

## **MEMORANDUM TO ATTORNEYS IN CIVIL JURY TRIALS**

The following are the general procedures followed by Judge Jones in the jury trial of a civil case. Any questions about these procedures, or any requests for changes in procedure, should be raised prior to trial.

### **Pretrial Motions**

Pretrial motions, including motions in limine, must be filed and scheduled for hearing or argument in advance of trial. Even if the Scheduling Order applicable to the case does not contain a deadline for such motions, it is understood that such motions will not be received during trial.

### **Jury Selection**

The jury will consist of seven persons. The jury is selected immediately prior to trial using the “struck jury” method and all members of the jury venire called for the trial—usually about twenty persons—are subjected to voir dire. A list of the jurors to be called for the case is sent to counsel by the clerk approximately a week prior to trial. Potential jurors will be seated in alphabetical order in the jury box.

The attorneys are permitted to conduct voir dire after preliminary questions from the Judge. The Judge’s voir dire will solicit any requests from jurors to be excused from jury duty on the ground of hardship, and the Judge will determine such requests before turning voir dire over to the attorneys. Attorneys’ voir dire is expected to be limited to relevant questions and not consist of disguised argument on the merits of the case. Following voir dire, any party having any challenge for cause should make known to the court that a matter outside of the presence of the jury is to be taken up, in which case the jury panel will be excused and the challenges determined.

Thereafter, the parties will take alternate written strikes on a single jury list, in a number depending on the remaining members of the panel, in order to reduce the jury to seven. In the normal case, no alternates will be used.

In the usual case, jury selection is expected to take no more than two hours.

After the jury is sworn, preliminary instructions are given by the Judge. Jurors are told that they will be permitted to take notes. Questions by the jurors are not permitted.

## **Opening Statements**

Opening statements must summarize objectively the key facts, without argument. In most cases, an opening statement should not exceed ten or fifteen minutes. If there may be a dispute as to admissibility of any evidence or exhibit, omit it from the opening statement or advise opposing counsel of your intent to refer to such evidence or exhibit, so that opposing counsel may seek a ruling from the court.

## **Presentation of Evidence**

Witnesses and exhibits are required to be disclosed prior to trial and will not be admitted if not so disclosed. It will be assumed that all exhibits have been previously disclosed and that there is no objection to an exhibit unless promptly made. Provide a list of witnesses and exhibits to the court reporter and courtroom deputy clerk in order to reduce delay. Provide an extra copy of each exhibit for the Judge.

In complex cases, exhibit notebooks for the Judge and each member of the jury are suggested.

Questions to witnesses and argument to the court must be made from the lectern. Counsel may approach the witness without leave of court to hand the witness a document or exhibit, but must promptly return to the lectern.

Requests for exclusion of witnesses should be made before examination of the first witness and preferably before opening statements. Although the rule does not prevent talking with excluded witnesses during recesses about their expected testimony, do not disclose courtroom testimony given by other witnesses or permit other witnesses to disclose their testimony.

Witnesses should be released from further attendance as soon as they are no longer needed. After testifying, a witness is deemed released unless counsel or the court promptly indicates that the witness is not so excused.

Cooperative witnesses not immediately needed may be placed “on call” but counsel remains responsible for having sufficiently available witnesses so that the trial may proceed without early adjournments or lengthy recesses. Plaintiff’s counsel should keep defense counsel advised of the progress of the plaintiff’s case so that the defense may be ready to proceed promptly following the conclusion of the plaintiff’s case in chief.

Once in evidence, an exhibit may ordinarily be displayed to, or passed among, the jury, while examining the witness. Exhibits are in the custody of the courtroom deputy clerk and must be returned to the clerk once examination is completed.

### **Objections**

All objections and other remarks to the court must be made while standing. Objections must be succinct, without argument or other comment. If argument is needed, the Judge will so indicate.

Side bar or bench conferences are discouraged and argument outside of the presence of the jury will normally take place only during regular recesses or before or after court sessions. Accordingly, counsel should anticipate any evidentiary questions or disputes and bring them to the attention of the Judge ahead of time.

### **Multiple Party Cross Examination**

When there are multiple parties, counsel are responsible for coordination of cross-examination. The Judge will not permit repetitive cross-examination.

### **Scheduling**

Normally, trials begin promptly at 9:00 a.m. and end at approximately 5:00 p.m. each day, with an hour lunch break at noon and twenty minute breaks in mid-morning and mid-afternoon. Matters to be taken up outside of the presence of the jury should be scheduled before or after the trial day or during the recesses. If there are such matters to be taken up, a request should be made to the courtroom deputy clerk or the bailiff, and notice given to opposing counsel.

### **Closing Argument**

Closing arguments are normally limited to thirty minutes to the side, unless unusual circumstances exist, and leave of court has been obtained.

### **Jury Instructions**

Attached is a copy of the Judge's standard preliminary and final jury instructions. Counsel is responsible for submitting any other instructions desired, as well as specific issue instructions as to the particular case. The Scheduling Order normally requires such instructions to be submitted to the Judge in advance of trial, with a copy to opposing counsel.

## **Submission to Jury**

Prior to closing argument the Judge will conduct a charge conference and advise counsel of the substance of the jury charge. The charge is given after closing argument, and before the jury begins deliberations. Counsel will be given an opportunity to make any objections to the charge on the record. In most cases, the Judge will send with the jury a written copy of his charge for the jury's reference during deliberations. The jury will be instructed that during deliberations it may request any or all of the exhibits.

During jury deliberations, counsel will be expected to remain in the courthouse, unless excused by the Judge. Following the case, counsel may not discuss the case with jurors, without leave of court.

PRELIMINARY INSTRUCTIONS TO JURY  
PRIOR TO BEGINNING OF TRIAL  
CIVIL CASE

Judge James P. Jones

### **Introduction**

1           Members of the jury, before we begin the trial, I want to give you some preliminary  
2 instructions to help you understand what will happen during the trial and also to guide your conduct.  
3 I will give you detailed instructions near the end of the trial but what I say now is to explain to you  
4 your role here, as well as the role of the court and the role of others here.

### **Burden of Proof**

5           This is a civil case. In a civil case, the party who brings the lawsuit is called a plaintiff. In this  
6 case, the plaintiff is \_\_\_\_\_. The party against whom the suit is brought is called the  
7 defendant. In this case, the defendant is \_\_\_\_\_. The case involves a  
8 claim by the plaintiff as follows: [Describe] [The defendant has filed a counterclaim as follows.]

9           In a civil case, the plaintiff has the burden of proving his case by what is called the  
10 preponderance of evidence. That means the plaintiff has to produce evidence which, considered in  
11 the light of all the facts, leads you to believe that what the plaintiff claims is more likely true than not.  
12 To put it differently, if you were to put plaintiff's and defendant's evidence on opposite sides of the  
13 scales, the plaintiff would have to make the scales tip somewhat on his side. If the plaintiff fails to  
14 meet this burden, the verdict must be for the defendant.

15           Those of you who have sat on criminal cases will have heard of proof beyond a reasonable  
16 doubt. That requirement does not apply to a civil case and you should therefore put it out of your  
17 mind.

### **Duty of the Jury**

1           It is your role to decide disputed questions of fact. You and you alone, are the judges of the  
2 facts. Nothing I say or do during this trial should make you feel one way or another about the facts.  
3 You will hear the evidence, decide what the facts are, and then apply those facts to the law which I  
4 will give to you. Even if you personally disagree with the law, you are bound to accept it and follow  
5 it as I give it to you. I will decide all questions of law that arise during the trial.

6           You must keep an open mind to both sides during this entire trial until it is time for you to  
7 retire and deliberate. You must not decide this case near the beginning, halfway through or near the  
8 end. You must wait to decide until you have heard all the evidence, and I have given you the  
9 instructions as to the law before you render your decision.

### **Conduct of the Jurors**

10           Let me tell you some things about your responsibilities here. First, I instruct you that during  
11 the trial you are not to discuss the case with anyone or permit anyone to discuss it with you, or  
12 remain in hearing distance of others who are discussing this case. Until you retire to the jury room  
13 at the end of the case to deliberate on your verdict, you simply are not to talk about this case, even  
14 with each other.

15           Second, do not read anything about this case, or watch anything about this case on television,  
16 or listen to anything about this case on the radio.

17           Do not independently investigate or research any of the issues you hear in this matter.

18           Do not make up your mind about the issues in this case until you have retired to the jury room  
19 to discuss this case with your fellow jurors.

## **Rulings**

1           No statement, ruling, remark, or comment which I may make during the course of this  
2 trial is intended to indicate to you how you should decide this case, nor is it intended to influence your  
3 decision.

4           During the course of the trial, I may ask questions of a witness. Please do not assume that  
5 I hold any opinion on the matters to which my questions may have related. I am simply trying to  
6 bring out the facts for your consideration.

## **Evidence**

7           You will decide this case based on the evidence. The evidence from which you will find the  
8 facts will consist of the sworn testimony of witnesses, documents, and other things received into the  
9 record as exhibits.

10          Statements and arguments by lawyers are not evidence in the case, unless made as an  
11 admission or stipulation of fact. When the attorneys on both sides stipulate or agree to the existence  
12 of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that  
13 fact as proved to you.

14          Objections to questions are not evidence. Lawyers have an obligation to their client to make  
15 an objection when they believe evidence being offered is improper under the rules of evidence. You  
16 should not be influenced by the objection or by my ruling on it.

17          Any evidence as to which an objection is sustained by the court, and any evidence ordered  
18 stricken by the court, must be entirely disregarded. If an objection is overruled, treat the answer like  
19 any other. You should not concern yourself with why an objection is made or why the court has  
20 decided one way or another.

1           Anything you may have seen or heard outside the courtroom is not evidence, and must be  
2 entirely disregarded.

3           When I say that something is “admitted or received into evidence” that means that exhibit is  
4 now part of the evidence and part of what you may consider in your decision in this case. Some  
5 evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has  
6 been admitted for a limited purpose, you must consider it only for that limited purpose and for no  
7 other.

8           I urge you to pay close attention to the testimony as it is given.

### **Juror Notes**

9           You will notice that we have a court reporter making a record of the trial. However, we will  
10 not have typewritten transcripts of this record available for use in reaching your decision in this case.

11           If you want to take notes during the course of the trial you may do so. However, it is difficult  
12 to take detailed notes and pay attention to what the witnesses are saying at the same time. If you do  
13 take notes, be sure that your note taking does not interfere with listening to and considering all the  
14 evidence. Also, if you take notes, remember that they are for your own individual benefit and not the  
15 use of other jurors.

16           Do not take the notes home with you at the end of the day. Be sure to leave them in the jury  
17 room.

18           Whether or not you choose to take notes, remember it is your own individual responsibility  
19 to listen carefully to the evidence. You cannot give this responsibility to someone who is taking  
20 notes. We depend on the judgment of all members of the jury.

## **Outline of Trial**

1           The next steps of the trial will now begin. First, each side may make an opening statement,  
2 but is not required to. An opening statement is not evidence. It is simply an outline to help you  
3 understand what that party expects the evidence will show.

4           The plaintiff will then present evidence, and the lawyer for the defendant may cross-examine.  
5 Then the defendant may present evidence, and the lawyer for the plaintiff may cross-examine.

6           After the evidence has been presented, I will instruct you on the law that applies to the case  
7 and the attorneys will make closing arguments.

8           You will then go to the jury room to deliberate on your verdict.

FINAL INSTRUCTIONS TO JURY

CIVIL CASE

Judge James P. Jones

INSTRUCTION NO. \_\_\_\_\_

1           Members of the jury, you have heard the lawyers argue the case and you have heard the  
2 evidence. It is now my duty to instruct you as to the law. The instructions that I gave you at the  
3 beginning of the trial and during the trial remain in effect. You must, of course, continue to follow  
4 my earlier instructions as well as those that I give you now. You must not single out some  
5 instructions and ignore others, but must consider the instructions as a whole. I will send a copy of  
6 these instructions with you for your deliberations.

7           Neither in these instructions nor in any ruling, action or remark that I have made during the  
8 course of this trial have I intended to give any opinion or suggestion as to what your verdict should  
9 be. During this trial, I have occasionally asked questions of witnesses in order to bring out facts not  
10 then fully covered in testimony. Do not assume that I hold any opinion on the matter to which my  
11 questions related.

12           It is your duty to determine from the evidence what the facts are. You will then apply the law,  
13 as I give it to you, to those facts. You must follow my instructions on the law, even if you believed  
14 that the law was different or should be different.

15           Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict,  
16 unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. \_\_\_\_\_

17           In these instructions you are told that your verdict depends on whether you find that certain  
18 facts have been proved. As this is a civil case, the burden is on the plaintiff to prove every element  
19 of its claim by the greater weight of the evidence, also known as the preponderance of the evidence.

1 To prove something by the preponderance of the evidence is to prove that it is more likely true than  
2 not true. It is determined by considering all of the evidence and deciding which evidence is more  
3 believable.

INSTRUCTION NO. \_\_\_\_\_

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

7 In weighing the testimony of a witness, you should consider his or her relationship to the  
8 parties. You must also consider his or her interest, if any, in the outcome of the case, his or her  
9 manner of testifying, his or her opportunity to observe or acquire knowledge concerning the facts  
10 about which he or she testified, the candor, fairness, and intelligence of a witness and the extent to  
11 which a witness' testimony is supported or contradicted by other credible evidence. You may, in  
12 short, accept or reject the testimony of any witness in whole or in part.

13 This case should be considered by you as an action between persons of equal worth. All  
14 persons are equal before the law and are considered equals in the courtroom today.

INSTRUCTION NO. \_\_\_\_\_

15 In weighing a witness' testimony, you should also ask yourself whether there was evidence  
16 tending to prove that the witness testified falsely concerning some important fact; or whether there  
17 was evidence that at some other time the witness said or did something, or failed to say or do  
18 something, which was different from the testimony he or she gave before you during the trial.

1           You should again keep in mind, of course, that a simple mistake by a witness does not  
2 necessarily mean that the witness was not telling the truth as he or she remembers it, because people  
3 naturally tend to forget some things or remember other things inaccurately. So, if a witness has made  
4 a misstatement, you need to consider whether that misstatement was simply an innocent lapse or an  
5 intentional falsehood; and the significance of that may depend on whether it has to do with an  
6 important fact or only a small detail.

INSTRUCTION NO. \_\_\_\_\_

7           I have mentioned the word “evidence.” The “evidence” in this case consists of the testimony  
8 of witnesses, the documents and other things received as exhibits and the facts that have been  
9 stipulated — that is formally agreed to by the parties.

10           You may use reason and common sense to draw deductions or conclusions from facts that  
11 have been established by the evidence in the case.

12           Certain things are not evidence. I shall list those things for you now:

13           First: Statements, arguments, questions and comments by lawyers representing the parties  
14 in the case do not constitute evidence. In particular, statements by the lawyers as to the amount of  
15 damages claimed are not evidence and should not be considered as such.

16           Second: Objections are not evidence. Lawyers have a right to object if they believe  
17 something is improper. You should not be influenced by an objection. If I sustained an objection to  
18 a question, you must ignore the question and must not attempt to guess what the answer might have  
19 been.

1 Third: Testimony that I struck from the record, or told you to disregard, is not evidence and  
2 must not be considered.

3 Fourth: Anything you saw or heard about this case outside of the courtroom is not evidence.

4 Finally, during the course of this trial you may have been instructed that some evidence was  
5 received for a limited purpose only. You may consider such evidence only for the specific limited  
6 purpose for which it was admitted.

INSTRUCTION NO. \_\_\_\_\_

7 There are two types of evidence: direct and circumstantial. Direct evidence is the direct proof  
8 of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which  
9 you may infer or conclude that other facts exist. The law makes no distinction between direct and  
10 circumstantial evidence and you should give all evidence the weight and value you believe it is entitled  
11 to.

INSTRUCTION NO. \_\_\_\_\_

12 The issues in this case are as follows:

INSTRUCTION NO. \_\_\_\_\_

13 In conducting your deliberations and returning your verdict, there are certain rules you must  
14 follow. I shall list those rules for you now.

1 First, when you go to the jury room, you must select one of your members as your foreperson.  
2 That person will preside over your discussions and speak for you here in court.

3 Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You  
4 should try to reach agreement without violence to individual judgment, because a verdict must be  
5 unanimous.

6 Each of you must make your own conscientious decision, but only after you have considered  
7 all the evidence, discussed it fully with fellow jurors, and listened to the views of your fellow jurors.

8 Do not be afraid to change your opinions if the discussion persuades you that you should.  
9 But do not come to a decision simply because other jurors think it is right, or simply to reach a  
10 verdict.

11 Third, if you need to communicate with me during your deliberations, you may send a note  
12 to me through the bailiff, signed by one or more jurors. I will respond as soon as possible either in  
13 writing or by having you returned to the court room so that I can address you orally. Remember that  
14 you should not tell anyone — including me — how your vote stands numerically.

15 Fourth, your verdict must be based solely on the evidence and on the law which I have given  
16 you in my instructions. The verdict must be unanimous, you must all agree. Nothing I have said or  
17 done is intended to suggest what your verdict should be — that is entirely for you to decide. If you  
18 wish to have any or all of the exhibits sent to you in the jury room, you should advise the bailiff.

19 Finally, a verdict form is simply written notice of a decision that you reach in this case. Here  
20 is a form submitted to you for your consideration. You will take this form to the jury room, and  
21 when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and  
22 advise the bailiff that you are ready to return to the courtroom.