

## **Amendments to Standard Jury Instructions in Contract and Business Cases**

The Supreme Court Committee on Standard Jury Instructions—Contracts and Business publishes these new or amended Standard Jury Instructions—Contracts and Business. The Committee proposes amending or creating the following: Introductory Guide; Form 416.2, Model Form of Verdict for Third-Party Beneficiary of Contract Claim; Form 416.3, Model Form of Verdict for Formation of Contract; Form 416.5, Model Form of Verdict for Oral or Written Contract Terms; Form 416.7, Model Form of Verdict for Contract Implied in Law; Form 416.8, Model Form of Verdict for Formation of Contract — Offer; Form 416.10, Model Form of Verdict For Contract Formation — Acceptance; Form 416.11, Model Forma of Verdict for Contract Formation — Acceptance by Silence or Conduct; Form 416.33, Model Form of Verdict for Affirmative Defense — Equitable Estoppel; and Form 416.36, Model Form of Verdict for Affirmative Defense — Ratification.

Interested parties have until October 2, 2017, to submit comments electronically or by mail to the Contract and Business Committee at [sjicontract@flcourts.org](mailto:sjicontract@flcourts.org), or to the chair of the Contract and Business Committee, Manuel Farach, McGlinchey Stafford, PLLC, 1 East Broward Boulevard, Suite 1400, Fort Lauderdale, FL 33301-1834, [mfarach@mcglinchey.com](mailto:mfarach@mcglinchey.com), and a copy to The Florida Bar liaison for the committee, Krys Godwin, The Florida Bar, 651 E. Jefferson Street, Tallahassee 32399-6523, [kgodwin@floridabar.org](mailto:kgodwin@floridabar.org).

**[New Introduction Guide will appear after the table of contents for Section 400 — Substantive Instructions.]**

### Introductory Guide

The following Model Verdict forms are included as examples of how issues can be submitted to the jury. They may be changed on a case-by-case basis depending on the rulings and facts in a particular case. The Committee takes no position whether a special verdict form or a general verdict form is appropriate in any given case and that decision is left to the presiding court.

Historically, a general verdict form was considered appropriate. However, with the advent of special verdicts and bifurcation of issues, it is now common for cases to be submitted to the jury with a special verdict form. The committee has therefore

drafted the following special verdict forms. None of the following are complete verdicts and in cases involving multiple affirmative defenses, more than one of these forms or a general verdict form may be used.

**FORM 416.2 MODEL FORM OF VERDICT FOR  
THIRD-PARTY BENEFICIARY OF CONTRACT CLAIM**

**VERDICT**

**We, the jury return the following verdict:**

**Did (Claimant) prove that (contracting parties) intended that (Claimant) benefit from their contract?**

**YES ..... NO .....**

**If your answer is NO, then your verdict is for (Defendant) on this claim.  
If your answer is YES, you should proceed further as follows:**

***[Insert further instructions regarding proceeding to additional questions, as appropriate.]***

**NOTES ON USE**

1. This model verdict form should be used in conjunction with Standard Jury Instruction 416.2, *Third-Party Beneficiary*.

**FORM 416.3 MODEL FORM OF VERDICT FOR  
FORMATION OF CONTRACT**

**VERDICT**

**1. Did (Claimant) prove that the essential contract terms were clear enough so that the parties could understand what each party was required to do?**

**YES ..... NO .....**

**If your answer to question 1 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.**

**2. Did (Claimant) prove that (Claimant) and (Defendant) agreed to give each other something of value? [A promise to do something or not to do something may have value].**

**YES ..... NO .....**

**If your answer to question 2 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 2 is YES, please answer question 3.**

**3. Did (Claimant) prove that (Claimant) and (Defendant) agreed to the essential terms of the contract?**

**YES ..... NO .....**

**If your answer to question 3 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 3 is YES, your verdict is for (Claimant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.**

#### **NOTES ON USE**

**1. This model verdict form should be used in conjunction with Standard Jury Instruction 416.3, *Contract Formation—Essential Factual Elements*.**

**2. This form should be given only when the existence of a contract is contested. If both parties agree that they had a contract, then the form relating to whether a contract was formed would not need to be given. Users should omit elements in this form that are not contested so that the jury can focus on contested issues. Include the bracketed language only if it is an issue in the case.**

**FORM 416.5 MODEL FORM OF VERDICT FOR ORAL OR  
WRITTEN CONTRACT TERMS**

**NOTES ON USE**

1. The Committee does not believe a verdict form is necessary for Standard Jury Instruction 416.5, *Oral or Written Contract Terms*.

**FORM 416.6 MODEL FORM OF VERDICT FOR CONTRACT  
IMPLIED IN FACT**

**VERDICT**

1. Was (Claimant's) conduct intentional and did (Claimant) know or should (Claimant) have known that (Defendant) understood (Claimant's) conduct created a contract?

YES ..... NO .....

If your answer to question 1 is NO, [then go to question 3 if there is an assertion of a prior relationship] [your verdict is for (Defendant) on this claim, and you should not proceed further on this claim and you should proceed to [Form (number)] [Question (number)]]. If your answer to question 1 is YES, please answer question 2.

2. Was (Defendant's) conduct intentional and did (Defendant) know or should (Defendant) have known that (Claimant) understood (Defendant's) conduct created a contract?

YES ..... NO .....

If your answer to question 2 is NO, [then go to question 3 if there is an assertion of a prior relationship] [your verdict is for (Defendant) on this claim, and you should not proceed further on this claim and you should proceed to [Form (number)] [Question (number)]]. If your answer to question 2 is YES, your verdict is for (Claimant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.

[3. Did the prior relationship between the parties, combined with all the circumstances in this case, create a contract?

YES ..... NO .....

**If your answer to question 3 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further on this claim and you should proceed to [Form (number)] [Question (number)]. If your answer to question 3 is YES, your verdict is for (Claimant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.]**

**NOTES ON USE**

1. This model verdict form should be used in conjunction with Standard Jury Instruction 416.6, *Contract Implied in Fact*.

2. Use this form where there is no express contract, oral, or written, between the parties, and the jury is being asked to infer the existence of a contract from the facts and circumstances of the case.

3. In deciding whether a contract was created, the conduct and relationship of the parties as well as all the circumstances should be considered.

4. Do not use question 3 unless there is evidence of a course of dealing, usage of trade, or course of performance between the parties.

**FORM 416.7 MODEL FORM OF VERDICT FOR  
CONTRACT IMPLIED IN LAW**

**VERDICT**

**1. Did (Claimant) prove that (Claimant) gave a benefit to (Defendant)?**

**YES ..... NO .....**

**If your answer to question 1 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.**

**2. Did (Claimant) prove that (Defendant) knew of the benefit?**

**YES ..... NO .....**

**If your answer to question 2 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 2 is YES, please answer question 3.**

**3. Did (Claimant) prove that (Defendant) accepted or retained the benefit?**

**YES ..... NO .....**

**If your answer to question 3 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 3 is YES, please answer question 4.**

**4. Did (Claimant) prove that the circumstances are such that (Defendant) should, in all fairness, be required to pay for the benefit?**

**YES ..... NO .....**

**If your answer to question 4 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 4 is YES, your verdict is for (Claimant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.**

#### **NOTES ON USE**

**1. This model verdict form should be used in conjunction with Standard Jury Instruction 416.7, *Contract Implied in Law*.**

### **FORM 416.8 MODEL FORM OF VERDICT FOR FORMATION OF CONTRACT — OFFER**

#### **VERDICT**

**1. Did (Claimant) prove that (Claimant) communicated to (Defendant) that (Claimant) was willing to enter into a contract with (Defendant)?**

**YES ..... NO .....**

**If your answer to question 1 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.**

**2. Did (Claimant) prove that the communication[s] between (Claimant) and (Defendant) contained the essential terms of the offer?**

**YES ..... NO .....**

**If your answer to question 2 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 2 is YES, please answer question 3.**

**3. Did (Claimant) prove that based on the communication[s], (Defendant) could have reasonably concluded that a contract with these terms would result if (Defendant) accepted the offer?**

**YES ..... NO .....**

**If your answer to question 3 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 3 is YES, your verdict is for (Claimant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.**

### **NOTES ON USE**

**1. This model verdict form should be used in conjunction with Standard Jury Instruction 416.8, *Contract Formation — Offer*.**

**2. Do not give the verdict form unless the defendant has testified or offered other evidence in support of his or her contention. This verdict form assumes that the defendant is alleging that the claimant never made an offer. Change the identities of the parties in the indented paragraphs if, under the facts of the case, the roles of the parties are switched (e.g., if defendant was the alleged offeror). If the existence of an offer is not contested, then this verdict form is unnecessary.**

**FORM 416.10 MODEL FORM OF VERDICT FOR  
CONTRACT FORMATION — ACCEPTANCE**

**VERDICT**

**1. Did (Claimant) prove that (Defendant) communicated [his] [her] [its] agreement to the terms of the offer?**

**YES ..... NO .....**

**If your answer to question 1 is NO, your verdict is for (Defendant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please [go to question 2 if there is evidence of an agreement to only certain terms] [go to question 3 if there is evidence of introduction of a new term into the bargain].**

**[2. Did (Defendant) prove that (Defendant) agreed only to certain terms of the offer?**

**YES ..... NO .....**

**If your answer to question 2 is YES, your verdict is for (Defendant) on this claim, and you should not proceed further on this defense and you should proceed to [Form (number)] [Question (number)]. If your answer to question 2 is NO, please answer question 3.]**

**[3. Did (Defendant) prove that (Defendant) introduced a new term into the bargain?**

**YES ..... NO .....**

**If your answer to question 3 is YES, your verdict is for (Defendant) on this claim, and you should not proceed further on this claim and you should proceed to [Form (number)] [Question (number)]. If your answer to question 3 is NO, your verdict is for (Claimant) on this claim, and you should not proceed further on this claim and you should proceed to [Form (number)] [Question (number)].]**

**NOTES ON USE**

**1. This model verdict form should be used in conjunction with Standard Jury Instruction 416.10. *Contract Formation — Acceptance.***

2. Do not give this form unless the defendant has testified or offered other evidence in support of the defendant's contention.

3. This form assumes that the defendant has denied accepting the claimant's offer. Change the identities of the parties in the indented paragraph, if under the facts of the case, the roles of the parties are switched.

**FORM 416.11 MODEL FORM OF VERDICT FOR CONTRACT  
FORMATION — ACCEPTANCE BY SILENCE OR CONDUCT**

**VERDICT**

**Did (Claimant) prove that**

*Choose appropriate option(s):*

**1.a. (Claimant) and (Defendant) understood (Defendant's) silence or inaction to mean that the offer was accepted?**

**[And] [or]**

**1.b. (Defendant) accepted the benefits of the offer?**

**[And] [or]**

**1.c. (Defendant) had a legal duty to speak from (Claimant's) and (Defendant's) [past relationship] [previous dealings] [or] [(identify other circumstances)]?**

**YES ..... NO .....**

**If your answer to [this] [any of these] question(s) is YES, your verdict is for (Claimant) on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to [this] [all of these] question(s) is NO, your verdict is for (Defendant) on this claim, and you should not proceed further on this claim and you should proceed to [Form (number)] [Question (number)].**

## NOTES ON USE

1. This form should be used in conjunction with Standard Jury Instruction 416.10, *Contract Formation — Acceptance* if acceptance by silence is an issue.

2. Pending further development of the law, the committee takes no position as to what “other circumstances” create a legal duty to speak.

## FORM 416.33 MODEL FORM OF VERDICT FOR AFFIRMATIVE DEFENSE — EQUITABLE ESTOPPEL

### VERDICT

1. Did (Defendant) prove that (Claimant) [acted by (describe material action)] [spoke about (describe material fact)] [concealed or was silent about (describe material fact) at a time when (Claimant) knew of (that fact) (those facts)]?

YES ..... NO .....

If your answer to question 1 is NO, then your verdict is for (Claimant) on this defense, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Did (Defendant) prove that (Defendant) relied in good faith upon (Claimant’s) [action] [words] [inaction] [silence]?

YES ..... NO .....

If your answer to question 2 is NO, then your verdict is for (Claimant) on this defense, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 2 is YES, please answer question 3.

3. Did (Defendant) prove that (Defendant’s) reliance on (Claimant’s) [action] [words] [inaction] [silence] caused (Defendant) to change (Defendant’s) position for the worse?

YES ..... NO .....

If your answer to question 3 is NO, then your verdict is for (Claimant) on this defense, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 3 is YES, then your verdict is for (Defendant) on this defense, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.

## NOTES ON USE

1. This model verdict form should be used in conjunction with Standard Jury Instruction 416.33, *Affirmative Defense — Equitable Estoppel*.

**FORM 416.36 MODEL FORM OF VERDICT FOR  
AFFIRMATIVE DEFENSE — RATIFICATION**

**VERDICT**

**If your answer to [Form (number)] [Question (number)] is NO, then you should proceed no further on this [Verdict Form (on this defense)]; if your answer to [Form (number)] [Question (number)] is YES, please answer question 1.**

**1. Did (Defendant) prove that (Claimant) knew of the [act] [transaction]?**

**YES ..... NO .....**

**If your answer to question 1 is NO, then your verdict is for (Claimant) on this defense, and you should not proceed further on this defense and you should proceed to [Form (number)] [Question (number)]. If your answer to question 1 is YES, please answer question 2.**

**2. Did (Defendant) prove that (Claimant) knew that (Claimant) could reject the contract because of the [act] [transaction]?**

**YES ..... NO .....**

**If your answer to question 2 is NO, then your verdict is for (Claimant) on this defense, and you should not proceed further on this defense and you should proceed to [Form (number)] [Question (number)]. If your answer to question 2 is YES, please answer question 3.**

**3. Did (Defendant) prove that (Claimant) [accepted the [act] [transaction]] [expressed [his] [her] [its] intention to accept the [act] [transaction]]?**

**YES ..... NO .....**

**If your answer to question 3 is NO, then your verdict is for (Claimant) on this defense, and you should not proceed further on this defense and you should proceed to [Form (number)] [Question (number)]. If your answer to question 3 is YES, your verdict is for (Defendant) on this defense, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.**

**NOTES ON USE**

1. This model verdict form should be used in conjunction with Standard Jury Instruction 416.36, *Affirmative Defense — Ratification*.