**1.12 QUESTIONS BY JURORS**

After a witness has testified, you may propose questions to the witness, but you are not required to do so. The purpose of allowing you to submit questions is to help you understand the evidence. You should not become aligned with any party or attempt to help or respond to any party with your questions. You must remain neutral and impartial throughout this trial, and you must not assume the role of investigator or advocate.

Please write down the questions you want to ask. Add your [Jury Member Number] [Initials], and pass the questions to me. I will review them and show them to the parties. I may ask your questions or I may allow the parties to ask them.

You must decide independently whether to ask any questions. Do not discuss questions with anyone else including other members of the jury.

I will only allow questions that comply with the Rules of Evidence. Do not hold it against either party if I decide not to ask your questions. The decision whether to ask questions is for the court, and not the parties.

You should consider answers to juror questions the same way that you consider answers to questions posed by the parties. You should not give an answer to a juror question special weight or consideration.

# **Directions for Use**

This instruction should be given in cases where the court has decided to allow the jury to propose questions after balancing the potential prejudice to the parties against the potential benefit to the jury. If jury questions are allowed, this instruction should be given as a preliminary instruction. The final paragraph should be given again during the final charge to the jury:

The court allowed jurors to ask questions of witnesses during trial. You should consider answers to juror questions the same way that you consider answers to questions posed by the parties. You should not give an answer to a juror question special weight or consideration.

Requiring juror identification on each question enables the court to address problems unique to a juror by *voir dire* or by giving a curative instruction without exposing the entire panel to potential prejudice. The parties should be given the opportunity, outside the presence of the jury, to review proposed questions with the court. Counsel should be given the opportunity to reexamine a witness who has been presented a juror’s question in order to give the parties an opportunity to cure prejudicial questions or answers, and to prevent the jury from becoming an adversary in the proceeding.

# **Sources and Authority**

The elements of this instruction are based on two criminal appeals. Linden v. State, 598 P.2d 960, 962-63 (Alaska 1979); Landt v. State, 87 P.3d 73, 76-79 (Alaska App. 2004). Whether to allow the jury to propose questions is to be decided by the trial court on a case-by-case basis after balancing the potential prejudice to the parties against the potential benefit to the jury. Landt, 87 P.3d at 80.

Linden held it was harmless error for the trial court to disallow written questions submitted by the jury without showing them to defense counsel. Defendant’s appeal asserted that the trial court engaged in *ex parte* communications between judge and jury in violation of defendant’s Criminal Rule 38 right to be present at all stages of trial. 598 P.2d at 962–63. The decision suggested that allowing the parties to see juror questions before the court ruled on admissibility would provide greater due process protection. Id. at 963. Landt held that written jury questions did not violate defendant’s right to a fair and impartial jury.