

# Avoiding Last Minute Chambers Conferences on Jury Charges

by *Norman L. Lippitt*

This article provides a system for efficiently reviewing all the final jury instructions for a case, while determining the opponents' and judge's position on each instruction.

It's not news to any of us that our profession is populated by attorneys with varied and diverse personalities. Some attorneys thrive on solitary research and others on controversy. Some talk endlessly on the telephone while others curse the day telephones were invented. Some have neat desks while others have papers strewn over their entire office. Some can't wait to complete a project while others dwell on assigned tasks, oblivious to everything else which requires their attention.

In my case, a lifetime compulsion to complete assigned projects has prompted me to pursue shortcuts. Therefore, it was quite natural, after my appointment to the bench in September of 1985, to continue this pursuit. For example, as an attorney I always detested last minute chambers conferences with judges, to review and decide upon final jury instructions. I found these conferences particularly burdensome in actions with multiple parties and in actions where standard jury instructions were not available. I vowed to find a shortcut after I was forced to preside over a handful of these conferences myself. I especially detested shuffling papers, comparing charges, determining their proper sequence, and in many instances doing the attorney's job while the jury waited for us.

Why, I asked myself, should I have to sit at my desk with two or more sets of requests to my left and one or more volumes of SJJ or CJI to my right, while attorneys argued over the appropriate instructions. Particularly aggravating were the many instances when I had to remind the attorneys that they had forgotten a crucial instruction which all of them should have requested.

My solution turned out to be quite simple. I thought if the judge and the attorneys could simultaneously look at a table or chart of all the possible instructions set down in their logical sequence, and at the same glance determine both their opponent's and the judge's position on each of them, a great deal of time could be saved and much wasteful effort avoided.

So, one day while I presided over a particularly boring jury trial, I began to toy with a possible solution to the problem. Using the table of contents of SJJ and later CJI, I worked out some simple charts on a few pages of columnar paper. Attorneys soon learned that if the charts were properly filled out in advance of the chambers conference, they were able to quickly review respective positions. Paper shuffling, endless comparing, and arguments over sequencing were eliminated.

Along with the charts, I give the following instructions to the attorneys:

- Check (✓) off those standard instructions you wish delivered to the jury.
- Each party is to use a separate column, beginning with Plaintiff #1 and so on.
- Those standard instructions that require blanks to be filled in must be typed out in full on plain non-identifiable 8 1/2x14 inch paper and attached.
- Special instructions should only be requested when the subject is not adequately covered by the standard jury instructions. When requested, the above format should be followed.
- If you want the Court to deliver your theory, it also must be provided.
- Requests to charge should be made in the sequence in which you wish them submitted to the jury. Requests that are written in an argumentative fashion or with undue emphasis upon certain theories will not be considered.
- After you have completed the charts by checking off the desired standard instructions, attach your special requests and circulate the charts to other counsel. The last party must file the entire package with the Court.

After the charts are circulated among the attorneys for the parties, I complete a column indicating my choices. My clerk is then instructed to copy the completed charts and provide one set to each attorney. This is all accomplished prior to the conference. Because the circulated and completed charts are back to me before the conference and I have spent a few minutes reviewing them, I already know the extent of disagreement, if any, among the attorneys. I learn this simply by looking down and across the columns for check marks. Occasionally I find there is no disagreement at all, making the conference unnecessary. However, in most cases with the aid of the completed charts, the conference is over in a matter of minutes. I can then call the jury in and begin summation.

The system can best be understood by examining the filled-in charts printed at the end of this article. They are examples of charts that would be used in an employment discrimination case. Chart 1 contains the general jury instructions given before instructions applicable to the particular type of case are given. Chart 2 contains instructions for the particular type of case (in this instance and employment discrimination case), and the standard instructions on damages, jury deliberations, and verdict forms. As you can see, the first chart can be used in every case. Since the instructions in the second chart will vary according to the cause of action, a second chart will have to be prepared for each different type of action. I leave space in the second chart for special instructions requested by the parties.

I have now used the system for over a year with great success, and the attorneys who have appeared before me tell me they like it as

well. In fact, a few law firms have now added the charts to their inventory of forms. My clerks appreciate the system because it saves them time in pulling instructions from our regular maintained inventory. Furthermore, juries no longer have to wait and wonder, and of course, it satisfies my lifelong compulsion to get on to the next project.

Norman L. Lippitt has been a Judge of the Sixth Judicial Circuit (Oakland County) since 1985. Since his admission to the Michigan bar in 1961, Judge Lippitt has lectured extensively for such organizations as the Detroit College of Law, the Wayne State University Law School, the University of Michigan Law School, the Detroit Bar Association, the Michigan Trial Lawyers Association, and the Institute of Continuing Legal Education. In addition, Judge Lippitt has served as an arbitrator for the Michigan Attorney Grievance Commission since 1980. Judge Lippitt has published articles in the *University of Detroit Journal of Urban Law*, *the Wayne Law Review*, and *Laches*.

Chambers Conferences on Jury Charges

**CHART 1**  
**General Jury Instructions**

<div style="display: flex; justify-content: space-between;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Plaintiff Smith</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Def. Jones, Inc.</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Def. White</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Judge Lippitt</div> </div>				SJI 2d	Description
				<b>Chapter 3</b>	<b>Cautionary Instructions</b>
✓	x	x	✓	3.01	Faithful Performance of Duties
✓	x	x	✓	3.02	Facts Determined from Evidence
✓	x	x	✓	3.03	Admission of Evidence
✓	x	x	✓	3.04	Attorney's Statements not Evidence
	x	x	✓	3.05	Unprejudiced Treatment of Corporations
	x		✓	3.06	Irrelevance of Insurance
				3.07	Evidence Introduced for Limited Purpose
✓	x	x	✓	3.08	Judge's Opinion of Facts is to be Disregarded
✓	x	x	✓	3.09	Jury to Consider All Evidence
✓	x	x	✓	3.10	Circumstantial Evidence
✓	x		✓	3.11	Consideration of Ordinary Experience & Observations by Jurors
				3.12	Jury View of Premises
				3.13	Facts Judicially Noticed
				<b>Chapter 4</b>	<b>Credibility &amp; Weight</b>
✓	x	x	✓	4.01	Credibility of Witnesses
	x	x	✓	4.06	Attorney Interviewed Witness
✓			✓	4.07	Weighing Conflicting Evidence—Number of Witnesses
				4.11	Deposition Evidence
				<b>Chapter 5</b>	<b>Impeachment</b>
				5.01	Impeachment of Nonparty Witness
✓			✓	5.02	Impeachment of Party by Prior Inconsistent Statement
				5.03	Impeachment by Proof of Conviction of Crime
				<b>Chapter 6</b>	<b>Failure to Produce</b>
				6.01	Failure to Produce Evidence or a Witness
				<b>Chapter 7</b>	<b>Issues &amp; Theories</b>
✓	x	x	✓	7.01	Issues for the Jury & Theories of the Parties
				<b>Chapter 40</b>	<b>Multiple Plaintiffs</b>
				40.01	Two or More Plaintiffs—Separate Consideration
				40.02	Assessment of Damages
				<b>Chapter 41</b>	<b>Multiple Defendants</b>
				41.01	Two or More Defendants—Separate Consideration
				41.02	Assessing Damages Separately
				41.03	Multiple Parties & Pleadings—Jury Unable to Apportion Damages
				41.04	Damages Not to be Allocated among Joint Tort-feasors

**CHART 2**

**Jury Instructions for Employment Discrimination Cases**

<div style="display: flex; justify-content: space-between; padding: 5px;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-size: small;">Plaintiff Smith</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-size: small;">Def. Jones, Inc.</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-size: small;">Def. White</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-size: small;">Judge Lippitt</div> </div>				SJI 2d	Description
<b>Chapter 105 Employment Discrimination</b>					
	105.01	Disparate Treatment—Explanation			
	105.02	Disparate Treatment—Definition			
	105.03	Disparate Treatment—Cautionary As to Business Judgment			
	105.04	Disparate Treatment—Burden of Proof			
	105.05	Constructive Discharge—Definition			
✓	x	x	✓	105.10	Sexual Harassment
	x	x	✓	105.41	Mitigation of Damages for Loss of Compensation
	x		✓	Special	Respond at Superior—Eide v Kelsey-Hayes Co, 154 Mich App 142 (1986)
<b>Chapter 50 Damages</b>					
✓	x	x	✓	50.01	Measure of Damages—Personal & Property
✓	x	x	✓	50.02	Elements of Damage—Pain & Suffering, Etc.
				50.03	Elements of Damage—Disability & Disfigurement
				50.04	Elements of Damage—Aggravation of Preexisting Condition
✓	x	x	✓	50.05	Element of Damage—Medical Expenses
				50.06	Element of Damage—Loss of Earning Capacity-Past & Future-Adult Plaintiff, Emancipated Minor
				50.07	Element of Damage—Loss of Future Earning Capacity-Unemancipated Minor Plaintiff
				50.08	Element of Damage—Miscellaneous Expense
				50.10	Defendant Takes Plaintiff as He/She Finds Him/Her
				50.11	Inability to Determine Extent of Aggravation of Injuries
<b>Chapter 52 Injury to Spouse</b>					
				52.01	Measure of Damages—Injury to Spouse
<b>Chapter 53 Factors in Computing Damages</b>					
				53.01	Statutory Mortality Table—Injury Case
	x	x	✓	53.03	Future Damages Reduced to Present Cash Value
✓			✓	53.04	Interest
				53.05	Mitigation of Damages—Failure to Exercise Ordinary Care
<b>Chapter 60 Jury Deliberations</b>					
✓	x	x	✓	60.01	Jury Deliberations
✓	x	x	✓	60.02	Deadlocked Jury
<b>Chapter 65 General Verdict Form</b>					
				65.01	Single Defendant with No Counterclaim
				65.02	Single Defendant with Counterclaim
✓	x	x	✓	65.03	Multiple Defendants with No Counterclaims
				65.04	Multiple Defendants with One or More Counterclaims