by _____ (*party's name*)]. Therefore, it became my duty to insert the answer to that part of the verdict which relates to this allocation.

Plain English Revision

105.06

**COMPARATIVE FAULT—FAULT DIRECTED BY COURT—
ADMITTED OR STIPULATED ISSUE**

(Instruction Deleted. When liability is not an issue, see PIK 4th 106.05, Liability Directed. When damages are not an issue, see PIK 4th 171.41, Damages Not an Issue.)