

CIVIL JURY – PRELIMINARY INSTRUCTIONS

Ladies and gentlemen of the jury, will you please rise and raise your right hands to be sworn. The answer to the oath is “I do.”

[Oath administered by clerk of court.]

Please be seated. Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial.

We operate on the following schedule:

- We try cases Monday through Thursday.
- We start at 9:00 a.m. in the morning and we adjourn at about 5:00 p.m. in the afternoon.
- We take a lunch break from about 12:00 p.m. to about 1:30 p.m.
- We take a coffee break mid-morning and mid-afternoon.
- All of these times are **approximate**. If it would break the flow of testimony for us to recess at a particular time, we will either delay or accelerate our recess in order to preserve the continuity of testimony.
- The clerk's office will provide coffee and pastries in the jury room each morning. They will also provide bottled water in the refrigerator in the jury room. I recommend that you not drink the water from the tap or the drinking fountains in the building as it has an unpleasant taste.
- There is also a microwave in the jury room for your use and a telephone. However, the telephone and your cell phones will be removed during jury deliberations. There is also a phone for use by the public in the district clerk’s office on the fifth floor.
- I recommend that you dress in layers including sweaters or jackets, because the temperature of the courtroom can vary drastically and without warning.

Your point of contact will be my case manager, Ruth Guerrero. Her telephone number is listed on your handout.

Duty of the Jury

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as the court will give it to you. You must follow that law whether you agree with it or not.

Nothing the court may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

Evidence

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to, or that the court may instruct you to find.

Certain things are **not evidence** and must not be considered by you.

The following things are not evidence:

1. Statements, arguments and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence.

You should not be influenced by the objection or by the court's ruling on it.

- * If the objection is **sustained**, ignore the question.
 - * If the objection is **overruled**, treat the answer like any other.
 - * If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.
3. Testimony that the court has excluded or told you to disregard is not evidence and must not be considered.
 4. Certain exhibits may be used as an illustration—a model, picture, or description to describe something involved in this trial.
 5. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded.

You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence - direct and circumstantial.

- Direct evidence is direct proof of a fact, such as testimony of an eyewitness.
- Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist.

I will give you further instructions on these as well as other matters at the end of the case, but keep in mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

[Depositions]

Certain testimony may be presented to you through a deposition. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that witness's testimony may be presented under oath in the form of a deposition. Some time before this trial, attorneys representing the parties in this case questioned some of the witnesses under oath. A court reporter was present and recorded the testimony. [A videographer was also present and recorded the testimony on videotape. An edited version of the questions and answers may be played here in the courtroom.] [The questions and answers may be read to you here in the courtroom.] This deposition testimony is entitled to the same consideration and is to be judged by you as to credibility, and weighed and otherwise considered by you insofar as possible in the same way as if the witness had been present and had testified from the witness stand in court.]

Burden of Proof

This is a civil case. The plaintiff(s) has/have the burden of proving his/her/its/their case by what is called the **preponderance of the evidence**. That means the plaintiff(s) has/have to produce evidence which, considered in the light of all the facts, leads you to believe that what the plaintiff(s) claim(s) is more likely true than not. To put it differently, if you were to put the plaintiff(s)' and the defendant(s)' evidence on opposite sides of the scales, the plaintiff(s) would have to make the scales tip somewhat on his/her/its/their side. If the plaintiff(s) fails to meet this burden, your verdict must be for the defendant(s).

[The defendant(s) has/have the burden of proof on his/her/its/their counterclaim by a preponderance of the evidence. That means the defendant(s) has/have to produce evidence which, considered in light of all the facts, leads you to believe that what the defendant(s) claim(s) is more likely true than not. If the defendant(s) fail(s) to meet this burden, your verdict must be for the plaintiff(s) on the defendant(s)' counterclaim.]

Those of you who have sat on criminal cases will have heard of proof **beyond a reasonable doubt**. That requirement **does not apply** to a civil case and you should therefore put it out of your mind.

Conduct of the Jury

Now, a few words about your conduct as jurors.

You have taken an oath which states you are going to decide this case based on the evidence and the evidence alone. Let me discuss this with you at this time.

First of all, do **not** decide which side you like the best and try to decide the case accordingly.

You should not have any contact with anybody related to the case. You may say “good morning” or “good afternoon” as you pass them in the hall - you may say **nothing** further. You will certainly not accept from nor extend to anybody related to the case any favors, however slight.

When you get home this evening, you will probably be asked by your family if you were selected to serve on a jury. Of course, you may tell them that you are serving on a jury, but you are **not** to tell them anything concerning the nature of the case because, if you do, they might make a comment which has no relevance whatsoever to this particular case but that could affect your thinking in this matter. You are not to discuss the case with anyone until after you have heard all of the evidence.

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in this case, or the lawyers, individuals or corporations involved in the case. 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 case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom. One of my jobs as the judge is to be the gatekeeper of the evidence you see and hear and upon which you will base your verdict. As you know, much of the information on the internet or available through social media is wrong, incomplete or inaccurate. It is important that all the jurors base their verdict on the same body of admissible evidence that is relevant and reliable.

Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end.

I know that many of you use cell phones, BlackBerries, the internet and other tools of technology. You also must not talk to anyone at any time about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through email, BlackBerry, iPhone, Android, text messaging, or on Twitter, through any blog or website, including Facebook, Google+, Reddit, LinkedIn, or YouTube. You may not use any similar technology or social media, even if I have not specifically mentioned it here. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

After the case is over, you will be released from that instruction and then you will be free to discuss the case in as much or as little detail as you want to with anybody you wish, including the attorneys.

If there is **publicity about this trial**, you must ignore it. You must decide this case only from the evidence presented in the trial. Do not read anything or listen to any t.v. or radio programs about the case.

Simply listen to the case as presented to you in court and make up your mind based upon the evidence and the evidence alone. After the case is over, I will answer any questions you have regarding the case, the evidence, and items not admitted into evidence. Until then, do not do any investigation or research of your own.

If you would like to take notes during the trial, you may do so. If you do take notes, be careful not to get so involved in note taking that you become distracted and miss part of the testimony. At the end of the day, please leave your notes in the jury room and do not take them home with you. Your notes are to be used only as aids to your memory, and if your memory should later be different from your notes, you should rely on your memory and not on your notes. If you do not take notes, rely on your own independent memory of the testimony. Do not be unduly influenced by the notes of other jurors. A juror's notes are not entitled to any greater weight than the recollection of each juror concerning the testimony.

Court Reporter

Even though the court reporter is digitally recording and making computer notes of which is said here in court, a typewritten copy of the testimony will **not** be available for your use during deliberations. On the other hand, any exhibits which are admitted into evidence will be available to you during your deliberations.

Bench Conferences and Recesses

At times during the trial it may be necessary for me to talk with the lawyers here at the bench out of your hearing, or by calling a recess. We meet because often during a trial something comes up that doesn't involve the jury.

You have been given a pamphlet with some written instructions which are a statement of your duties and responsibilities as jurors. You are to follow all of the instructions contained in that pamphlet just as you are to follow the oral instructions which I am now giving you. I suggest that you read this pamphlet on your lunch break today or this evening at home.

If you have any problems during the course of the trial, please let the case manager know. Should you be delayed arriving at the courtroom in the morning for any reason whatsoever, you must give the court a call.

If at any time you cannot hear, please signal me by putting your hand to your ear or otherwise letting me know immediately so that I can correct that problem for you.

When you return from each break, you are to go to the jury room. Please do not come to the courtroom. The marshal will come to get you at the end of each break when the trial is ready to continue.

There is no smoking permitted in the building, the courtroom or the jury deliberation room. If you desire to smoke, you will be free to do so outside of the courthouse during your breaks.

Course of the Trial

The trial will now begin.

First, each side will make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, the parties will present their evidence and witnesses, and the opponent may cross-examine them.

The court will then instruct you on the law.

Finally, the attorneys will make their closing arguments to summarize and interpret their views of the evidence for you.

The case then will be yours and you will retire to deliberate on your verdict.

Are counsel ready to proceed?