

**JUDGE ROBINSON'S STANDARD FINAL JURY INSTRUCTIONS
(CIVIL)**

Following are the instructions preferred by Judge Robinson as standard final jury instructions in a civil trial. These instructions will need to be augmented by the substantive instructions agreed upon by the parties and approved by the court.

Although Judge Robinson prefers to provide instruction to the jury prior to closing arguments, the last five instructions included here will be given to the jury following closing arguments, immediately prior to deliberations.

INSTRUCTION NO. _____

MEMBERS OF THE JURY:

The presentation of evidence is now complete. I gave you some general instructions and definitions at the outset of this case and I now give you final instructions. You may read along with me, or you may simply listen as I read these instructions. If you read along, stay with me. You will each be allowed to take your copy of the instructions to the jury room for further reference during your deliberations.

You must follow the law as set out in these instructions and apply that law to the facts you find from the evidence presented in this trial. No single instruction or smaller group of instructions states the law; you must consider all the instructions as a whole. You are not to question the wisdom of any of these instructions.

INSTRUCTION NO. _____

You must weigh and consider this case without sympathy and without bias for or against any party. You must not be influenced by anything not within the issues of the case.

You must consider and decide this case as an action between persons of equal standing in the community. [The United States],[The State of Kansas] [A corporation] is entitled to the same fair trial as an individual.

INSTRUCTION NO. ____

The foregoing instruction sets forth the claims of the respective parties, as stated in the case, and these claims are not to be considered by you as any evidence in this case. The allegations of the respective parties must be established and proven by the evidence.

INSTRUCTION NO.

[insert claim instruction—usually joint statement of case submitted by the parties]

INSTRUCTION NO. [Optional]

Each defendant is alleged to be liable for certain claims at issue in this case. It is your duty to give separate consideration to the evidence as it pertains to each defendant. Your verdict with respect to each defendant must be unanimous.

INSTRUCTION NO. ____

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his/her/its claim by a preponderance of the evidence. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence in the case, the jury should find for the defendant as to that claim.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

[insert substantive claim instructions here]

INSTRUCTION NO. ____ [Optional]

During the trial, I informed you that the parties had agreed or stipulated to certain facts. That stipulation was then read to you. As I also indicated to you at that time, these instructions contain a written copy of those stipulations agreed upon by the parties. The parties stipulate that:

A stipulation simply means that both the parties accept these facts as true. There was no disagreement over these facts, so there was no need for evidence on either side of these facts. Since the parties have so agreed, you are to take these facts as true for the purposes of this case.

INSTRUCTION NO. [Optional, Judicial Notice Instruction]

Even though no evidence has been introduced about it, I have decided to accept as proved: [insert] I believe [insert] can be so accurately and readily determined from an accurate outside source that it/they cannot reasonably be disputed. You may therefore treat the fact of [insert] as proved even though no evidence was brought out on the point.

INSTRUCTION NO. _____

You may consider as evidence the testimony of witnesses in person or by deposition, and the exhibits admitted into evidence, which you will have in the jury room during your deliberations.

INSTRUCTION NO. [Optional]

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state his or her opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

INSTRUCTION NO. _____

The parties may prove any fact through either direct or circumstantial evidence. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though not proved directly.

In deciding if a fact has been proved by circumstantial evidence, you will consider all the evidence in the light of reason, common sense, and experience.

You may give the same weight to circumstantial evidence as you give to direct evidence.

INSTRUCTION NO. _____

You are permitted to draw reasonable inferences from the testimony and exhibits you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts established by the testimony and evidence in the case.

INSTRUCTION NO. _____

You must consider all the evidence, but you need not accept all evidence as true or accurate.

You will determine the weight and credit to be given the testimony of each witness. You may use common sense, common knowledge and experience in weighing that testimony.

The number of witnesses who testify about a matter may or may not determine the weight of the evidence. The testimony of a fewer number of witnesses concerning any fact may be more credible than the testimony of more witnesses to the contrary.

Similarly, you will determine the weight and credit to be given to each exhibit.

INSTRUCTION NO. ____

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness you should consider the witness’s relationship to the plaintiff or to the defendant; any interest the witness may have in the outcome of the case; the witness’s manner while testifying; the opportunity and ability to observe or acquire knowledge concerning the facts about which the witness testified; the witness’s candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

When weighing conflicting testimony you should consider whether the discrepancy has to do with a material fact or with an unimportant detail, and should keep in mind that innocent misrecollection—like failure of recollection—is not uncommon.

In addition, while you must consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

INSTRUCTION NO. _____

A witness may be discredited or “impeached” by contradictory evidence, or by evidence that at some other time the witness has said or done something, or failed to say or do something, which is inconsistent with the witness's testimony at trial.

If you believe any witness has been so impeached, you may give the testimony of that witness such weight as you believe it deserves.

If a witness is shown to have deliberately testified falsely concerning any material matter, you have a right to distrust that witness’s testimony. You may reject any part or all of that witness’s testimony.

An act or omission is deliberate if done voluntarily and intentionally and not through mistake, accident, or other innocent reason.

INSTRUCTION NO. _____

I have instructed you concerning plaintiff's damages, but that does not mean I believe the plaintiff should, or should not, prevail in this case. That decision rests with you.

Your verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

As jurors, you must consult with one another and deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence with your fellow jurors. During your deliberations, do not hesitate to re-examine your own views or to change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or simply to return a verdict.

Remember at all times you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. ____

In considering the evidence in this case, you are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

You are to perform your duty without bias as to any party or person. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. That was the promise you made and the oath you took before being accepted by the parties as jurors and they have the right to expect nothing less.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in, and the law applicable to, this case.

INSTRUCTION NO. _____ [OPTIONAL]

At the beginning of trial, I instructed that you could take notes during the course of trial and cautioned that your note-taking should not interfere with your duty to listen and consider all the evidence. Now that you are about to begin your deliberations, I would like to comment on your use of any notes during the deliberations.

There is always a tendency to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory. Your notes are not evidence, and are by no means a complete outline of the proceedings or a list of the highlights of the trial. If you did not take notes, you should rely upon your own independent recollection or memory of what the evidence was, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror as to what the evidence was. Above all, your memory should be your greatest asset during your deliberations.

INSTRUCTION NO. _____

Statements, objections or arguments the lawyers make are not evidence. Lawyers point to those matters which are most significant or most helpful to their side of the case and to those matters which are most damaging to the opponent's case, calling your attention to certain facts or inferences that might otherwise escape your notice.

INSTRUCTION NO. _____

At times during the trial, I have ruled on the admission of certain testimony and exhibits. Those matters are questions of law for the court. Do not concern yourselves with or draw any inferences from those rulings.

I have not intended to and I do not express or suggest any opinion in these instructions, my rulings, actions or remarks about the resolution of any issue in this case.

You will now hear arguments of counsel. Their role is to offer interpretations of the evidence consistent with their respective causes. Please give them your thoughtful and respectful attention.

The preceding instructions are given to the jury prior to closing arguments. The following instructions are given to the jury following closing arguments, immediately prior to deliberations.

INSTRUCTION NO. _____

This is an important case. If you should fail to reach a decision, the case is left open and undecided. Like all cases, it must be decided sometime. There is no reason to believe that the case can be tried again any better or more exhaustively than it has been. There is no reason to believe that more evidence or clearer evidence would be produced on behalf of either side.

Also there is no reason to believe that the case would ever be submitted to people more intelligent or more impartial or more reasonable than you. Any future jury must be selected in the same manner that you were.

This does not mean that those favoring any particular position should surrender their honest convictions as to the weight or effect of any evidence solely because of the opinion of other jurors or because of the importance of arriving at a decision.

This does mean that you should give respectful consideration to each other's views and talk over any differences of opinion in a spirit of fairness and candor. If at all possible, you should resolve any differences and come to a common conclusion so that this case may be completed.

INSTRUCTION NO. _____

When you retire to the jury room, you will first select one of your members to preside over your deliberations, speak for the jury in court and sign the verdict upon which you agree.

In this case your verdict will be returned in the form of written answers to special written questions submitted by the court. Your answers will constitute your verdict. Your answers to the questions must be unanimous. Your verdict must be founded entirely upon the evidence admitted and the law as given in these instructions.

It is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

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

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. ____

During your deliberations, that is when all of you are together in the jury room, you are released from the admonition regarding discussion of the case.

The admonition regarding discussion remains in effect at any time when all of you are not in the jury room, or when you are away from the courthouse. The admonition regarding reading, listening to or watching news reports about the case, doing any sort of independent investigation or discussing the case with any third party, remains in effect at all times until such time as I release you from the admonition. During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. I cannot overemphasize the importance of this admonition.

INSTRUCTION NO. _____

If it becomes necessary during your deliberations to communicate with the court, please write out your message or question, have the presiding juror sign and date it, and give the note to the law clerk or bailiff stationed outside of the jury room. No member of the jury should ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. With regard to any message or question you might send, you should never state or specify your numerical division at the time. In other words, do not reveal how the group is voting, unless it is in response to a direct question from me about your division. Bear in mind also that you are never to reveal to any person how the jury stands—numerically or otherwise—on the question before you, until after you have reached an unanimous verdict.

You may now retire and conduct your deliberations in such manner as may be determined by your good judgment as reasonable people.

INSTRUCTION NO. _____

A final suggestion by the court—not technically an instruction upon the law—may assist your deliberations. The attitude of jurors at the outset of and during their deliberations is important. It is seldom productive for a juror, immediately upon entering the jury room, to make an emphatic expression of his or her opinion upon the case or to announce a determination to stand for a certain verdict. The reason is obvious: we are all human and it is difficult to recede from a position once definitely stated, even though later convinced it is unsound.

Jurors are selected for the purpose of doing justice. This presupposes and requires deliberation—counseling together in an effort to agree. Have in mind at all times, therefore, that you are a deliberative body, selected to function as judges of the facts in a controversy involving the substantial rights of the parties. You will make a definite contribution to efficient administration of justice when and if you arrive at a just and proper verdict under the evidence which has been adduced. No one can ask more and you will not be satisfied to do less.

Date

Julie A. Robinson

United States District Judge