

Clear and Convincing Evidence

In this case, PLF must prove [describe issue] [*For wrongful conviction cases, substitute*> DFT must prove his innocence¹] by what we call “clear and convincing evidence.” That means that the evidence must persuade you that PLF’s claim [DFT’s defense] is highly likely to be true. PLF [DFT] does not have to convince you that the claim/defense is certainly true, or even that it is almost certainly true, or that it is true beyond a reasonable doubt. But, s/he/it must do more than show that his/her/its facts are probably true. Clear and convincing evidence exists only if you believe with a high degree of probability that the claimed facts are true.

Even if you have been a juror before, you may never have used the “clear and convincing evidence” test. To avoid confusion, let me explain how this test differs from tests used in criminal cases and in other civil cases.

In criminal cases, the government must prove a criminal charge beyond a reasonable doubt. PLF [DFT] does not have to do that here. In this case, even if you still have some doubts, and even if those doubts are reasonable, you can decide in favor of PLF [DFT] on [describe issue] [innocence], but you can do so only if the evidence persuades you with a high degree of probability.

On the other hand, in the usual civil case, a PLF only needs to prove that a claim is probably true. Here, PLF [DFT] must do more. Here, the evidence must convince you with a high degree of probability that [describe issue] [s/he is innocent].

¹ The judge should use this term for wrongful conviction cases. G.L. c. 258D.