

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Civil No. 27-cv-09-17778

Plaintiff,

**PLAINTIFF'S PROPOSED
JURY INSTRUCTIONS**

v.

Donald W.R. Allen, *et al*,

Defendants.

Plaintiff proposes the following jury instructions:

10.15 Preliminary Instructions Before Trial

CIVJIG 10.15 Preliminary Instructions--Before Trial

Introduction

Members of the jury:

You have now been sworn in.

Of all the people in this courtroom, it is vital that you the jury be able to hear and see everything. If any of you have difficulty hearing or understanding what a witness is saying, or if a witness or an attorney should block your view, raise your hand immediately so that we can correct that.

Duties of the jury and the judge

Here are some basic rules about your job as a juror.

Your job will be to find what the facts are in this case by considering the evidence.

As judge I will apply the rules and tell you what you can and cannot consider as evidence.

What is evidence

1. Evidence is what witnesses say on the stand. This is called "testimony."
2. Evidence can be items like photographs and documents. These items are called exhibits.
3. There are also facts you must accept:

a. Evidence can be a fact agreed upon by the parties. This agreement is called a stipulation.

b. There may also be facts that I tell you to accept.

What is not evidence

The following are not evidence:

1. Nothing the attorneys say during the trial, including opening statements and closing arguments, is evidence.

2. The attorneys' questions are not evidence. The witnesses' answers are.

3. Objections are not evidence. Attorneys may object if they think a question or answer is against the rules:

a. I will sustain the objection if I think it is against the rules, and you should ignore this question or answer.

b. If I overrule the objection, the answer is evidence like the rest of the witness's testimony.

4. You cannot consider anything you hear or learn about this case outside this courtroom.

You must follow the instructions on what you can consider as evidence.

Taking notes

You may take notes during the trial. You do not have to.

Do not let your note taking distract you.

Your notes must stay in the courtroom during the trial.

You may take them into the jury room during deliberations.

Use your notes as an aid to your memory. Fit them in with your total recollection of the facts.

A written note does not necessarily make a piece of evidence more important, whether you or another juror wrote it down.

Deciding the facts

Wait until you have heard all the evidence before you make up your mind.

Your best guide is your own good judgment, experience and common sense.

In addition ask yourself:

1. Is a witness being truthful?

2. Will a witness gain or lose if this case is decided a certain way?

3. How did a witness learn the facts? How did he or she remember and tell the facts?
4. What was his or her manner?
5. What was his or her age and experience?
6. Did the witness seem honest and sincere?
7. Was the witness frank and direct?
8. Is the testimony reasonable compared with other evidence?
9. Are there any other factors that bear on believability and weight?

Duty of the jury

You must decide the facts.

You and only you can decide the facts. Do not take anything I say or do as a sign of what the verdict should be.

You must apply the law to the facts.

You must follow the law I give you even if you don't agree with it.

How to act as a jury member

Now a few words about your conduct as jurors:

Do not let outsiders influence you.

Do not discuss this case with other jury members during the trial.

You will have plenty of time to do this at the end of the trial, once you have all the evidence.

If anyone tries to discuss this case with you outside the courtroom, report this to me.

Do not refer to any newspapers, books, magazines, the internet, or other sources of information to answer questions of fact or of law raised by the evidence or by the court's instructions.

Do not do your own investigation.

Keep an open mind until you have heard or seen all of the evidence.

Remember you cannot consider anything you hear or learn about this case outside this courtroom.

10.20 Post-trial Preliminary Statement

CIVJIG 10.20 Post-Trial Preliminary Statement--Duties of Judge and Jury

Instructions

I will give you your instructions.

The order in which I give the instructions is not important.

Consider all the instructions together.

You must apply the law in these instructions whether you agree with it or not.

You must follow all of the instructions. Do not single out some and ignore others--all of them are equally important.

I will give you a copy of these instructions to take into the jury room. You do not need to take notes as I read the instructions to you.

10.25 Statements of Counsel and Judge

CIVJIG 10.25 Statements of Counsel and Judge

Duties of the attorneys

The attorneys have professional duties:

1. They represent their clients.
2. They introduce evidence to support or defend their clients.
3. They make objections.
4. They argue their clients' cases.

Statements of the attorneys and judge

Nothing the attorneys say during the trial, including opening statement and closing argument, is evidence.

The attorneys' questions are not evidence. The witnesses' answers are evidence.

What I say or what the attorneys say about the evidence may be different from what you remember. If that happens, rely on your own memory.

What the attorneys say about the law may be different from what I say. If this happens, you must rely on what I say about the law.

10.30 Rulings on Objections to Evidence

CIVJIG 10.30 Rulings on Objections to Evidence

Rulings on evidence

The law has rules about the evidence allowed in a case. It is my duty to make sure the rules are followed.

Objections

Attorneys objected if they thought a question or answer is against the rules. Keep the following in mind about objections:

1. If I sustained the objection, ignore that question or answer.
2. If I overruled the objection, that answer is evidence like anything else.
3. Remember that objections by themselves are not evidence.
4. The fact that evidence has been objected to should not affect your view of the evidence.

Evidence that is not allowed

I have told you when other types of evidence are against the rules and have to be ignored or stricken from the record.

Notes taken by Jurors

CIVJIG 10.35 Notes Taken by Jurors

How to use notes

If you took notes during the trial, you may take them to the jury room.

Use the notes as an aid to your memory and not as a substitute for it.

A written note does not necessarily make a piece of evidence more important, whether you or another juror wrote it down.

10.40 Separation of Jury Recess and jury

CIVJIG 10.40 Separation of Jury Recess of Jury

Recess of jury

This jury will be adjourned until *(time and date)*. **You may return home.**

While you are adjourned, there are some rules you must follow:

1. **You must not discuss this case with anyone.**
2. **You must not let anyone discuss the case with you.**

3. You must not do any investigation yourself or ask others to do it for you.

4. You must not refer to any newspapers, books, magazines, the internet, or other sources of information to answer questions of fact or of law raised by the evidence or by the court's instructions.

You are excused until (*time and date*). You will come back to the jury box before returning to your deliberations.

10.45 Deliberation and Return of Verdict

CIVJIG 10.45 Deliberation and Return of Verdict

Deliberation and Return of Verdict

Here are some instructions about your deliberations and return of the verdict.

Items that will be in the jury room

During your deliberations you will have the following items in the jury room:

1. Any exhibits received in evidence,
2. The notes you took during the trial,
3. The written final instructions, and
4. The verdict form.

Selection of a foreperson

When you return to the jury room to discuss this case, you must select a jury member to be foreperson. That person will lead your deliberations.

The jurors' duty to discuss the case

The goal of jury deliberations is to talk among yourselves in order to reach an agreement about the verdict.

This agreement must be consistent with your own judgment.

Each of you must decide the case for yourself, but do so only after you have fully considered the views of your fellow jurors.

Re-examine your own view and change your mind, if you decide your original view was mistaken.

But do not change your mind just because other jurors disagree, or simply because of pressure to return a verdict.

Kinds of verdict

There are two kinds of verdicts: a unanimous verdict and a divided verdict.

Unanimous verdict

Your verdict must be unanimous, that is: all jurors must agree on all the answers.

The foreperson must date and sign the verdict form if your verdict is unanimous.

Divided verdict

If you cannot reach a unanimous verdict after six hours of deliberation, then *[five] [other number]* **of you may return a divided verdict.**

If you return a divided verdict, each of the *[five] [other number]* jurors must sign and date the jury form.

The same *[five] [other number]* jurors must agree on all answers.

Return of the verdict

When you agree on a verdict, notify the *(bailiff) (jury attendant)*.

You will return to the courtroom where your verdict will be received and read out loud in your presence.

[Sealed verdict

If you agree on a verdict when the court is in recess:

1. Put your completed verdict in the envelope and seal it.
2. Give the sealed envelope to _____ .
3. You may leave the courthouse.
4. You must return to the court at _____ , when I will receive your verdict in open court. The verdict will be read out loud in your presence.
5. Do not discuss the case with anyone or let anyone know your verdict, until it is read in court.]

Secrecy of the jury deliberations

Your deliberations must be secret and confidential.

You must not communicate with anyone except other jury members about the case during your deliberations.

During your deliberations, you may have questions about things unrelated to the case itself *(such as supplies or the physical facilities)*. **If so, ask the *(bailiff) (jury attendant)*.**

Juror's responsibility

You must not allow sympathy, prejudice, or emotion to influence your verdict.

The quality of your service will be reflected in the verdict you return to this court.

A just and proper verdict contributes to the administration of justice.

12.10 Direct and Circumstantial Evidence

CIVJIG 12.10 Direct and Circumstantial Evidence

Direct and circumstantial evidence

A fact can be proved in one of two ways:

1. A fact is proved by direct evidence when that fact is proved directly without any inferences.
2. A fact is proved by circumstantial evidence when that fact can be inferred from other facts proved in the case.

For example, the fact that “a person walked in the snow” could be proved:

1. By an eyewitness who testified directly that he or she saw a person walking in the snow, or
2. By circumstantial evidence of shoe-prints in the snow, from which it can be indirectly inferred that a person had walked in the snow.

Using direct and circumstantial evidence

You should consider both kinds of evidence. The law makes no distinction between the weight given to either direct or circumstantial evidence.

It is up to you to decide how much weight to give any kind of evidence.

12.15 Evaluation of Testimony – credibility of witnesses

CIVJIG 12.15 Evaluation of Testimony--Credibility of Witnesses

Guidelines for evaluating testimony

You must decide what testimony to believe and how much weight to give it.

Here are some guidelines:

1. Will a witness gain or lose if this case is decided a certain way?
2. What is the witness's relationship to the parties?
3. How did a witness learn the facts? How did he or she remember and tell the facts?
4. What was his or her manner?
5. What was his or her age and experience?
6. Did the witness seem honest and sincere?
7. Was the witness frank and direct?
8. Is the testimony reasonable compared with other evidence?
9. Are there any other factors that bear on believability and weight?

In addition, you should rely upon your own experience, good judgment, and common sense.

12.20 Evaluation of deposition evidence

CIVJIG 12.20 Evaluation of Deposition Evidence

Evaluating evidence given in a deposition

A witness's deposition may be presented when the witness cannot be at the trial in person. The deposition was given under oath.

When a deposition *(is) (was)* read to you:

- 1. Give the evidence the same weight as you would if the person was present.**
- 2. Use the same factors as you would in judging any evidence.**

The manner of the person reading the deposition is not a factor.

[Evaluation of a videotaped deposition

A witness's deposition may be presented when the witness cannot be at the trial in person. The deposition was given under oath.

When you *(are) (were)* shown a videotape deposition:

- 1. Give the evidence the same weight as you would if the person was present.**
- 2. Use the same factors as you would in judging any evidence.]**

12.25 Impeachment

CIVJIG 12.25 Impeachment

Guidelines for impeachment

[1 You may consider what the witness did or said in the past, if it is not consistent with what he or she is saying now.

If a past statement was not under oath, use it only to decide the truth or weight of what the witness is saying now.

If the past statement was under oath, or the witness is a party in this case *(or an agent for one of the parties)*, then you may use what was said in the past to decide the issues in this case and the truth and weight of what the witness is saying now.]

[2 You may consider whether the witness has been convicted of a crime. You may consider whether the kind of crime makes it more likely that he or she is not telling the truth.]

[3 You may consider a witness's reputation for truthfulness.]

14.15 Burden of Proof

CIVJIG 14.15 Burden of Proof

Deciding the issues in a case

You will be asked to answer “yes” or “no” to some questions on the verdict form.

The greater weight of the evidence must support a “yes” answer.

This means that all of the evidence, regardless of which party produced it, must lead you to believe that the claim is more likely true than not true.

Greater weight of the evidence does not necessarily mean the greater number of witnesses or the greater volume of evidence.

Any believable evidence may be enough to prove that a claim is more likely true than not.

40.30 Interference with contractual relationships

CIVJIG 40.30 Interference With Contractual Relationships

Definition of “intentional interference with a contractual relationship”

There is an intentional interference with a contractual relationship if:

1. There was a contract
2. *(Defendant)* **knew about the contract**
3. *(Defendant)* **intentionally caused the breach of the contract**
4. *(Defendant's)* **actions were not justified.**

40.35 Interference with Prospective Advantage

CIVJIG 40.35 Interference With Prospective Advantage

Interfering with prospective advantage

Interference with prospective advantage means intentionally and improperly interfering with another person's prospective contractual relationship by:

1. Inducing or causing a third person not to enter or continue in the relationship, or
2. Preventing the other person from getting or continuing the relationship.

40.45 Damages for Interference with contractual relations/prospective advantage

CIVJIG 40.45 Interference With Contractual Relationships/Prospective Advantage-- Damages

Damages for interference with a contractual relationship/prospective advantage

Damages for interference with a contractual relationship/prospective advantage may include:

1. The loss of benefits of the contract or the prospective relationship, and
2. Other losses that were directly caused by the interference, and
3. Emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference.

50.10 Defamatory communication

CIVJIG 50.10 Defamatory Communication

Definition of defamatory statement

A statement or communication is defamatory if it tends to:

1. So harm the reputation of a person that it lowers his or her esteem in the community,
or
2. Deter third persons from associating or dealing with him or her, or
3. Injure his or her character, or
4. Subject this person to ridicule, contempt, or distrust, or
5. Degrade or disgrace this person in the eyes of others.

[A statement or communication may be defamatory because (*defendant*):]

[1 Left out certain facts so the statement conveyed a defamatory meaning.]

[2 Linked statements in a way that conveyed a defamatory meaning.]

[3 Stated an opinion that conveyed defamatory facts.]

50.15 Publication

CIVJIG 50.15 Publication

Publication

A defamatory statement or communication is published if it is communicated to, and understood by, at least one person other than (*plaintiff*).

[Intentional publication

A publication is intentional if:

1. It is made for the purpose of communicating the defamatory matter to a person other than (*plaintiff*), or
2. **With knowledge that the defamatory matter is substantially certain to be communicated.]**

[Negligent publication

A publication is made negligently if a reasonable person would recognize that the defamatory matter will be communicated to a person other than *(plaintiff)*.]

[Compelled self-publication

Publication can occur in a situation where only *(plaintiff)* is told the statement and repeats it if:

1. *(Plaintiff)* was compelled to repeat the defamatory statement or communication, and

2. It was foreseeable to *(defendant)* that *(plaintiff)* would be compelled to repeat it.]

50.20 Per se (Committee recommended no instruction)

Defamation per se involves the defendant accusing the plaintiff of having committed a crime, or that affects the plaintiff in the plaintiff's business, trade, profession, office, or calling.

[These questions fit with SVF 50.91].

50.25 Falsity

Definition of "false"

Question _____ asks whether the statement (_____) was false.

A statement or communication is false if it is not substantially accurate. Substantial accuracy does not require every word to be true. A statement or communication is substantially accurate if its substance or gist is true.

[A statement or communication is also false if the implication of the statement is false.]

50.45 Defamation negligence standard

CIVJIG 50.45 Defamation--Negligence

Defamation--negligence standard

***(Defendant)* was negligent in the publication of a statement or communication if *(he) (she)* knew or in the exercise of reasonable care should have known that the statement was false.**

50.50 Presumed damages

CIVJIG 50.50 Presumed Damages

Deciding harm for defamation

The only question for you to decide [in answering Question ____] is the amount of money (*plaintiff*) **is entitled to receive for:**

- 1. Harm to (*his*) (*her*) reputation and standing in the community**
- 2. Mental distress**
- 3. Humiliation**
- 4. Embarrassment**

No evidence of actual harm is required.

50.55 Defamation actual damages

CIVJIG 50.55 Defamation--Actual Damages

Factors to consider in deciding damages for defamation

Damages for the publication of a defamatory statement or communication include:

- 1. Harm to (*plaintiff*)'s reputation and standing in the community**
- 2. Mental distress**
- 3. Humiliation**
- 4. Embarrassment**
- 5. Physical disability**
- 6. Economic loss caused by the defamatory statement or communication.**

50.60 Defamation special damage

CIVJIG 50.60 Defamation--Special Damage

Definition of "special damages"

"Special damages" means economic loss directly caused by a defamatory statement or communication.

Special damages include:

- [1 Loss of employment]
- [2 Loss of a presently existing advantage]
- [3 Failure to realize a reasonable expectation of financial gain].

90.10 Compensation Damages

CIVJIG 90.10 Compensatory Damages--Personal and Property Damages--Definition

Question(s) __ , __ , and __ in the verdict form (*is*) (*are*) the damages question(s).

Answer each question independently

[You must answer these questions regardless of your answers to the other questions on the verdict form. Your verdict is not complete until these damages questions are answered.]

When you decide damages, do not consider the possible effect of your answers to other questions.

Damages are money

The term "damages" means a sum of money that will fairly and adequately compensate a person who has been *(injured) (harmed)*. **Damages may include past and future *(injury) (harm)*. It must be proved that future *(injury) (harm)* is reasonably certain to occur.**

Dated: January 24, 2011

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