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THE JURY CHARGE IN STATE COURT

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I. INTRODUCTION

In the early 1990s, the Texas Supreme Court acknowledged a significant truth: “The rules governing charge procedures are difficult enough; the caselaw applying them has made compliance a labyrinth daunting to the most experienced trial lawyers.” *State Dep’t of Highways & Pub. Transp. v. Payne*, 838 S.W.2d 235, 240 (Tex. 1992).

In the twenty-five years since the supreme court decided *Payne*, it seems fair to say that the situation has not improved. “[T]he process of telling the jury the applicable law and inquiring of them their verdict is a risky gambit in which counsel has less reason to know that he or she has protected a client’s rights than at any other time in the trial.” *Id.* at 240.

Nevertheless, it is a fascinating area of the law and if you become good at crafting a jury charge and stating objections, you not only will be in demand in your own law firm, but also may find this to be a potential area for business development.

II. PRESERVATION REQUIREMENTS

Rule 33.1 of the Texas Rules of Appellate Procedure establishes the general requirements for preservation of any appellate complaint. In broad terms, the rule requires a timely complaint and ruling by the trial court. Specifically, Rule 33.1(a) declares:

In General. As a prerequisite to presenting a complaint for appellate review, the record must show that:

(1) the complaint was made to the trial court by a timely request, objection, or motion that:

(A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and

(B) complied with the requirements of the Texas Rules of Civil or Criminal Evidence or the Texas Rules of Civil or Appellate Procedure; and

(2) the trial court:

(A) ruled on the request, objection, or motion, either expressly or implicitly; or

(B) refused to rule on the request, objection, or motion, and the complaining party objected to the refusal.

TEX. R. APP. P. 33.1(a). Thus, to preserve any complaint—including a complaint about the jury charge—a party must make a timely, specific objection or request, obtain a ruling on

the complaint, and comply with the rules of evidence and procedure. *E.g., Knapp v. Wilson N. Jones Mem'l Hosp.*, 281 S.W.3d 163, 170 (Tex. App.—Dallas 2009, no pet.) (op. on reh'g).

While Rule 33.1(a) is the starting point for preserving charge error, it certainly does not encapsulate all that is required. Frankly, as the supreme court recognized in *Payne*, preservation of charge complaints is much more complicated. A lawyer tasked with preparing and objecting to a jury charge must know Rules 271 through 279 of the Texas Rules of Civil Procedure. These Rules are packed with information and requirements that all lawyers should understand before appearing in a trial court to discuss a jury charge.

A. IT IS THE COURT'S CHARGE, NOT THE PARTIES'.

To begin with, the Rules make clear that the charge to the jury is the trial court's charge, not the parties': "Unless expressly waived by the parties, the trial court shall prepare and in open court deliver a written charge to the jury." TEX. R. CIV. P. 271. Certainly, the parties have significant responsibilities in offering and objecting to jury charge submissions, but it is the trial court, not the parties, that is ultimately tasked with preparation and delivery of the charge to the jury. *See Columbia Rio Grande Healthcare, L.P. v. Hawley*, 284 S.W.3d 851, 862 (Tex. 2009) ("It is the trial court's prerogative and duty to instruct the jury on the applicable law.").

Practice Note: The trial court often will ask each party to include its proposed jury charge as part of its pre-trial submissions. In addition to filing a hard copy, ask the trial court if the court would like a copy of your proposed charge on a thumb drive or by email.

B. OBJECTIONS AND REQUESTS MUST BE TIMELY.

Although the jury charge is given by the court, the parties may request that the court include questions, definitions, and instructions, and they may object to including such items in the charge. Rule 272 of the Texas Rules of Civil Procedure governs the timing of objections and requests:

[The charge] shall be submitted to the respective parties or their attorneys for their inspection, and a reasonable time given them in which to examine and present objections thereto outside the presence of the jury, which objections shall in every instance be presented . . . before the charge is read to the jury. All objections not so presented shall be considered as waived.

TEX. R. CIV. P. 272. Under this rule, the trial court must allow a "reasonable time" to review the court's charge and make objections. *Id.* But as the supreme court held in *King Fisher Marine Serv., L.P. v. Tamez*, 443 S.W.3d 838, 847 (Tex. 2014), trial courts retain "discretion to set a deadline for charge objections that precedes the reading of the charge to the jury." The *King Fisher* court explained that the only requirement in setting such a deadline is that the deadline afford counsel a "reasonable time" to inspect and object to the charge. *Id.* Determining what amount of time is "reasonable" is for the trial court to decide within its considerable discretion. *See Bekins Moving & Storage Co. v. Williams*, 947 S.W.2d 568, 575 (Tex. App.—Texarkana 1997, no pet.) ("The time allowed for objections

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