

**PRESENTED AT**

27<sup>th</sup> Annual Conference on State and Federal Appeals

June 1–2, 2017  
Austin, Texas

**Top Ten Five New Issues in the Jury Charge**

**Justice Tracy Christopher**

Justice Tracy Christopher  
Fourteenth Court of Appeals  
Houston, Texas

[tracy.christopher@txcourts.gov](mailto:tracy.christopher@txcourts.gov)  
713.274.2800

## Contents

Introduction .....	1
I. What's New in the 2016 Pattern Jury Charge Volumes? .....	1
A. Changes in Multiple Volumes. ....	2
B. Changes to the General Negligence Volume. ....	3
C. Changes to the Malpractice Volume. ....	4
D. Changes to the Business Volume. ....	5
E. Changes to the Family & Probate Volume. ....	7
F. The New Oil & Gas Volume. ....	8
II. What Potential New Issues Will the PJC Discuss in the Next Two Years? .....	8
A. Fiduciary Duty. ....	8
B. Pain and Mental Anguish. ....	9
C. Good Faith. ....	11
D. Legislative Changes and Other Updates. ....	12
1. The Malpractice Volume .....	13
2. The General Negligence Volume .....	14
3. The Business Volume .....	14
III. What's New in Preservation? .....	15
A. A Court Can Impose a Reasonable Deadline for Charge Objections. ....	15
B. Sometimes You Do Not Have to be Perfect to Preserve Error. ....	15
C. But Do Not Forget to Submit a Question. ....	16
D. Raise the Issue Post-Verdict in the Trial Court. ....	17
IV. What's New in a Harm Analysis? .....	18
A. <i>Casteel</i> Violations. ....	18
B. Refusal to Submit a Question. ....	20
C. Refusal to Limit a Question. ....	21
V. Finding New Issues on Your Own. ....	22

## **Top ~~Ten~~ Five New Issues in the Jury Charge**

A. Preserve at Every Step. ....	23
B. Examine Unrelated Cases.....	24
C. Pay Close Attention to Fill-in-the-Blanks Damages.....	24
D. Read the Comments. ....	25
E. Do Not Wait for a Supreme Court Ruling.....	26
Conclusion .....	26

## **Top ~~Ten~~ Five New Issues in the Jury Charge**

## **Top ~~Ten~~ Five<sup>1</sup> New Issues in the Jury Charge**

### **Introduction**

A proper jury charge is one of the most interesting challenges for a judge and should be researched and prepared by practitioners on both sides in advance of trial. While some trial judges prefer to submit the plaintiff's proposed charge on the ground that it is the plaintiff who bears the burden of proof, other trial judges take heart the maxim that the charge that is submitted is not a party's charge, but "the charge of the court." Judges who believe strongly that the charge belongs to the court are more likely to submit issues in the manner they believe is appropriate, even if both sides object.

### **I. What's New in the 2016 Pattern Jury Charge Volumes?**

Each Pattern Jury Charge Volume has its own committee that drafts the new changes to its volume. The names of the committee members are in each volume. In addition to those committees, there is also a Pattern Jury Charge Oversight Committee that reviews all of the new submissions for each volume before its publication. The Oversight Committee also tries to maintain uniformity between volumes and mediates "disputes" between the volumes. Generally to handle multiple volume issues, Oversight creates a multi-volume subcommittee that consists of members from each committee who will try to reach consensus. On the rare occasion that no consensus is possible, the Oversight Committee has the last word.

The Pattern Jury Charge Committees are State Bar Committees and the members are appointed by the State Bar president. The records of the various committees are open and available to the public. The official records for each committee are kept by personnel with TexasBarBooks, but generally any chair of a committee can provide you with committee drafts. There are no reporters at our meetings however.

---

<sup>1</sup> Yes I know I promised you the top ten but the paper has a lot of sub points! And the organization of the paper flows better with 5 main topics.

## **Top ~~Ten~~ Five New Issues in the Jury Charge**

Unfortunately, some volumes of the PJC's have inadequate names. The General Negligence volume, for example, also includes intentional torts and workers' compensation. This may be the reason that some volumes are frequently referred to by their color: General Negligence is the green volume; Malpractice (which includes premises liability and products liability) is the red volume; and Business (which includes consumer, insurance, and employment actions) is blue. Because the Family & Probate volume covers exactly that, it is not usually referred to by its yellow cover. For the same reason, the new Oil & Gas volume likely will be referred to by its name rather than as "the purple volume." The Criminal PJC's do not have distinctly colored covers.

New volumes of Pattern Jury Charges are published every two years, and the beginning of each volume lists the changes it contains. This section will discuss the highlights of those changes. Generally the 2016 volumes incorporate new statutory law and cases through the end of 2015, although some also include a few 2016 cases.

### **A. Changes in Multiple Volumes.**

Occasionally the Supreme Court will decide a new case that affects multiple volumes of the Pattern Jury Charges. That happened in 2015 when the Supreme Court decided *Nabors Well Services, Ltd. v. Romero*, 456 S.W.3d 553 (Tex. 2015). In *Nabors*, the court held that jurors could decide whether the failure to wear a seat belt caused, or contributed to cause, the plaintiffs' injuries. While this might seem to involve only the General Negligence volume, the case also impacts any case involving the proportionate-responsibility statute, Texas Civil Practice & Remedies Code section 33.001–.004, which cuts across multiple volumes.

Prior versions of the PJC included options to use "injury," "occurrence," or "injury or occurrence" in the definition of proximate cause, in the broad-form negligence submissions, and in proportionate-responsibility questions. The new volumes have eliminated the disjunctive "injury or occurrence" as an option, instead noting that, under *Nabors*, the default for these questions should be "injury." This is the note in PJC 4.1 in the General Negligence volume but this note also is in the Malpractice and Business volumes:

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Top (Ten) Five New Issues in the Jury Charge

Also available as part of the eCourse

[Texas Appellate Law Update 2017: Supreme Court, Legislature, Civil Procedure, Jury Charges, and More](#)

First appeared as part of the conference materials for the  
27<sup>th</sup> Annual Conference on State and Federal Appeals session  
"Top Ten New Issues in the Jury Charge"