

INSTRUCTION NO. [1-121]

[Cautionary Instruction for Potentially Hung Jury]

The judicial process assigns tasks to the people involved in the case. It is the task of the witnesses to testify truthfully to the facts as they recall them. It is the task of the lawyers to prepare the case for final submission to the trier of the facts, the jury. It is the task of the Judge to preside, to instruct you as to the law, and to rule on whether certain evidence will be allowed at trial. It is the task of the jury to decide the case. You are not partisan nor are you advocates in this matter; you are neutral judges of the facts. It is you and you alone that can decide this cause. There is no reason to believe that any other 12 people would possess any more ability, intelligence, and courage to do the task assigned to a jury under the American system of justice.

The purpose of this instruction is to encourage you to collaborate with your fellow jurors in order to reach a just and fair verdict in this case. This instruction is not meant to coerce or to force a verdict. You should take as much time as needed in your deliberations.

You should not surrender your honest convictions in this matter for the mere purpose of returning a verdict or solely because of the opinion of other jurors. This does not mean, however, that you should avoid your task of rendering a verdict in this case.

This instruction is not more important than any other instruction I have previously given you. You should consider this instruction together with, and as part of, all the other instructions. Please return to your jury room and, again, diligently and earnestly resume your deliberations.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 1-121 (2017)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Cautionary Instruction for Potentially Hung Jury, No. 1-121, 2017 Supp., Source and Comment]

SOURCE: *State v. Norquay*, 2011 MT 34, ¶ 43, 359 Mont. 257, 268-69, 248 P.3d 817, 824-25.

COMMENT: This instruction is identical to the language adopted by the Montana Supreme Court in *State v. Norquay*.