

STANDING ORDER *IN LIMINE*
FOR TRIAL OF CIVIL JURY CASES
IN HARRIS COUNTY PROBATE COURT NO. 2

During the trial of any civil jury case in Harris County Probate Court No. 2, unless and except to the extent that the operation of this order shall have been suspended with reference to such specific trial, no attorney shall make mention, refer to or suggest any of the matters hereinafter set forth in the presence or hearing of the jury, the venire panel, or of any member of either *without first approaching the bench and securing a ruling from the Court authorizing such reference.*

In addition, each attorney shall admonish the client, client's representatives and all non-adverse witnesses the attorney may call to testify similarly to refrain from any such statement, reference or suggestion unless same is essential to respond truthfully to a question asked by opposing counsel.

The matters to which reference is prohibited by this order are as follows:

1. **Insurance.** Unless an insurance company is a named defendant, that the defendant is or is not protected, in whole or in part, by liability insurance, or that defense counsel was retained by, or all or any part of the costs of defense, or of any resulting judgment, are or will be paid by an insurance company, or any other matter suggesting an involvement of any insurance company with the defense of the case.
2. **Jurors' Connection with Insurance Industry.** Inquiring of potential jurors as to their present or past employment or connection with the insurance industry, except that:
 - a) If a potential juror's juror information card discloses employment in the insurance industry, such potential juror may be questioned concerning same.
 - b) Inquiry may be made of potential jurors concerning their experience (or that of members of their family, if any, reviewing, adjusting or allowing/disallowing claims, as long as no express reference is made to "insurance".
3. **Liability or Non-Liability for Judgment.** That the named defendant may or may not have to pay any resulting judgment.
4. **Collateral Source.** That any portion of the damages sought by Plaintiff have been, or will be, paid by any collateral source, including but not limited to:
 - a) health and accident or disability insurance;
 - b) any employee benefit plan, formal or informal, including payment of wages for time not actually worked;
 - c) social security or welfare;
 - d) veterans or other benefits;
 - e) medical services provided free of charge or for less than reasonable and customary charges—provided that the foregoing does not prohibit reference to unpaid charges of any health care provider who actually testifies for plaintiff (or whose medical records are offered by Plaintiff) or to any letter of protection securing any such charges.

5. **Retention of Attorney.** The time or circumstances under which either party consulted or retained an attorney provided that if any attorney referred a party to a health care provider who testifies in the case (or whose medical records are introduced by such party) such fact may be a subject of inquiry.
6. **Attorneys' Fees.** That any party will have to pay attorneys' fees, unless a claim for recovery of attorneys' fees in the case will be submitted to the jury.
7. **Independent Medical Examination.** That the plaintiff offered to, or was, or is willing to, or did, undergo an examination by an independent physician or psychologist.
8. **Criminal Offenses.** That any party or witness has been suspected of, arrested for, charged with or convicted of any criminal offense unless there is evidence of a specific conviction that the Court has previously ruled is admissible in the case.
9. **Alcohol or Drug Use.** That any party or witness uses or abuses alcohol, tobacco, or any controlled substance, unless and until such alleged use or abuse is shown to be specifically relevant to the matters in controversy.
10. **Settlement Negotiations or Mediation.** Any reference to negotiations, offers or demands with respect to any attempted settlement or mediation.
11. **Discovery Disputes.** Any reference to discovery disputes that arose during the preparation of the case for trial, and to any position taken by any party with respect thereto, or to the Court's rulings thereon.
12. **Prior Suits or Claims.** That any party has been a party to any prior lawsuit, or has asserted any prior claim, or that any prior claim has been asserted against a party; provided that this clause does not prohibit inquiry about a prior injury that may have been the subject of a claim, as distinguished from the claim, suit or settlement with reference thereto, if the nature of injuries claimed in the present suit make the same relevant.
13. **Ex Parte Statements of Witnesses.** Any reference to any *ex parte* statement of any witness or alleged witness, other than an adverse party or agent of an adverse party, unless and until such witness has been called to testify and has given testimony conflicting with such *ex parte* statement. A deposition or a statement in business or medical records that have been proved up as required by the Rules of Evidence is not an *ex parte* statement.
14. **Testimony of Absent Witness.** Any statement of suggestion as to the probable testimony of any witness of alleged witness who is unavailable to testify, or whom the party suggesting such testimony does not, in good faith, expect to testify in the trial. If the party is expected to testify by deposition, this provision does not apply to testimony contained in the deposition expected to be offered.
15. **Failure to Call Witness.** Any reference to the failure of an opposing party to call any witness.
16. **Hearsay Medical Opinions.** Any hearsay statement offered for the truth of the statement by an allegedly injured person concerning any diagnosis or medical opinions communicated to such person by a physician or other health care provider.
17. **Photographs and Visual Aids.** Showing any documents, photographs, or visual aids to the jury, or displaying same in such manner that the jury or any member thereof can see the same, unless and until

the same has been tendered to opposing counsel and has been admitted in evidence or approved for admission or use before the jury by the Court.

18. Request for Stipulations. Any request or demand in the presence of the jury for a stipulation to any fact, or that counsel admit or deny any fact.

19. Requests for Files. Any request or demand in the presence of the jury that opposing counsel produce any document or thing, or that opposing counsel or any party or witness exhibit, turn over or allow examination of the contents of any file or briefcase (except that a party may demand to see a document used by a witness on the stand to refresh his or her recollection, or that a witness testifies that he/she has used previously to refresh his/her recollection).

20. Discrimination. Any argument that a party should be treated more or less favorable because of such party's race, gender, national origin, nationality, religion, marital status, occupation, or financial status (except in the second phase of a bifurcated trial).

21. Social Cost of Award. Any argument or suggestion that an award of damages will affect insurance premiums, the price of any goods or services, or the level of taxation.

22. Hardship or Privation. Any argument or suggestion that a failure to award damages will cause a plaintiff privation or financial hardship.

23. Golden Rule. Any argument or suggestion that the jurors should put themselves in the position of a party.

24. Counsel's Opinion of Credibility. Any expression of counsel's personal opinion regarding the credibility of any witness.

25. Effect of Answers to Jury Questions. Any argument that any finding of failure to find in response to a particular jury question will, or will not, result in a judgment favorable to any party. This provision does not bar argument by counsel that a particular jury question should be answered in a particular way.

26. Evidence Not Produced in Discovery Response to a Proper Request. Calling any witness, or offering any document in evidence, of the identity of such witness or the document has not been disclosed in a response to a proper discovery request. If a party has a good faith basis to urge that such witness or document should be received either because (a) no discovery request properly called for its disclosure, or (b) good cause existed for failure timely to disclose, such party shall first approach the bench and secure a ruling thereon. Counsel are advised that, to the extent possible or predictable, such matters should be addressed and a ruling sought at pretrial once the case is assigned for trial.

27. Objections to Evidence Not Produced in Discovery. Any objection based on failure to disclose evidence in pre-trial discovery. Any party desiring to urge any such objection shall request to approach the bench and urge such objection outside the hearing of the jury. To the extent possible or predictable, such matters should be addressed and a ruling sought at pretrial once the case is assigned for trial, although the objection may be urged from the record outside the hearing of the jury at the time such evidence is offered in the event the Court has overruled the objection at pretrial.

Ordered by Hon. Michael Newman
January 8, 2019