

## **14-7010. Explanation of life imprisonment without possibility of release or parole proceeding; single aggravating circumstance.<sup>1</sup>**

### **INTRODUCTION OF STAFF:**

I am Judge \_\_\_\_\_ (name of Judge presiding over hearing). My bailiff, who will escort you and assist in communicating with the court, is \_\_\_\_\_. My administrative assistant is \_\_\_\_\_. If you need anything during this proceeding the bailiff or the administrative assistant would be happy to help. The court [reporter][monitor] is making a record of the proceeding. You must pay close attention to the testimony even though there is a [reporter][monitor] making a record of the proceeding because ordinarily transcripts of the witnesses testimony will not be provided to you.

### **INTRODUCTION TO PRELIMINARY INSTRUCTIONS:**

As the proceeding begins, I have some instructions for you. These instructions, along with those previously given, are preliminary only and may be changed during or at the end of the proceeding. All of you must pay attention to the evidence. After you have heard all of the evidence I will read the final instructions of law to you. You will also receive a written copy of the instructions. You must follow the final instructions in reaching your verdict.

### **SCHEDULING DURING HEARING:**

This proceeding is expected to last [until \_\_\_\_\_] [\_\_\_\_\_ days]. The usual hours of the proceeding will be from \_\_\_\_ (a.m.) to \_\_\_\_ (p.m.) with lunch and occasional rest breaks. Unless a different starting time is announced, please report to the jury room by \_\_\_\_ (a.m.). Please do not come back into the courtroom until you are called by the bailiff.

### **NOTE TAKING PERMITTED**

You are allowed, but not required, to take notes during this proceeding. Note paper will be provided for this purpose. Notes should not take the place of your independent memory of the evidence. When taking notes, please remember the importance of paying close attention to the proceeding. Listening and watching witnesses during their testimony will help you assess their appearance, behavior, memory and whatever else bears on their credibility. At each recess you must either leave your notes on your chair or take them with you to the jury room. At the end of the day, the bailiff will store your notes and return them to you when the proceeding resumes. When deliberations commence you will take your notes with you to the jury room. Ordinarily at the end of the case the notes will be collected and destroyed.<sup>3</sup>

### **ORDER OF HEARING**

The proceeding generally begins with the lawyers telling you what they expect the evidence to show. These statements and other statements made by the lawyers during the course of the proceeding can be of considerable assistance to you in understanding the evidence as it is presented at the proceeding. Statements of the lawyers, however, are not themselves evidence. The evidence will be the testimony of witnesses, exhibits and any stipulations or facts agreed to by the parties. After you have heard all the evidence, I will give you final instructions on the law. The lawyers will argue the case, and then you will retire to the jury room to arrive at your verdict.

It is my duty to decide what evidence you may consider. Your job is to find and determine the facts in this proceeding, which you must do solely upon the evidence received in court.

It is the duty of a lawyer to object to questions, testimony or exhibits the lawyer believes may not be proper, and you must not hold such objection against the objecting party. I will sustain objections if the question or evidence sought is improper for you to consider. If I sustain an objection to evidence, you must not consider such evidence nor may you consider any evidence I have told you to disregard. By itself, a question is not evidence. You must not speculate about what would be the answer to a question that I rule cannot be answered.

It is for you to decide whether the witnesses know what they are talking about and whether they are being truthful. You may give the testimony of any witness whatever weight you believe it merits. You may take into account, among other things, the witness's ability and opportunity to observe, memory, manner, or any bias or prejudice that the witness may have and the reasonableness of the testimony considered in light of all of the evidence of the case.

No ruling, gesture or comment I make during the course of the proceeding should influence your decision in this case. At times I may ask questions of witnesses. If I do, such questions do not in any way indicate my opinion about the facts or indicate the weight I feel you should give to the testimony of the witness.

## **QUESTIONS BY JURORS**

Ordinarily, the attorneys will develop all pertinent evidence. It is the exception rather than the rule that an individual juror will have an unanswered question after all of the evidence is presented. However, if you feel an important question has not been asked or answered, write the question and your name it down on a piece of your note paper and give it to the bailiff before the witness leaves the stand. I will decide whether or when your question will be asked. Rules of evidence or other considerations apply to questions you submit and may prevent the question from being asked. If the question is not asked, please do not give it any further consideration, do not discuss it with the other jurors, and please do not hold it against either side that you did not get an answer.

## **CONDUCT OF JURORS**

There are a number of important rules governing your conduct as jurors during the proceeding. You must reach your verdict based solely upon the evidence received in court. You must not consider anything you may have read or heard about the proceeding outside the courtroom. During the proceeding and your deliberations, you must avoid news accounts of the proceeding, whether they be on radio, television, the internet, or in a newspaper or other written publication. You must not visit the scene of the incident on your own. You cannot make experiments with reference to the proceeding.

You, as jurors, must decide this proceeding based solely on the evidence presented here within the four walls of this courtroom. This means that during the proceeding you must not conduct any independent research about this proceeding, the matters in this proceeding and the individuals or corporations involved in the proceeding. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this proceeding or to help you reach your verdict. You are prohibited from attempting to find out information from any source outside the confines of this courtroom.

After the parties have made their closing statements, you will retire to deliberate. Until you retire to deliberate, you may not discuss this proceeding with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the verdict to be reached with your fellow jurors, but you cannot discuss the verdict with anyone else, including your family and friends, until the proceeding is at an end.

I know that many of you use cell phones, the internet, and other tools of technology. You are not to discuss or provide any information to anyone about this proceeding through telephone calls or text messages. You are also not to engage in any social media interaction, communication or exchange of information about this proceeding until I have accepted your verdict and this proceeding is at a close. This rule applies to all chats, comments, direct messages, instant messages, posts, tweets, blogs, vlogs or any other means of communicating, sharing, or exchanging information through social media.

It is important that you keep an open mind and not decide any part of the proceeding until the entire case has been completed and submitted to you. Your special responsibility as jurors demands that throughout this proceeding you exercise your judgment impartially and without regard to sympathy, bias, or prejudice. Therefore, until you retire to deliberate, you must not discuss this proceeding or the evidence with anyone, even with each other, because you have not heard all the evidence, you have not been instructed on the law, and you have not heard the final arguments of the lawyers. If an exhibit is admitted in evidence, you should examine it yourself and not talk about it with other jurors until you retire to deliberate.

To minimize the risk of accidentally overhearing something that is not evidence, please continue to wear the jurors' badges while in and around the courthouse. If

someone happens to discuss the case in your presence, report that fact at once to a member of the staff.

Although it is natural to visit with people you meet, please do not talk with any of the attorneys, parties, witnesses or spectators either in or out of the courtroom. If you meet in the hallways or elevators, there is nothing wrong with saying a “good morning” or “good afternoon,” but your conversation should end there. If the attorneys, parties and witnesses do not greet you outside of court, or avoid riding in the same elevator with you, they are not being rude. They are just carefully observing this rule.

## HEARING PROCEDURE:

I will outline the procedure for you to follow in reaching your verdict.

The state has charged that the following aggravating circumstance was present:<sup>2</sup>

[at the time of the murder, \_\_\_\_\_ (*name of peace officer*) was a peace officer and was performing the duties of a peace officer];

[the murder of \_\_\_\_\_ (*name of victim*) was committed during [the commission of] [an attempt to commit]<sup>2</sup> kidnapping];

[the murder of \_\_\_\_\_ (*name of victim*) was committed during [the commission of] [an attempt to commit]<sup>2</sup> criminal sexual contact of a minor];

[the murder of \_\_\_\_\_ (*name of victim*) was committed during [the commission of] [an attempt to commit]<sup>2</sup> criminal sexual penetration];

[the murder of \_\_\_\_\_ (*name of victim*) was committed while the defendant was attempting to escape from a penal institution];

[at the time of the murder, \_\_\_\_\_ (*name of victim*) was an inmate of a penal institution];

[at the time of the murder \_\_\_\_\_ (*name of victim*) was a person lawfully on the premises of a penal institution];

[at the time of the murder \_\_\_\_\_ (*name of victim*) was an employee of the corrections department];

[the murder of \_\_\_\_\_ (*name of victim*) was for hire];

[the murder was of a witness to a crime for the purpose of preventing report of the crime or testimony in any criminal proceeding];

[the murder was of a person likely to become a witness to a crime for the purpose of preventing report of the crime or testimony in any criminal proceeding];

[the murder was in retaliation for a person having testified in a criminal proceeding].

You will decide whether this aggravating circumstance was present beyond a reasonable doubt.

The prosecuting attorney will now make an opening statement if [he] [she] desires. The defendant's attorney may make an opening statement if [he] [she] desires or may wait until later in the proceeding to do so.

What is said in the opening statement is not evidence. The opening statement is simply the lawyer's opportunity to tell you what [he] [she] expects the evidence to show.

#### USE NOTES

1. This instruction is to be used if the defendant is charged with a crime carrying a sentence of life imprisonment without possibility of release or parole and the court adopts a bifurcated proceeding to determine whether an aggravating circumstance exists. It is to be used when the defendant has been convicted of a single murder and a single aggravating circumstance has been charged. (For cases where the death penalty remains an option, see UJI 14-7010 NMRA (2020), *available at* <https://nmonesource.com> (follow "Historical New Mexico Rules Annotated" hyperlink)). It is to be given at the start of the proceeding on the aggravating factor and before opening statements. This instruction does not go to the jury room. If the defendant has been convicted of more than one capital offense, use UJI 14-7011 NMRA. If more than one aggravating circumstance is charged for the same murder, use UJI 14-7011 NMRA.

If the court does not adopt a bifurcated proceeding, do not use this instruction or the other instructions in Chapter 70; instead give special verdict and special interrogatory instructions patterned on UJIs 14-6013 and 14-6014 NMRA for each alleged murder and aggravating circumstance.

2. Use only the applicable alternative.

[As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008, effective for all cases pending or filed on or after December 31, 2021.]