

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

MICHAEL ERIC MIAL,

Plaintiff,

vs.

IOWA DEPARTMENT OF HUMAN
SERVICES,

Defendant.

No. C17-4007-LTS

**COURT’S INSTRUCTIONS
TO THE JURY
(Final Annotated Version)**

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NO. 1 – INTRODUCTION

Congratulations on your selection as a juror! These instructions will help you better understand the trial and your role in it.

This is a civil case brought by the plaintiff, Michael Mial, against the defendant, Iowa Department of Human Services. Mr. Mial was a Psychiatric Security Specialist at the Civil Commitment Unit for Sexual Offenders (CCUSO), located in Cherokee, Iowa. He was employed from December 7, 2015, until the termination of his employment on April 28, 2016. Mr. Mial alleges the Iowa Department of Human Services discriminated against him in failing to accommodate a religious belief that he held.

Iowa Department of Human Services denies Mr. Mial's claim and asserts that accommodating him would have imposed an undue hardship upon it. Iowa Department of Human Services also claims that requiring it to permit a religious message within a signature on State emails could violate the Establishment Clause in the First Amendment to the United States Constitution.

You should not consider this summary as proof of any claim, and it is up to you to decide the facts from the evidence and apply the law that I will give you.

In making your decisions in this case, you are the sole judges of the facts. You must not decide this case 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, these instructions, and any additional oral or written instructions that I may give you. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Please remember that this case is important to the parties and to the fair administration of the law. Therefore, please be patient, consider all the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

NO. 2 – 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 will then 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. Some witnesses have been designated by both parties. To be efficient, the attorneys may ask any questions of a witness the first time the witness is called to testify, rather than recalling them later. This may result in fewer witnesses being called during the defendant's presentation of the case.¹

After all the evidence has been presented, the attorneys will then make arguments summarizing and interpreting the evidence. 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.

¹ See Defendant's Objection ¶ 2. I find the instruction is appropriate but have added to it for clarity.

NO. 3 – BURDEN OF PROOF

You will have to decide whether certain facts have been proved. The obligation to prove a fact, or “the burden of proof,” is on the party whose claim depends upon that fact. The party with the burden of proving a fact must prove that 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.

NO. 4 – DEFINITION OF EVIDENCE

Evidence consists of the following:

- testimony,
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you, and
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved.

The following are not evidence:

- testimony that I tell you to disregard,
- exhibits that are not admitted into evidence,
- statements, arguments, questions, and comments by the lawyers,
- objections and rulings on objections, and
- anything that you see or hear about this case outside the courtroom.

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact.
 - An example is testimony by a witness about what that witness personally saw or heard or did.
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact.
 - An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window.

- You should consider both kinds of evidence, because the law makes no distinction between their weight.
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide.

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens.
- I will instruct you on the purposes for which the evidence can and cannot be used.

NO. 5 – TESTIMONY 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, only part of it or none of it.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You may need to decide whether a contradiction is an innocent misrecollection or lapse of memory or, instead, an intentional falsehood. This may depend on whether the contradiction involves an important fact or only a small detail.

In deciding what testimony of any witness to believe, consider the witness' intelligence, the opportunity the witness had to see or hear the things he or she testifies about, the quality of the witness' memory, any motives the witness may have for testifying a certain way, the witness' demeanor, whether the witness said something different at an earlier time, the witness' drug or alcohol use or addiction, if any, the general reasonableness of the testimony, the extent to which the testimony is consistent with other evidence that you believe and any other factors that you find bear on believability or credibility.

You should not give any more or less weight to a witness' testimony just because the witness is or is not a public official.²

You may give any witness' opinion whatever weight you think it deserves, but you should consider the reasons and perceptions on which the opinion is based, any reason that the witness may be biased and all of the other evidence in the case.

² I agree with Defendant's Objection at ¶ 3 that it is not necessary to instruct the jury regarding experts if there are not experts in the case. However, because some of the witnesses are public officials, and some are not, I find it appropriate to retain the remaining portion of the statement while modifying it to state "is or is not a public official."

Remember, it is your exclusive right to give any witness' testimony whatever weight you think it deserves.

NO. 6 – DEPOSITION EVIDENCE AT TRIAL

Testimony may be presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. The deposition testimony to be offered was recorded in writing and now will be read to you. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testifies here in person. You should not place any significance on the manner or tone of voice used to read the witness's answers to you.

NO. 7 – STIPULATIONS

The parties have agreed to certain facts and reduced them to written or oral stipulations. You should treat stipulated facts as having been proved.

NO. 8 – OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself.
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible.

NO. 9 – BENCH CONFERENCES

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess.
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient.
- We will do our best to keep such conferences short and infrequent.

NO. 10 – NOTE TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence.
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory.
- Do not discuss your notes with anyone before you begin your deliberations.
- Leave your notes and these instructions on your chair during recesses and at the end of the day.
- At the end of trial, you may take your notes with you or leave them to be destroyed.
- No one else will ever be allowed to read your notes, unless you let them.
- If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.
- An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

NO. 11 – QUESTIONS BY JURORS

When the lawyers have finished questioning a witness, you will be allowed to ask the witness questions. To do so, please write the question down on a piece of paper, which the Courtroom Deputy will collect and hand to me. I will review the question and will invite the lawyers to do so, as well. I will then ask the question unless I find that the rules of evidence do not allow it to be asked. After all of your questions, if there are any, the lawyers may ask more questions.

Do not be concerned or embarrassed if your question is not asked; sometimes even the lawyers' questions are not allowed.

NO. 12 – FAILURE TO ACCOMMODATE RELIGIOUS PRACTICE

In order to prevail on his claim of failure to accommodate religious practice, plaintiff must prove each of the following elements by the greater weight of the evidence:

1. He had a bona fide religious belief that conflicted with an employment requirement;
2. He gave defendant notice of this conflict; and
3. He suffered an adverse employment action.

“Bona fide” means genuine or sincerely-held.

“Religious belief” includes all aspects of religious observance and practice, as well as religious belief. You must consider whether the religious practice asserted by the Plaintiff – in this case, use of the email signature “In Christ” in his work email – is purely personal, or is indeed conduct mandated by religious beliefs.³

“Notice” requires that the plaintiff notify the defendant of a request for an accommodation of a religious practice. If the employer has enough information about the existence of a conflict between the employee’s religious practices and the employer’s job requirements, the employer has sufficient notice.

Termination of employment is an “adverse employment action.”

If plaintiff does not prove each of the above elements by the greater weight of the evidence, your response to Verdict Question No. 1 must be “No.”

³ See Defendant’s objections at ¶ 4, *Brown v. Polk Cnty.*, 61 F.3d 650, 655 (8th Cir. 1995) (citing *Thomas v. Review Board*, 450 U.S. 707, 718 (1981)). In *Brown*, the Eighth Circuit Court of Appeals found that the plaintiff’s use of public property or resources to further his religious practice (directing a secretary to type his Bible study notes, allowing prayers in his office before the start of the workday) was “not mandated by his religion” and therefore not protected activity under Title VII or the First Amendment.

NO. 13 – DEFENSE: UNDUE BURDEN

If plaintiff establishes the elements of his claim as set forth by Instruction No. 12, the defendant has the burden of proving that it could not reasonably accommodate plaintiff’s religious belief without incurring undue hardship.

Employers are not required to accommodate every religious activity. To require an employer to bear more than a minimal cost is an “undue burden.” “Undue burden” involves not only monetary concerns, but also the employer’s burden in conducting its business. Any burden asserted must be real rather than speculative, merely conceivable, or hypothetical. Undue burden cannot be proved by assumptions nor by opinions based on hypothetical facts.

In some situations, religious expression in the workplace can conflict with employer policies aimed at curbing speech in the workplace that could disrupt or offend coworkers. However, undue hardship requires more than proof of some fellow-worker’s grumbling. An employer claiming undue hardship must demonstrate actual imposition on co-workers or disruption of the work routine. A plaintiff does not establish a claim if he refuses to comply with a generally applicable rule or procedure.⁴

⁴ Plaintiff requested this last sentence to read “generally applicable and settled rule of law” to avoid the jury believing an employee would not have to comply with a “generally applicable employment requirement.” Plaintiff’s Objections at ¶ 1. Plaintiff’s proposed instruction misstates the law – employees are not entitled to variations from generally applicable rules or procedures where deviation would create an undue burden, i.e. by imposing additional costs, *Brown*, 61 F.3d at 654-55 (employer need not create an exception to the rule against religious use of government property to accommodate employee), violating a bargained-for union agreement, *Trans World Airlines v. Hardison*, 432 U.S. 63, 83 (1997) (an accommodation which requires an employer’s violation of a collective bargaining agreement constitutes an undue hardship), violating a non-discrimination policy, *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599 (9th Cir. 2004) (employer not required to accommodate plaintiff’s anti-gay and lesbian views in the workplace by allowing employee to post discriminatory posters or removing its own anti-discrimination posters), or by creating some other imposition on the employer. Each of these

Under the Establishment Clause set forth in the First Amendment to the United States' Constitution, the Government, including the Iowa Department of Human Services, cannot promote or endorse any particular religion so that each citizen can make his or her own choice in religious worship. Government employers do not violate the law by preventing religious use of government time or resources, or by preventing apparent endorsement of a particular religion by the Government.⁵

If the defendant proves by the greater weight of the evidence that it could not accommodate the plaintiff's request to include "In Christ" in his email signature line without undue burden, your response to Question 2 on the Verdict Form must be "Yes."

situations involves an employee refusing to comply with a generally applicable *employment* rule or procedure.

⁵ Plaintiff requests I change the second clause of this statement to read "or by preventing a clearly visible or obvious endorsement of a particular religion by the Government." Plaintiff's Objections at ¶ 3. I do not find this proposed clarification to be an accurate statement of the law. As I have previously found in this case, "an employer may restrict religious statements if they would *reasonably* cause customers or co-workers to perceive the materials to express the employer's own message, or if the item or message in question is harassing or otherwise disruptive." Doc. No. 19 at 22 (emphasis added). "Clearly visible or obvious" goes beyond that standard. The above instruction adequately instructs the jury as to the defendant's burden.

NO. 14 – DAMAGES

If you find that the plaintiff proved his claim and the defendant failed to prove its defense, then you must award the plaintiff such sum as you find will fairly and justly compensate him for any damages you find the plaintiff sustained as a direct result of defendant's decision to discharge the plaintiff. The plaintiff's claim for damages includes two distinct types of damages, and you must consider them separately.

First, you must determine the amount of any wages and fringe benefits the plaintiff would have earned from his employment with the defendant if he had not been discharged on April 28, 2016, through the date of your verdict, minus the amount of earnings and benefits that he received from other employment during that time.

You are instructed that the plaintiff has a duty under the law to "mitigate" his damages – that is, to exercise reasonable diligence under the circumstances to minimize his damages by finding other paid employment. Therefore, if you find that the plaintiff failed to seek out or take advantage of an opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such an opportunity.

Second, you must determine whether the plaintiff has proved that he is entitled to damages arising from emotional distress. Damages for emotional distress are the amount of damages that will reasonably compensate the plaintiff for the emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life that were proximately caused by the wrongful conduct of the defendant. The amount, if any, that you assess for damages for emotional distress cannot be measured by an exact or mathematical standard, and the plaintiff is not

required to introduce evidence of the monetary value of such damages. Even so, you must use your sound judgment based upon an impartial consideration of the evidence to determine the amount of such damages. Damages for emotional distress must compensate the plaintiff for any emotional distress proximately caused by the wrongful conduct that he suffered from the time of the wrongful conduct until the time that you give your verdict.

You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

Remember, throughout your deliberations, you must not engage in any speculation, guess or conjecture, and you must not award damages under this Instruction by way of punishment or through sympathy.

NO. 15 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and the law in these Instructions and any additional written or oral instructions that I may give. 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 Blackberry, 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, through social media—or in any other way conduct 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, in any “blog,” or through social media 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 “implicit biases.” Everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes – that is, “implicit biases” – that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. 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 and the instructions that I give you. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- A Verdict Form is attached to these Instructions. A Verdict Form is simply a written notice of your decision. After your deliberations, if you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- 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 let me know. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instructions and the Verdict Form at the end of the evidence.

NO. 16 — DUTY TO DELIBERATE⁶

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence and the instructions that I give you.
- You must consider all the evidence bearing on each question before you.
- Take all the time that you feel is necessary.

⁶ Plaintiff requested substitution of the 8th Cir. Civil Model Instruction for the jury's duty to deliberate. I decline to substitute my standard instructions. I prefer the criminal model instruction for the jury's duty to deliberate. Instruction No. 16 does not misstate the parties' relative burdens and admonishes the jury to deliberate fairly.

- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

NO. 17 — DUTY DURING DELIBERATIONS⁷

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the race, color, religion, national origin, or sex of any party or witness.
- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

⁷ Although I will be keeping the 8th Cir. Model Criminal Instruction for Instruction No. 17 (*see* Plaintiff's Objections and footnote 6, above), I find the plaintiffs' first proposed deletion to be appropriate. In addition, I agree with plaintiff that my standard statement concerning discrimination may be confusing due to the nature of this case. As such, I have modified that statement and have also removed the certification statement from the Verdict Form.

IT IS SO ORDERED.

DATED this 14th day of January, 2019.



Leonard T. Strand, Chief Judge

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No. C17-4007-LTS

VERDICT FORM

We, the Jury, find the following verdict on the questions submitted to us:

QUESTION NO. 1

Did Plaintiff prove his failure to accommodate religious practice claim by the greater weight of the evidence?

ANSWER: _____ Yes _____ No

If you answered "Yes" to Question No. 1, proceed to Question No. 2. If you answered "No," proceed to the signature section below and then notify the Court Security Officer that you have reached your verdict.

QUESTION NO. 2

Did Defendants prove their undue hardship defense by the greater weight of the evidence?

ANSWER: _____ Yes _____ No

If you answered "Yes" to Question No. 2, proceed to the signature section below and notify the Court's officer that you have reached your verdict. If you answered "No," proceed to Question No. 3.

QUESTION NO. 3

What amount of damages do you award Plaintiff for the following items:

Lost wages and benefits: \$ _____

Emotional distress: \$ _____

Proceed to the signature section below and then notify the Court Security Officer that you have reached your verdict.

Date

_____ Foreperson	_____ Juror
_____ Juror	_____ Juror
_____ Juror	_____ Juror
_____ Juror	_____ Juror