

## **JURY SEPARATION DURING DELIBERATIONS<sup>1</sup>** **(Revised December 17, 2009)<sup>2</sup>**

Members of the jury, today's court session is drawing to a close and I am about to excuse you for the day. You must return [*specify time and place for jurors to reassemble*].

The law requires that, before I excuse you, I review with you the rules that you must follow over the course of this recess.

These rules are designed to guarantee the parties a fair trial, and are generally the same ones you were required to follow prior to deliberations. But the law requires that I restate them at this stage in order to emphasize their importance.

The reason for the emphasis is that you are in a critical stage. You are in the process of deliberations and you are not being sequestered. That means you are not being kept together overnight where we can have greater assurance that you are following the rules.

You are being permitted to go home after deliberations have begun. There may now be a greater temptation, for example, to discuss the case with someone else, or to go to the scene. You must resist that temptation. To discuss the case with someone else, or to visit the scene, would not only violate my order, but would also violate the oath you took to follow the rules.

The rules are as follows:

1. Deliberations must be conducted only in the jury room when all jurors are present. Therefore, all deliberations must now cease and must not be resumed until all of you have returned and are together again in the jury room.

2. During the recess, do not converse, either among yourselves or with anyone else, about anything related to the case.

3. You remain under obligation not to request, accept, agree to accept, or discuss with any person the receiving or accepting of any payment or benefit in return for supplying any information concerning the trial.

4. You must promptly report directly to me any incident within your knowledge involving an attempt by any person improperly to influence you or any member of the jury.

5. You must not visit or view the premises or place where the charged crime was allegedly committed, or any other premises or place involved in the case.

6. You must not read, view or listen to any accounts or discussions of the case reported by newspapers, television, radio, the internet, or any other news media.

7. You must not attempt to research any fact, issue, or law related to this case, whether by discussion with others, by research in a library or on the internet, or by any other means or source.

Again, in this age of instant electronic communication and research, I want to emphasize that in addition to not conversing face to face with anyone about the case, you must not communicate with anyone about the case by any other means, including by telephone, text messages, email, internet chat or chat rooms, blogs, or social websites, such as facebook, myspace or twitter.

You must not provide any information about the case to anyone by any means whatsoever, and that includes the posting of information about the case, or what you are doing in the case, on any device, or internet site, including blogs, chat rooms, social websites or any other means.

You must also not google or otherwise search for any information about the case, or the law which applies to the case, or the people involved in the case, including the defendant, the witnesses, the lawyers, or the judge.

Now, ladies and gentlemen, I want you to understand why these rules are so important:

Our law does not permit jurors to converse with anyone else about the case, or to permit anyone to talk to them about the case, because only jurors are authorized to render a verdict. Only you have been found to be fair and only you have promised to be fair – no one else has been so qualified.

Our law also does not permit you to visit a place discussed in the testimony. First, you cannot always be sure that the place is in the same condition as it was on the day in question. Second, even if it were in the same condition, once you go to a place discussed in the testimony to evaluate the evidence in light of what you see, you become a witness, not a juror. As a witness, you may now have an erroneous view of the scene that may not be subject to correction by either party. That is not fair.

Finally, our law requires that you not read or listen to any news accounts of the case, and that you not attempt to research any fact, issue, or law related to the case. Your decision must be based solely on the evidence presented in this courtroom. It would not be fair to the parties for you to base your decision on some reporter's view or opinion, or upon information you acquire outside the courtroom.

Again, I trust you understand and appreciate the importance of following these rules and, in accord with your oath and promise to me, I know you will do so.

1. CPL 310.10(2) provides:

“At any time after the jury has been charged or commenced its deliberations, and after notice to the parties and affording such parties an opportunity to be heard on the record outside of the presence of the jury, the court may declare the deliberations to be in recess and may thereupon direct the jury to suspend its deliberations and to separate for a reasonable period of time to be specified by the court, not to exceed twenty-four hours, except that in the case of a Saturday, Sunday or holiday, such separation may extend beyond such twenty-four hour period. Before each recess, the court must admonish the jury as provided in section 270.40 of this chapter and direct it not to resume its deliberations until all twelve jurors have reassembled in the designated place at the termination of the declared recess.” See *People v. Bonaparte*, 78 N.Y.2d 26, 32 (1991).

2. The purpose of the revision was to conform the admonitions and explanations to the instructions on the admonitions to be given to the jury during the preliminary instructions.