

JUDGE STRAND'S STANDARD PRELIMINARY JURY INSTRUCTIONS FOR CIVIL JURY TRIALS

It is Judge Strand's practice to read most of the instructions to the jury before opening statements. This includes standard instructions, similar to those set forth below, along with instructions concerning the specific claims and defenses in the case and instructions concerning damages. At the conclusion of the evidence, and before closing arguments, Judge Strand will read additional instructions as necessary. Each juror will be provided with a copy of all instructions to keep during trial and during deliberations.

The standard instructions set forth below may be amended and/or supplemented as necessary to meet the needs of the case. These are provided as a starting point for the parties in preparing their joint proposed jury instructions.

INSTRUCTION NO. 1

INTRODUCTION

Congratulations on your selection as a juror!

I give you these instructions now to help you better understand the trial and your role in it. I may give you additional instructions during the trial, and I will give you additional instructions at the end of the trial, before you begin your deliberations.

Consider these instructions, together with any oral or written instructions I give you during the trial or at the end of the trial, and apply them as a whole to the facts of the case. In considering these instructions, the order in which they are given is not important.

INSTRUCTION NO. 2

STATEMENT OF THE CASE

As I explained during jury selection,

[insert statement of the case]

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. 3

DUTY OF JURORS

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are and then apply those facts to the law that I will give you in these preliminary instructions, any instruction given during the trial, and in the final instructions at the conclusion of the case. You will then deliberate and reach your verdict. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with it or not.

This case must be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons are equal before the law. Corporations are entitled to the same fair and conscientious consideration by you as any other person.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 4

ORDER OF TRIAL

The trial will proceed as follows:

After I finish reading these instructions, the attorneys may make opening statements. An opening statement is not evidence. It is simply a summary of what the parties expect the evidence to be.

The plaintiff then will present evidence. The defendant may cross-examine the plaintiff's witnesses. Following the plaintiff's case, the defendant may present evidence. The plaintiff may cross-examine the defendant's witnesses. Following the defendant's case, the parties may present additional evidence.

After all evidence has been presented, I may give additional instructions to you. The attorneys will then make arguments summarizing and interpreting the evidence for you. As with opening statements, these arguments are not evidence. Then I will give you a final instruction on deliberations, and you will retire to deliberate on your verdict.

INSTRUCTION NO. 5

BURDEN OF PROOF

Your verdict will depend upon whether or not you find certain facts have been proved. The obligation to prove a fact, or “the burden of proof,” is upon the party whose claim depends upon that fact. The party with the burden of proving a fact must prove the fact by “the greater weight of the evidence,” which is proof that the fact is more likely true than not true. This is also called “the preponderance of the evidence.”

To determine whether a fact has been proved by the greater weight of the evidence, you must consider the evidence in the case, decide which evidence is more believable, and then determine whether the fact is more likely true than not true. If you find a fact is more likely true than not true, then the fact has been proved by the greater weight of the evidence. If you find a fact is more likely not true than true, or you find the evidence on the fact is equally balanced, then the fact has not been proved by the greater weight of the evidence. The greater weight of the evidence is not determined by the number of witnesses or exhibits a party presents, but by your judgment as to the weight of all of the evidence.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this one.

INSTRUCTION NO. 6

DEFINITION OF EVIDENCE

You shall base your verdict only upon the evidence, these instructions and other instructions that I may give you during trial.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations, which are agreements between the parties.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

Sometimes during a trial references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence.

1. Opening statements, closing arguments and questions are not evidence.

2. Objections and rulings on objections are not evidence.
3. Testimony that I strike from the record, or tell you to disregard is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

INSTRUCTION NO. 7

CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony and the extent to which their testimony is consistent with other evidence that you believe.

INSTRUCTION NO. 8

STIPULATIONS

The parties may agree to certain facts and reduce them to written or oral stipulations. You should treat stipulated facts as having been proved.

INSTRUCTION NO. 9

INTERROGATORIES

During the trial, you may hear the word “interrogatory.” An interrogatory is a written question one party can send to the other which the other party then must answer under oath and in writing. Consider interrogatories and the answers to them as if they were, respectively, questions asked and answered under oath here in court.

INSTRUCTION NO. 10

DEPOSITIONS

A deposition is testimony taken under oath before the trial and preserved in writing or electronically. Testimony from a deposition may be read into evidence or replayed from a video recording. Consider such testimony as if it had been given under oath here in court.

INSTRUCTION NO. 11

OPINION EVIDENCE – EXPERT WITNESS

You will hear testimony from witnesses described as experts. “Experts” are persons who may be knowledgeable in a field because of their education, experience, or both. They are permitted to give their opinions on matters in that field and the reasons for their opinions.

You may accept or reject expert testimony just like any other testimony. After considering the witness’s education and experience, the reasons given for the opinion, and all the other evidence in the case, you may give an expert witness’s testimony whatever weight, if any, you think it deserves.

An expert witness may be asked to assume certain facts are true, and to give an opinion based on that assumption. This is called a hypothetical question. When deciding the weight, if any, to give to an expert witness’s testimony, if a fact assumed in a hypothetical question has not been proved by the evidence, you should consider the extent to which the falsely assumed fact affects the value of the opinion.

INSTRUCTION NO. 12

OBJECTIONS

During the trial, the parties may make objections. You should not hold it against the parties when they do this. A party may object when the other party offers testimony or other evidence the party believes is not admissible. If I sustain an objection to a question, you should not pay any attention to the question itself. Also, when I rule or comment on an objection or motion, you should not think I have any opinions about the case, favoring one side or the other.

Insert case-specific instructions (elements, defenses, damages, etc.) after this instruction.

INSTRUCTION NO. ____

BENCH CONFERENCES

During the trial, it may be necessary for me to talk with the attorneys out of your hearing, either by having a bench conference here, while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid wasting your time. We will do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. ____

NOTE TAKING

You may take notes during the trial if you wish. After the parties' opening statements, the Court Security Officer will give you note pads and pens for this purpose.

If you choose to take notes, be sure it does not interfere with your ability to listen to the evidence. It is the responsibility of all jurors to listen carefully to the evidence. You cannot give this responsibility to another juror who may be taking notes. We depend on *all* members of the jury to remember and consider the evidence. Do not discuss your notes with anyone until you begin your deliberations.

A juror's notes are not evidence. They are no more reliable than the memory of a juror who chooses to listen carefully to the evidence without taking notes.

Do not take your notes with you when you leave the courtroom. Leave them on your chair in the courtroom, and the Court Security Officer will safeguard them for you. Your notes will remain confidential throughout the trial, and will be destroyed when the trial is over.

You will notice that we have an official court reporter making a record of the trial. However, we will not have a typewritten transcript of the record available for your use in reaching your decision.

INSTRUCTION NO. ____

CONDUCT OF JURORS DURING TRIAL

You must decide this case solely on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties,

and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to

search for or to view any place discussed in the testimony.

- Do not read any news stories or articles, in print, on the Internet, or on any blog, about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.
- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.

- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read additional instructions at the end of the evidence.