

## **PRELIMINARY JURY INSTRUCTIONS (CIVIL)**

Members 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 courtroom deputy.

Please be seated.

Ladies and Gentlemen, I am sure that the first thing on your mind is “How long am I going to be here?” We anticipate that this case will take \_\_\_\_\_ [days] [weeks] to try, then you will decide, and thereafter you will be released from jury service.

We operate on the following schedule:

1. We start at 9:00 a.m. and we adjourn at about 5:00 p.m.;
2. We take a lunch break from about 11:30 a.m. to 1:00 p.m.;
3. We take a ten to fifteen minute 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.

I will now give you some Preliminary Instructions to explain some basic principles about a civil trial and your duty as jurors and to guide you in your participation in the trial. At the end of the trial I will give you more detailed instructions.

Course of the Trial:

First, the government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in.

Next, the defendant's attorney may, but does not have to, make an opening statement.

Opening statements are neither evidence nor argument.

The government will then present its witnesses, and counsel for the defendant may cross-examine them. Following the government's case, the defendant may, if [he] [she] wishes, present witnesses whom the government may cross-examine.

After all the evidence is in, the attorneys will present their closing arguments to summarize and interpret the evidence for you, and I will instruct you on the law.

After that, you will go to the jury room to decide your verdict.

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 witnesses said during the trial. Although the Court Reporter is recording everything that is said, we will not provide typewritten transcripts for your use during deliberations and therefore you should not expect to receive them.

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

Taking Notes: If you wish, you may take notes during the trial, but you are not required to take notes. That decision is yours. If you do take notes, do not let it distract you from the ongoing proceedings.

Whether or not you take notes, you should rely on your own memory of what was said, and other jurors' notes should not unduly influence you. Notes are to assist your memory only. They are not entitled to any greater weight than your memory or impression about the testimony.

During breaks, you should leave your notes in your chairs. We will collect notebooks at the end of each day and return them to you when trial resumes.

#### DUTY OF JURY:

Your duty is to determine from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply the law to those facts. You must follow the law, as I explain it to you, even if you do not agree with the law.

You should not decide whom you like and whom you dislike and decide the case according to those likes and dislikes.

You should keep an open mind about the case and not make up your mind until you have heard all of the evidence, been instructed on the law, and begin deliberating with your fellow jurors.

#### CREDIBILITY OF WITNESSES:

Your duty also involves determining the credibility of witnesses. In reaching your verdict, you may have to decide what testimony to believe and what testimony not

to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account:

- The opportunity and ability of the witness to see or hear or know the things testified to;
- The witness's memory;
- The witness's manner while testifying;
- The witness's interest, if any, in the outcome of the case;
- The witness's bias or prejudice, if any;
- Whether other evidence contradicted the witness's testimony;
- The reasonableness of the witness's testimony in light of all the evidence; and
- Any other factors that bear on believability.

I will give you additional guidelines for determining credibility of witnesses at the end of the case. For now, you should use the guidelines I just listed and your good judgment to evaluate the credibility of each witness.

### EVIDENCE:

You will decide the facts based upon the evidence admitted at trial, which will consist of the witnesses' testimony, documents and other items admitted into evidence as exhibits, and any facts the lawyers agree are facts, or that I may instruct you to find.

You must decide the case solely on the evidence presented here in the courtroom. Evidence can come in many forms. It can be testimony about what

someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.

Some evidence can be direct evidence because it directly proves a fact, such as a witness's testimony about a fact. Some evidence proves a fact indirectly, and such indirect evidence, sometimes called circumstantial evidence, is simply a proof of circumstances from which you may infer or conclude that other facts exist. For example, a witness who saw wet grass outside and people walking into the courthouse carrying wet umbrellas may lead you to infer or conclude that there is indirect or circumstantial evidence that it rained outside. In this example, direct evidence would be if the witness says, "I saw it raining outside." As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind and should give every piece of evidence whatever weight you think it deserves.

There are rules of evidence that control what the court can receive into evidence. Therefore, you'll hear certain things that are not evidence and you must not consider them. I will list them for you now:

First, statements and arguments by the lawyers are not evidence. In their opening statements and closing arguments, the lawyers will discuss the case, but their remarks are not evidence.

Second, the lawyers' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because a lawyer's question suggests that it is. For instance, if a lawyer asks a witness, "you saw the defendant hit

his sister, didn't you?" – that question is no evidence whatsoever of what the witness saw or what the defendant did, unless the witness agrees with it.

Third, when a lawyer asks a witness a question or presents an exhibit, the opposing lawyer may object if he or she thinks the rules of evidence don't permit it. The objections by lawyers are not evidence. Lawyers have an obligation to their clients to make objections when they believe the rules prohibit certain evidence. The lawyers are not attempting to hide information from you. The law requires that we conduct trials by certain rules that are designed to ensure fair trials.

You should not be influenced by the objection or my ruling on it. Therefore,

If I overrule the objection, then treat the answer like any other answer or treat the exhibit like any other exhibit.

If I sustain the objection, then ignore the question or exhibit at issue and not try to guess what the answer would have been or what the exhibit is.

Sometimes I may order that evidence be stricken and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider that evidence.

Some evidence is admitted only for a limited purpose. If I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and no other.

#### CONDUCT OF THE JURY:

Our law requires jurors to follow certain instructions regarding their personal conduct in order to help assure a just and fair trial. I will now give you those instructions:

1. Do not talk, either among yourselves or with anyone else, about anything related to the case. You may tell the people with whom you live and your employer that you are a juror and give them information about when you will be required to be in court, but you may not discuss with them or anyone else anything related to the case.
2. Do not, at any time during the trial, request, accept, agree to accept, or discuss with any person, any type of payment or benefit in return for supplying any information about the trial.
3. You must promptly tell me about any incident you know of involving an attempt by any person to improperly influence you or any member of the jury.
4. Do not visit or view the premises or place where the charged crime was allegedly committed, or any other premises or place involved in the case. And you must not use Internet maps or Google Earth or any other program or device to search for a view of any location discussed in the testimony.
5. Do not read, watch, or listen to any accounts or discussions related to the case which may be reported by newspapers, television, radio, the Internet, or any other news media.

6. Do not attempt to research any fact, issue, or law related to this case, whether by discussions with others, by library or Internet research, or by any other means or source.

In this age of instant electronic communication and research, I want to emphasize that in addition to not talking face to face with anyone about the case, you must not communicate with anyone about the case by any other means, including by telephone, text messages, email, Internet chat, chat rooms, blogs, or social-networking websites such as Facebook, Instagram, SnapChat, or Twitter.

You must not provide any information about the case to anyone by any means whatsoever, and that includes posting information about the case, or what you are doing in the case, on any device or Internet site, including blogs, chat rooms, social websites, or any other means.

You also must not use Google or otherwise search for any information about the case, or the law that applies to the case, or the people involved in the case, including the defendant, the witnesses, the lawyers, or the judge.

These rules exist and are important because:

Our law does not permit jurors to talk with anyone else about the case, or to permit anyone to talk to them about the case, because only jurors are authorized to render a verdict. Only you have been found to be fair and only you have promised to be fair – no one else is so qualified.



Our law also does not permit jurors to talk among themselves about the case until the court tells them to begin deliberations, because premature discussions can lead to a premature final decision.

Our law also does not permit you to visit a place discussed in the testimony. First, you can't be sure that the place is in the same condition as it was on the day in question. Second, even if it were in the same condition, once you go to a place discussed in the testimony to evaluate the evidence in light of what you see, you become a witness, not a juror. As a witness, you may now have a mistaken view of the scene that neither party may have a chance to correct. That is not fair.

Finally, our law requires that you not read or listen to any news accounts of the case, and that you not attempt to research any fact, issue, or law related to the case. Your decision must be based solely on the testimony and other evidence presented in this courtroom. Also, the law often uses words and phrases in special ways, so it's important that any definitions you hear come only from me, and not from any other source. It wouldn't be fair to the parties for you to base your decision on some reporter's view or opinion, or upon other information you acquire outside the courtroom.

These rules are designed to help guarantee a fair trial, and our law accordingly sets forth serious consequences if the rules are not followed. I trust that you understand and appreciate the importance of following these rules, and in accord with your oath and promise, I know you will do so.

If you have any problems during the course of the trial, please let a member of the staff know. Should you be delayed returning to the courtroom for any reasons, you must give the court a call. The Court Deputy will give you a number to call.

When you return from each break, you should go to the jury room. One of the staff will come get you at the end of each break when the trial is ready to continue.

### RULES FOR CIVIL CASES:

This is a civil case. To help you follow the evidence, I'll summarize the parties' positions. The Plaintiff, [name of plaintiff], claims the Defendant, [name of defendant], [describe claim(s)]. [Name of defendant] denies those claims and contends that [describe counterclaims or affirmative defenses].

I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. But to help follow the evidence, I will now give you a brief summary of the elements of the claim(s) that the Plaintiff must prove to make its case:

[INSERT SUMMARY HERE]

### Burden of proof:

[Name of plaintiff] has the burden of proving [his/her/its] case by what the law calls a "preponderance of the evidence." That means [name of plaintiff] must prove that, in light of all the evidence, what [he/she/it] claims is more likely true than not. So, if you could put the evidence favoring [name of plaintiff] and the evidence favoring [name of defendant] on opposite sides of balancing scales, [name of plaintiff] needs to

make the scales tip to [his/her/its] side. If [name of plaintiff] fails to meet this burden, you must find in favor of [name of defendant].

To decide whether any fact has been proved by a preponderance of the evidence, you may – unless I instruct you otherwise – consider the testimony of all witnesses, regardless of who called them, and all exhibits that the court allowed, regardless of who produced them. After considering all the evidence, if you decide a claim or fact is more likely true than not, then the claim or fact has been proved by a preponderance of the evidence.

[Optional: On certain issues, called “affirmative defenses,” [name of defendant] has the burden of proving the elements of a defense by a preponderance of the evidence. I’ll instruct you on the facts [name of defendant] must prove for any affirmative defense. After considering all the evidence, if you decide that [name of defendant] has successfully proven that the required facts are more likely true than not, the affirmative defense is proved.]

[Optional: [Name of defendant] has also brought claims for relief against [name of plaintiff] called counterclaims. On these claims, [name of defendant] has the same burden of proof that [name of plaintiff] has for [his/her/its] claims.]

#### Course of the Trial:

The trial will now begin. First, the plaintiff will make an opening statement.

Next, the defendant’s attorney may, but does not have to, make an opening statement.

The plaintiff will then present its witnesses, and counsel for the defendant may cross-examine them. Following the plaintiff's case, the defendant may, if [he] [she] wishes, present witnesses whom the government may cross-examine. You should base your decision on all the evidence, regardless of which party presented it.

After all the evidence is in, the attorneys will present their closing arguments to summarize and interpret the evidence for you, and I will instruct you on the law.

After that, you will go to the jury room to deliberate and decide your verdict.

I hope you will enjoy your jury service with us.