02.31 CLOSING INSTRUCTIONS — RETURNING A VERDICT

The verdict form has a series of questions that the jury must answer. Read the verdict form very carefully. Each question is followed by specific instructions telling you what to do next.

At least [ten] of you must agree to the answer to each question on the verdict form. But the same [ten] people need not agree on each answer. When at least [ten] of you reach agreement on each question that you are required to answer, your foreperson should date and sign the verdict form.

If you agree on a verdict before p.m., your foreperson should advise the bailiff by a written note that you have reached a verdict. The bailiff will advise the court, and the court will contact the parties and counsel. As soon as everyone returns to the courtroom, the jury will present the verdict in open court. After the verdict is presented, members of the jury will be excused.

If you do not agree on a verdict before p.m., but you agree later tonight, your foreperson should date and sign the verdict form and place it, together with the instructions and the exhibits, in the envelope I am giving you. The foreperson will seal the envelope and [keep possession of the sealed envelope] [give the sealed envelope to the bailiff]. [Exhibits that do not fit in the envelope may be kept (insert appropriate place).] If you use this method of sealing your verdict, you must return to the jury room tomorrow morning by \_\_\_\_\_\_\_\_ a.m. You must not speak with anyone concerning the case and the verdict until the verdict is opened in court in your presence.

If you do not agree on a verdict before \_\_\_\_\_\_ p.m., you may return to your homes. You must not talk about the case or your deliberations outside of the jury room. Before you go home, the foreperson of the jury should [take the unsigned verdict form, these instructions and the exhibits, place them in the envelope I am giving you, seal the envelope and [keep possession of the envelope] [give the sealed envelope to bailiff]] [lock the jury room so that the exhibits, instructions, and unsigned verdict form will remain undisturbed]. If you have not agreed on a verdict, you must return to the jury room tomorrow morning by a.m. to continue deliberations.

 Use Note

This instruction explains to the jury how to return a verdict and should be given in all cases. The fourth paragraph should only be included when a sealed verdict is being used under Alaska R. Civ. P. 49(a). If a sealed verdict is used, the foreperson of the jury should keep the verdict, unless a court officer is supervising the jury and can take possession of the envelope. The final paragraph tells the jury what to do if it is going to separate overnight. If the jury room locks, it might be easier to leave the room locked and not to disturb the exhibits. If the room does not lock, the exhibits and instructions should be protected in one of the ways specified in the instruction.

 Comment

This instruction covers three situations: First, the jury returns a verdict while court is still in session. Second, the jury deliberates beyond normal court hours and agrees upon a verdict, which can be sealed and returned on the next court day. Third, the jury cannot agree during a normal working day, and it decides to separate for the night. It is important that the trial judge be in a position to assure that there has been no tampering with the verdict or with the exhibits. Thus, the instructions tell the jury how to secure the instructions, the exhibits, and the verdict form.

It probably is better if the foreperson of the jury is not required to remove the sealed envelope from the courthouse since it could be lost. In some places, however, removal will be the best safeguard, and the instruction is written to accommodate courthouses where security is not good as well as those that are very secure.

Whenever possible, a court officer should remain with the jury to protect against outside influences and to carry messages to the trial judge. This person is referred to as the bailiff in these instructions.

Since Alaska R. Civ. P. 49(a) allows any party to have the jury polled, the jury should return to court the next day, when it has returned a late-night verdict, so that it can be polled while memories are fresh. It also may be advisable to have a jury that has not agreed continue deliberations the next day to retain continuity in the deliberations. Whenever the next day cannot be used--if it is a holiday, for instance--the jury should be clearly advised as to when it is to return.

When the jury has not reached a verdict, the court may wish to consider directing the jury to reassemble in the jury box, not in the jury room. This will assure the trial judge that all jurors are present and give the trial judge an opportunity to give the jurors a new envelope for the exhibits, instructions, and verdict form if they again fail to reach a verdict, or if their verdict is returned late in the day.

AS 09.20.100 requires that five-sixths of the jurors agree in order to have a valid verdict. This would mean ten of twelve jurors. Alaska R. Civ. P. 47(f) provides that the parties may stipulate to a jury of fewer than twelve persons and to a verdict by a stated majority of the jurors. In this situation, the appropriate number of jurors who must agree on a verdict should be inserted in the instruction.