

**2509 DEFAMATION: PRIVATE INDIVIDUAL VERSUS MEDIA DEFENDANT
(NEGLIGENCE STANDARD)**

(As to question 1, give the definition of "Defamation," from Wis. JI-Civil 2501.)

Question 2 asks whether (defendant) was negligent in making (publishing) the statement about (plaintiff). If you are satisfied from the credible evidence that (defendant) did not have a reasonable basis for making (publishing) the statement or did not use ordinary care in checking on the truth or falsity of the statement before making (publishing) it, then you will answer question 2 "yes."

Ordinary care is the degree of care which the great mass of mankind ordinary exercises under the same or similar circumstances. A person fails to use ordinary care when, without intending to do any wrong, he or she acts or omits a precaution under circumstances in which a person of ordinary intelligence and prudence ought reasonably to foresee that such act or omission will subject the person or the person's property, or the person or property of another, to an unreasonable risk of injury or damage.

(Plaintiff) has the burden of proof to satisfy you by the greater weight of the credible evidence, to a reasonable certainty, that (defendant) was negligent in making (publishing) the statement.

(As to question 3, the damage question, give Wis JI-Civil 2516.)

(As to question 4, actual malice, give the actual malice part of Wis JI-Civil 2511.)

(As to question 5, punitive damages, give Wis JI-Civil 2520.)

(As to question 3, burden of proof, give Wis JI-Civil 200.)

(As to questions 4 and 5, actual malice and punitive damages, give Wis JI-Civil 205.)

SPECIAL VERDICT

Question 1: Was the statement made (published) by (defendant) (insert statement, e.g., John Jones took a bribe) defamatory:

ANSWER: _____
(yes or no)

Question 2: If you answered "yes" to question 1, then answer this question:

Was (defendant) negligent in making (publishing such statement?

ANSWER: _____
(yes or no)

Question 3: If you answered "yes" to question 2, then answer this question:

What sum of money will fairly and reasonably compensate (plaintiff) because of such defamatory statement?

ANSWER:\$ _____

Question 4: If you answered "yes" to question 2, then answer this question:

Did (defendant) act with actual malice in making (publishing) such statement?

ANSWER: _____
(yes or no)

Question 5: If you answered "yes" to question 4, then answer this question:

What sum of money, if any, do you assess against (defendant) for punitive damages?

ANSWER:\$ _____

COMMENT

This instruction and comment were approved by the Committee in 1985. This instruction was revised in 2002 to conform the language regarding the burden of proof to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205, the instructions on the civil burdens of proof. See Wis. JI-Civil 200, Comment.

The Wisconsin Supreme Court determined in Denny v. Mertz, 106 Wis.2d 636, 318 N.W.2d 141 (1982), that the requisite showing of "fault" be media defendant sued by a private plaintiff is negligence. See Law Note, Wis JI-Civil 2500, Defamation, pages 12-13.

In cases involving a private individual versus a media defendant, the plaintiff must prove actual malice to warrant an award of punitive damages. Gertz v. Robert Welch, Inc., 94 S.Ct. 2997, 3012 (1974); Denny v. Mertz, supra at 659.