

**PJC 104.2 Question and Instruction—Breach of Fiduciary Duty
Defined by Common Law—Burden on Fiduciary**

QUESTION _____

Did *Don Davis* comply with *his* fiduciary duty to *Paul Payne*?

[*Because a relationship of trust and confidence existed between them,*] [*As Paul Payne's attorney,*] [*As Paul Payne's agent,*] *Don Davis* owed *Paul Payne* a fiduciary duty. To prove *he* complied with *his* duty, *Don Davis* must show—

1. the transaction[s] in question [*was/were*] fair and equitable to *Paul Payne*; and
2. *Don Davis* made reasonable use of the confidence that *Paul Payne* placed in *him*; and
3. *Don Davis* acted in the utmost good faith and exercised the most scrupulous honesty toward *Paul Payne*; and
4. *Don Davis* placed the interests of *Paul Payne* before *his* own and did not use the advantage of *his* position to gain any benefit for *himself* at the expense of *Paul Payne*; and
5. *Don Davis* fully and fairly disclosed all important information to *Paul Payne* concerning the transaction[s].

Answer “Yes” or “No.”

Answer: _____

COMMENT

When to use. PJC 104.2 submits the question of breach of fiduciary duty defined by the common law, whether the duty is based on a formal or an informal relationship, when the fiduciary bears the burden of proof. The burden of proof is on the fiduciary when the fiduciary has profited or benefited from a transaction with the beneficiary or has placed himself in a position in which his self-interest might conflict with the beneficiary. For cases in which the beneficiary has the burden of proof, see PJC 104.3.

If the fiduciary duty is defined by a statute or an agreement, see PJC 104.4 or 104.5. If the duty is defined by a trust agreement or the Texas Trust Code (Tex. Prop. Code tit. 9, subtit. B), see the current edition of State Bar of Texas, *Texas Pattern Jury Charges—Family & Probate* PJC 235.9–235.15. If the duty is defined by an agreement relating to oil and gas exploration or production, see the current edition of State Bar of Texas, *Texas Pattern Jury Charges—Oil & Gas* PJC 304.1–304.2. If the duty