

DUTY OF JURY

After all the evidence is received, you will decide the disputed issues of fact. Your duty is 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 to the law as I will explain it to you. You must follow that law whether you agree with it or not.

Your duty will also involve determining the credibility of the witnesses. You must decide which witnesses to believe, which witnesses not to believe, and how much of any witness' testimony to accept or reject. I will give you some specific guidelines for determining the credibility of witnesses at the end of the case. For now, know that you should use your common

sense and good judgment to evaluate the credibility of each witness the same as you determine whether you believe someone in your every day affairs.

You should keep an open mind about the case until you have heard all the evidence and are instructed about all of the law you are to follow. At the close of the case, your job will be to return a fair and impartial verdict based only on the evidence presented in court and law as I explain it to you.

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 you must not consider them. I will list them for you now:

1. Statements and arguments 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 I sustain the objection, ignore the question. In other words, if I sustain an objection to a question that goes unanswered by the witness, you should not guess or speculate what the answer might have been, nor should you draw any inferences or conclusions from the question itself. If an objection to a question is overruled, you should treat the answer like any other.

3. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.
4. Testimony that the court excludes or tells you to disregard is not evidence and must not be considered.
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. An example of direct evidence would be this: A witness states, "I drove home last night in a heavy snow storm." That statement would be "direct evidence" that it snowed last night.

Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. Circumstantial evidence is proof of a chain of facts

and circumstances that tend to prove, or disprove, an ultimate conclusion. An example of circumstantial evidence would be this: A witness states, “When I went to bed last night there was no snow on the ground. When I awoke this morning the ground was covered with fresh snow.” This would be “circumstantial evidence” that it snowed last night. I will give you further instructions on these as well as other matters at the end of the case, but have in mind that you may consider both kinds of evidence.

BURDEN OF PROOF

This is a civil case. In this case, plaintiffs claims that *KEYBOARD()* defendant claims that *KEYBOARD()*.

The burden of the plaintiff in a civil case is to establish his claims by a preponderance of the evidence as to each element of the claim.

A preponderance of the evidence means such evidence, when compared with evidence opposed to it, has more convincing force, and produces in your minds a belief, that what is sought to be proved is more likely true than not true.

To establish by a “preponderance of the evidence” merely means that the thing sought to be proven is more likely true than not true.

I will decide all questions of law and procedure that arise during the trial; and, before you retire to the jury room at the end of the trial to deliberate upon your verdict and decide the case, I will instruct you on -- that is, I will explain to you -- the rules of law that you must follow and apply in making your decision.

I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. To help you understand the importance of the evidence as it is presented, and so you will know

what questions you must decide at the end of all evidence, I will tell you now the basic requirements of each of the Plaintiffs' claims.

KEYBOARD() [Insert agreed propositions of law from pretrial order]

Nothing I may say or do during the course of the trial is intended to indicate, nor should it be taken by you as indicating, what your verdict should be. In other words, you should not infer or conclude from my ruling on objections or any other comment that I may make that I have any opinions on the merits of the case favoring one side or the other.

Transcripts Not Available. You should pay close attention to the testimony because it will be necessary for you to rely upon your memory concerning what the testimony was. Although, as you can see, the Court Reporter is making stenographic notes recording everything that is said, typewritten transcripts will

not be prepared in time for your use during your deliberations and you should not expect to receive them.

Exhibits Will Be Available. On the other hand, any exhibits admitted in evidence during the trial will be available to you for detailed study, if you wish, during your deliberations. So, if an exhibit is received in evidence but is not fully read or shown to you at the time, don't be concerned because you will get to see and study it later during your deliberations.

Note taking - Permitted. If you would like to take notes during the trial you may do so. On the other hand, of course, you are not required to take notes if you do not want to. That will be left up to you, individually.

If you do decide to take notes, be careful not to get so involved in note taking that you become distracted from the ongoing proceedings. Also, your notes

should be used only as aids to your memory; and if your memory should later differ from your notes, you should rely upon your memory and not your notes.

If you do not take notes, you should rely upon your own independent recollection or memory of what the testimony was, and you should not be unduly influenced by the notes of other Jurors. Notes are not entitled to any greater weight than the recollection or impression of each Juror concerning what the testimony was.

Notebooks will be collected at the end of each trial day, and returned to you when trial resumes. During breaks, you should leave your notebooks in your chairs.

CONDUCT OF THE JURY

Now, a few words about your conduct as jurors.

You will not be required to remain together while the court is in recess.

However, you must obey the following instructions regarding the recesses of the court:

First: Do not discuss the case either among yourselves or with anyone else during the course of the trial. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial, reaching your conclusion only during your final deliberations after all the evidence is in and you have heard the attorneys' summations and my instructions to you on the law, and then only after an interchange of views with the other members of the jury. Also, do not make up your mind about the case until AFTER you have heard all the evidence from both sides.

Second: Do not permit any person to discuss the case in your presence, and if anyone does so despite your telling him or her not to, report that fact to me

as soon as you are able. You should not, however, discuss with your fellow jurors either that fact or any other fact that you feel necessary to bring to my attention.

Third: Though a normal human tendency is to talk with people with whom we come in contact, during the time you serve on this jury, please do not talk -- whether in or out of the courtroom -- with any of the parties or their attorneys or any witness, or spectator to the trial. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all the parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

[Fourth: Do not read about the case in the newspapers, or listen to radio or television broadcasts about the trial. If a newspaper headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may

contain matters that are not proper evidence for your consideration. You must base your verdict solely on what is brought out in court.]

Fifth: Do not do any research or make any investigation about the case on your own. Do not use Google or Wikipedia for any information about the case or parties.

Sixth: Do not post on any social networking service, such as Facebook/My Space/Twitter, anything about your jury service.

Seventh: Do not email, call or send a text message to other members of the jury panel or have any contact with each other outside of court until the case is over and you are released from jury duty.

The reason for these cautions, of course, lies in the fact that your duty will be to decide this case solely on the basis of the testimony and evidence presented during the trial without consideration of any other matters whatever. No

information from outside the courtroom should be part of your consideration of this case. Likewise, you should not allow comments from other people to influence or affect your decisions. In some recent cases in other courts, jurors didn't follow instructions like these and as a result the court declared a mistrial and the case had to be tried all over again. We want to avoid any such problems here.

Two slight exceptions exist to these rules that I have just said. First, you may of course tell your family and your employer that you have been selected as a juror, and second, you may tell them generally what the schedule will be.

However, do not tell them anything more. Do not tell them the name of the case, who the lawyers or witnesses are, the nature of the claim, or anything at all about the case until it is completely over and you have returned your verdict. The reason for this restriction is that if you tell them about the case, they may make an off-hand remark that could -- consciously or subconsciously -- affect the way you

view this case. We just spent several hours selecting a fair and impartial jurors and we do not want to see some out-of-court statement affect your ability to be fair.

If you are having any problems with your employer about your jury service or expect a problem, please advise the court. Someone on the court staff will advise your employer that you must appear as part of your civil duty and your service cannot be held against you in any way. We can also send a letter explaining this duty to your employer, if you ask Ms. Wideman.

Also, if during the course of trial, you need a recess for personal reason, i.e. comfort break, just raise your hand. Sometimes I get carried away and forget to take breaks.

From time to time during the trial I may be called upon to make legal rulings on objections or motions made by the lawyers. You should not infer or

conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. And if I should sustain an objection to a question that goes unanswered by a witness, you should not guess or speculate what the answer might have been, nor should you draw any inferences or conclusions from the questions itself.

During the trial I may need to confer with the lawyers from time to time out of your hearing regarding questions of law, evidence, or procedure that require consideration by the judge alone. On some occasions you may be excused from the courtroom for the same reason. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

The order of the trial's proceedings will be as follows: In just a moment the lawyers for each of the parties will be permitted to address you in turn and make

what we call their “opening statements.” The plaintiff will then go forward with the calling of witnesses and presentation of evidence during what we call the plaintiff’s “case in chief.” When the plaintiff finishes, the defendant(s) will proceed with witnesses and evidence.

When the evidence portion of the trial is completed, the lawyers will then be given another opportunity to address you and make their summations or final arguments in the case. I will instruct you on the applicable law and you will then retire to deliberate upon your verdict.

**PAUSE - DOES EITHER PARTY DESIRE TO INVOKE THE RULE
AS TO EXCLUSION OF WITNESSES FROM THE COURTROOM?**

Now, we will begin by giving the lawyers for each side an opportunity to make their opening statements in which they may explain the issues in the case and summarize the facts they expect the evidence will show. The opening

statements, like all other statements by lawyers, are not evidence. Instead, they are like the picture on the jigsaw puzzle box: these statements should help you understand the overall picture of the case, and show you where the individual pieces of evidence fit.

Each side will be given 15 minutes for opening statements.

Plaintiff, you may present your opening statement.

Defendant, you may present your opening statement.

Plaintiff, you may call your first witness.