

Rule 451. Instructions

(a) Use of IPI Criminal Instructions; Requirements of Other Instructions. Whenever Illinois Pattern Jury Instructions, Criminal contains an instruction applicable in a criminal case, giving due consideration to the facts and the governing law, and the court determines that the jury should be instructed on the subject, the IPI Criminal instruction shall be used, unless the court determines that it does not accurately state the law. The most current version of the IPI Criminal instructions is maintained on the Supreme Court website. Whenever IPI Criminal does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given on that subject should be simple, brief, impartial, and free from argument.

(b) Court's Instructions. At any time before or during the trial, the court may direct counsel to prepare designated instructions. Counsel shall comply with the direction, and copies of instructions so prepared shall be marked "Court's Instructions." Counsel may object at the conference on instructions to any instruction prepared at the court's direction, regardless of who prepared it, and the court shall rule on these objections as well as objections to other instructions. The grounds of the objections shall be particularly specified.

(c) Section 2-1107 of the Code of Civil Procedure to Govern. Except as otherwise provided in these rules, instructions in criminal cases shall be tendered, settled, and given in accordance with section 2-1107 of the Code of Civil Procedure, but substantial defects are not waived by failure to make timely objections thereto if the interests of justice require. The court shall instruct the jury after the arguments are completed, or, in its discretion, at the close of all the evidence.

(d) Procedure. The court shall be provided an original and a copy of each instruction, and a copy shall be delivered to each opposing counsel. In addition to numbering the copies and indicating who tendered them, as required by section 2-1107 of the Code of Civil Procedure, the copy shall contain a notation substantially as follows:

"IPI Criminal No. _____" or "IPI Criminal No. _____ Modified"

or "Not in IPI Criminal"

as the case may be. All objections made at the conference and the rulings thereon shall be shown in the report of proceedings.

(e) Instructions Before Opening Statements. After the jury is selected and before opening statements, the court may orally instruct the jury as follows:

(i) On cautionary or preliminary matters, including, but not limited to, the burden of proof, the believability of witnesses, and the receipt of evidence for a limited purpose.

(ii) On the issue of substantive law applicable to the case, including, but not limited to, the elements of the offense. When requested by the defendant, the court may instruct the jury on the elements of an affirmative defense. Nothing in this rule is intended to eliminate the giving of written instructions at the close of the trial in accord with paragraph (c).

(f) Instructions During Trial. Nothing in the rule is intended to restrict the court's authority to give any appropriate instruction during the course of the trial.

(g) Proceedings When an Enhanced Sentence is Sought. When the State intends, for the purpose of sentencing, to rely on one or more sentencing enhancement factors which are subject to the notice and proof requirements of section 111-3(c-5) of the Code of Criminal Procedure, the

court may, within its discretion, conduct a unitary trial through verdict on the issue of guilt and on the issue of whether a sentencing enhancement factor exists. The court may also, within its discretion, upon motion of a party, conduct a bifurcated trial. In deciding whether to conduct such a bifurcated trial, the court must first hold a pretrial hearing to determine if proof of the sentencing enhancement factor is not relevant to the question of guilt or if undue prejudice outweighs the factor's probative value. Such bifurcated trial shall be conducted subject to the following:

(1) The court shall first conduct a trial through verdict on the issue of guilt under the procedures applicable to trials in other cases.

(2) If a guilty verdict is rendered, the court shall then conduct a separate proceeding before the same jury, or before the court if a jury was waived at trial or is waived for purposes of the separate proceeding. This separate proceeding shall be confined to the issue of whether the sentencing enhancement factor exists. The order in which the parties may present evidence and argument and the rules governing admission of evidence shall be the same as at trial, with the burden remaining on the State to prove the factor beyond a reasonable doubt. After the evidence is closed, the submission and giving of instructions shall proceed in accordance with paragraphs (a), (b), (c) and (d) of this rule.

(3) The court may enter a directed verdict or judgment notwithstanding the verdict respecting any fact at issue in the separate proceeding.

Amended June 19, 1968, effective January 1, 1969; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended May 20, 1997, effective July 1, 1997; amended February 10, 2006, effective July 1, 2006; amended Feb. 6, 2013, eff. immediately; amended Apr. 8, 2013, eff. immediately.

Committee Comments

(February 10, 2006)

Paragraph (g)

In response to the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), the Illinois legislature adopted Illinois Code of Criminal Procedure section 111-3(c-5) (725 ILCS 5/111-3(c-5)), which sets notice and proof requirements for sentencing enhancement factors in nondeath penalty cases. However, this section does not specify how the sentencing enhancements are to be tried when the trier of fact is a jury. Rule 451(a) provides a basis for trial courts to utilize special interrogatories when the sentencing enhancement factor is to be proven during a unitary trial.

The Supreme Court Committee on Jury Instructions in Criminal Cases recommended the adoption of a rule which would provide that bifurcated trials as well as unitary trials are authorized, and that trial courts have discretion in deciding which to conduct.

Because bifurcating a trial generally causes additional inconvenience to the jury, the witnesses, and/or the parties, and causes additional cost to the parties and/or the taxpayers, paragraph (g) makes unitary trials the presumptive option. Before a court orders a bifurcated trial, the court must

find that having a unitary trial might cause prejudice and that this risk outweighs the additional difficulties associated with a bifurcated trial. Paragraph (g) does not apply when the court serves as trier of fact on sentencing enhancement factors. Whether to bifurcate in that circumstance involves different considerations.

Committee Comments

This amendment gives the trial court the option of formally instructing the jury at the close of the evidence prior to closing arguments. It also expressly authorizes the trial court to orally instruct the jury prior to opening statements concerning cautionary and preliminary matters and on key issues of substantive law, such as the elements of the offense or of an affirmative defense. The amendments also recognize that it may become necessary for the trial court to give appropriate instructions during the course of the trial to guide the jurors in their consideration of the evidence.