

**50 PRELIMINARY INSTRUCTION: BEFORE TRIAL**

(NOTE TO THE TRIAL JUDGE: The following is a suggested instruction to be given to the jury before opening statements are made by the lawyers for the parties. While most of this instruction should apply to most cases, some parts of it do not apply to all cases and some parts of it may not apply to the case before you now. Read the instruction before it is given and delete any parts that are not applicable. Also, the language used in this Instruction is “suggested” language. You may have another way of expressing the same ideas in this instruction and may do so, consistent with Wisconsin law.)

**MEMBERS OF THE JURY:**

Before the trial begins, there are certain instructions you should have to better understand your functions as a juror and how you should conduct yourself during the trial.

Your duty is to decide the case based only on the evidence presented at trial and the law given to you by the court. Anything you may see or hear outside the courtroom is not evidence. Do not let any personal feelings about race, religion, national origin, sex, or age affect your consideration of the evidence.

In fairness to the parties, keep an open mind during the trial. Do not begin your deliberations and discussion of the case until all the evidence is presented and I have instructed you on the law. Do not discuss this case among yourselves or with anyone else until your final deliberations in the jury room. This order is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic devices, such as a mobile phone or computer, text or instant messaging, or social networking sites, to send or receive any information about this case or your

experience as a juror. Once deliberations begin in the jury room you will then be in a position to intelligently and fairly exchange your views with other jurors.

## CONDUCT

We will stop, or “recess,” from time to time during the trial. You may be excused from the courtroom when it is necessary for me to hear legal arguments from the lawyers. If you come in contact with the parties, lawyers (interpreters) or witnesses do not speak with them. For their part, the parties, lawyers, (interpreters) and witnesses will not contact or speak with the jurors. Do not listen to any conversation about this case.

Do not research any information that you personally think might be helpful to you in understanding the issues presented. Do not investigate this case on your own or visit the scene, either in person or by any electronic means. Do not read any newspaper reports or listen to any news reports on radio, television, over the internet, or any other electronic application or tool about this trial. Do not consult dictionaries, computers, electronic applications, social media, the internet, or other reference materials for additional information. Do not seek information regarding the public records of any party or witness in this case. Any information you obtain outside the courtroom could be misleading, inaccurate, or incomplete. Relying on this information is unfair because the parties would not have the opportunity to refute, explain, or correct it.

Do not communicate with anyone about this trial or your experience as a juror while you are serving on this jury. Do not use a computer, cell phone or other electronic device, including personal wearable electronics, applications, or tools with communication capabilities to share any information about this case. For example, do

not communicate by telephone, blog post, e-mail, text message, instant message, social media post, or in any other way, on or off the computer.

Do not permit anyone to communicate with you about this matter, either in person, electronically, or by any other means. If anyone does so despite your telling them not to, you should report that to me. I appreciate that it is tempting when you go home in the evening to discuss this case with another member of your household, but you may not do so. This case must be decided by you the jurors, based on the evidence presented in the courtroom. People not serving on this jury have not heard the evidence, and it is improper for them to influence your deliberations and decision in this case. After this trial is completed, you are free to communicate with anyone in any manner.

These rules are intended to assure that jurors remain impartial throughout the trial. If any juror has reason to believe that another juror has violated these rules, you should report that to me. If jurors do not comply with these rules, it could result in a new trial involving additional time and significant expense to the parties and the taxpayers.

## **PARTIES**

A party who brings a lawsuit is called a plaintiff. In this case, the plaintiff[s] [is] [are] \_\_\_\_\_ [state separately as to each if more than one]. The plaintiff[s] [is] [are] suing to [note: state purposes of the action for each plaintiff, for example, recover damages from a defendant].

[If there are multiple plaintiffs, give the following: You should decide the case of each plaintiff as if it were a separate lawsuit. Each plaintiff is entitled to separate consideration of [his] [her] [its] own claim(s). All instructions apply to each plaintiff unless I tell you otherwise.]

A party against whom a claim is made is called a defendant. In this case, the defendant[s] [is] [are] \_\_\_\_\_ [state separately to each if more than one].

[If there are multiple defendants, give the following: You should decide the case against each defendant as if it were a separate lawsuit. Each defendant is entitled to separate consideration of [his] [her] [its] own defenses. All instructions apply to each defendant unless I tell you otherwise.]

[If there is a counterclaiming defendant, give the following: The defendant[s] in this case have also filed a claim against the plaintiff[s]. [Identify the party making the counterclaim and the party against whom the counterclaim is made]. The claim of a defendant against a plaintiff is called a counterclaim. The defendant[s] [is] [are] counterclaiming for [note: state purposes of the counterclaim for each defendant, for example, recover damages from a plaintiff.]

[If there are parties with subrogated interests or other parties named in caption and not appearing at trial, give the following: There [is another party] [are other parties] named in this case that will not participate in this trial. Do not speculate on the reasons. Any claims involving them are not to be considered by you in deciding this case.]

[If there are settled, dismissed, or withdrawn parties, give the following: [Former party] is no longer a party in this case. [The claims of that party] [Claims against that party] have been [settled] [dismissed] [withdrawn]. Do not speculate on the reasons.]

## **EVIDENCE**

You are to decide the case solely on the evidence offered and received at trial.

Evidence is:

1. testimony of witnesses given in court, both on direct and cross-examination, regardless of who called the witness;
2. deposition testimony presented during the trial;
3. exhibits admitted by me regardless of whether they go to the jury room; and
4. any facts to which the lawyers have agreed or stipulated or which I have directed you to find.

Anything you may have seen or heard outside the courtroom is not evidence.

Remarks of the attorneys are not evidence. If any remarks suggest certain facts not in evidence, disregard the suggestion.

### **ORDER OF PROOF**

Normally, a plaintiff will produce all witnesses and exhibits supporting plaintiff's claim against the defendant before the defendant introduces any evidence, although exceptions are sometimes made to that rule to accommodate a witness. After the plaintiff's case is presented, the defendant may present witnesses and exhibits to establish any defenses. There is no requirement that the defendant call any witnesses or present any evidence [unless the defendant is making a claim against the plaintiff]. If the defendant does introduce evidence, the plaintiff is then permitted to offer additional evidence to rebut the defendant's case. Each witness is first examined by the lawyer who called the witness to testify and then the opposing lawyer is permitted to cross-examine.

**OBJECTIONS**

At times during a trial, objections may be made to the introduction of evidence. I do not permit arguments on objections to evidence to be made in your presence. Any ruling upon objections will be based solely upon the law and are not matters which should concern you at all. You must not infer from any ruling that I make or from anything that I should say during the trial that I hold any views for or against either party to this lawsuit.

During the trial, I will sustain objections to questions asked without permitting the witness to answer or, where an answer has been made, will instruct that it be stricken from the record and that you are to disregard it and dismiss it from your minds. You should not draw any inference from an unanswered question, nor may you consider testimony which has been stricken in reaching your decision. This is because the law requires that your decision be made solely upon the competent evidence before you.

**[NOTETAKING NOT ALLOWED**

Do not take notes during the trial. Taking notes will not be permitted in this case because \_\_\_\_\_.]

**[NOTETAKING PERMITTED**

You are not required to but you may take notes during this trial, except during the opening statements and closing arguments. The court will provide you with materials.

In taking notes, you must be careful that it does not distract you from carefully listening to and observing the witnesses.

You may rely on your notes to refresh your memory during your deliberations. Otherwise, keep them confidential. After the trial, the notes will be collected and destroyed.]

### **TRANSCRIPTS NOT AVAILABLE FOR DELIBERATIONS; READING BACK TESTIMONY**

You will not have a copy of the written transcript of the trial testimony available for use during your deliberations. [You may ask to have specific portions of the testimony read to you.] You should pay careful attention to all the testimony because you must rely primarily on your memory of the evidence and testimony introduced during the trial.

### **USE OF DEPOSITIONS**

During the trial, the lawyers will often refer to and read from depositions. Depositions are transcripts of testimony taken before the trial. The testimony may be that of a party or anybody who has knowledge of facts relating to the lawsuit. Deposition testimony, just like testimony during the trial, if received into evidence at the trial, may be considered by you along with the other evidence in reaching your verdict in this case.

### **[JUROR QUESTIONING OF WITNESSES**

You will be given the opportunity to ask written questions of the witnesses testifying in this case.

After both lawyers have finished questioning a witness, you may raise your hand if you have any questions that have not been addressed by the lawyers. Questions must be in writing and directed to the witness and not to the lawyers or me. If I determine that

your question may be asked, I will ask it. If I do not ask your question, you should not speculate what the answer to the question is or why I did not ask it.]

### **CREDIBILITY OF WITNESSES**

It is the duty of the jury to scrutinize and to weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony.

In determining the credibility of each witness and the weight you give to the testimony of each witness, consider these factors:

- whether the witness has an interest or lack of interest in the result of this trial;
- the witness' conduct, appearance, and demeanor on the witness stand;
- the clearness or lack of clearness of the witness' recollections;
- the opportunity the witness had for observing and for knowing the matters the witness testified about;
- the reasonableness of the witness' testimony;
- the apparent intelligence of the witness;
- bias or prejudice, if any has been shown;
- possible motives for falsifying testimony; and
- all other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive.



There is no magic way for you to evaluate the testimony; instead, you should use your common sense and experience. In everyday life, you determine for yourselves the reliability of things people say to you. You should do the same thing here.

### **BURDEN OF PROOF**

In every trial there is a burden of proof. The phrase “burden of proof” means that when a party comes into a courtroom and makes a claim, as the plaintiff is making here, the law says that claim must be proved. After the trial, I will instruct you on the proper burden of proof to be applied to the questions in the verdict that will be submitted to you.

### **[CLOSING ARGUMENTS**

After all of the evidence is introduced and both parties have rested, the lawyers will again have an opportunity to address you in a closing argument. While the closing arguments are very important, they are not evidence and you are not bound by the argument of either lawyer.

After the final arguments are concluded, I will instruct you on the rules of law applicable to the case, and you will then retire for your deliberations. Your function as jurors is to determine what the facts are and to apply the rules of law that I give you to the facts. The conclusion you reach will be your verdict. You will determine what the facts are from all the testimony that you hear and from exhibits that are submitted to you. You are the sole and exclusive judges of the facts. In that field, neither I nor anyone may invade your province. I will try to preside impartially during this trial and not to express any opinion concerning the facts. Any views of mine as to what the facts are are totally irrelevant.

I do caution you, however, that under your oath as jurors, you are duty bound to accept the rules of law that I give you whether you agree with them or not. As the sole judges of the facts in this case, you must determine which of the witnesses you believe, what portion of their testimony you accept, and what weight you attach to it.]

### **OPENING STATEMENTS**

We have now reached that stage of the proceedings where both lawyers have the opportunity to make an opening statement.

The purpose of an opening statement is to outline for you what each side expects to prove so that you will better understand the evidence as it is introduced during the trial. I must caution you, however, that the opening statements are not evidence.

After [counsel/the parties] have completed their opening statements, we will begin the trial, by (plaintiff)’s lawyer calling the first witness.

### **COMMENT**

This instruction was approved in 2010, and revised in 2017 to include a “Note to the Trial Judge” at the beginning of the instruction. This revision was approved by the Committee in January 2020; it expanded on the use of social media and other digital tools.