

MODEL CIVIL JURY PRECHARGE

< after jury has been sworn >

Jurors, you will be responsible for deciding this case. Please pay close attention to the evidence you will see and hear during this trial. When the evidence is complete, I will explain the legal rules that you must apply to decide this case. You will then meet together in private to consider the evidence, apply those rules, and work together to reach a verdict.

Before we start the trial itself, I will give you some initial instructions. I will describe what will happen during the trial. I will then explain my role as the judge, the lawyers' role, and your role as jurors. I will discuss some of the legal rules that apply in this case. And I will explain some important things that you must do, and other things you must not do, during this trial.

Outline of the Trial

When I finish with these initial instructions, the lawyers will make their opening statements. An opening statement is a summary of what the lawyer expects the evidence will show.

After the opening statements, you will hear testimony from various witnesses. The evidence may also include documents and other things. PLF will get to call witnesses first. Then DFT will have a chance to call additional witnesses. Both sides may question each witness.

After you see and hear all the evidence, each side will make a closing argument to summarize the evidence and to suggest conclusions you may reach based on the evidence and the law.

The lawyers' opening statements and closing arguments may help you make sense of the evidence you hear and see during the trial, but the openings and closings are not evidence.

At the end of the trial, I will instruct you in detail on the legal rules you must apply in deciding this case. You will then discuss the case in private and work together, as a jury, to agree on a verdict.

Trial Roles

(a) Role of the Judge

My job, as the judge in this case, is to make sure the case is tried fairly, efficiently, and according to the law.

I must make sure that you hear and see only evidence that is allowed under our "rules of evidence." Those rules determine what evidence the lawyers may and may not present to you. The purpose of these rules is to make sure that what you see and hear at this trial is relevant to the case and appropriate for you to consider.

If one of the lawyers says "Objection," that means the lawyer thinks that a particular answer or exhibit violates the rules of evidence.

If I am not persuaded by the objection, I will say "Overruled." That means that the witness may answer the question or the other party may show you some exhibit, and you may consider the answer or exhibit as evidence.

If I instead say "Sustained," that means the witness may not answer the question or the party may not show you the exhibit, because under our rules you may not consider the answer or exhibit. If I sustain an objection, you may not talk about or try to guess what the evidence might have been.

There may be times when I instruct you to "Disregard" something or allow a motion to "Strike" something that you have already heard or seen. If that happens, that means that the testimony or exhibit I tell you to disregard or that I strike is not evidence, and you may not consider it.

As the judge in this case, I must also explain the law to you. At the end of the trial, I will give you detailed instructions about the law you must follow to decide this case. I will give you those instructions orally, out loud, and

will also give you a written version to read while you work together to decide this case.

(b) Role of Counsel

The lawyers have their own important role in this trial. Their job is to bring to your attention the evidence and arguments that best support their client's position. They may also object to evidence offered by the other side, as I just discussed.

Please do not hold it against the lawyers if they make or oppose an objection. The lawyers have to let me know when there is a potential issue about whether you may see, hear, or consider something.

(c) Role of the Jury

Jurors, you have the most important role in this trial. After you have heard and seen all the evidence, you will deliberate with each other, meaning you will discuss the evidence, decide who and what to believe, and then answer specific questions about the claims or issues in this case.

You must decide this case based only on the evidence you see and hear during this trial and on my instructions on the law. You may not decide this case based on suspicion, guesswork, or speculation.

The evidence consists of the testimony of witnesses, as you recall it, and any documents or other things that become exhibits. Other things you will see and hear during the trial are not evidence. For example, the attorneys' opening statements and closing arguments are not evidence. And the questions the attorneys ask are not evidence either. A witness's answers are evidence, but a lawyer's questions are not.

A very important part of your job as jurors is to decide who and what to believe. Whether testimony is contradicted or not, it is up to you to decide whether you believe it. You may believe everything a witness says, part of it, or none of it. The same is true of each exhibit; you must decide whether you believe what it shows or not.

In deciding who or what to believe, you should ask and consider some important questions.

First, was the witness honestly trying to tell the truth, or deliberately lying? Though witnesses take an oath to tell the truth, sometimes a witness says things that the witness knows are false. If you conclude that a witness lied to you about something, then of course you should not believe that part of the testimony.

Second, was the witness accurate, or did the witness get something wrong without meaning to do so? Sometimes a witness may recall seeing or hearing something, but still be mistaken. If you conclude that a witness tried to be truthful but that some part of the person's testimony was not accurate, then you should not consider the inaccurate testimony.

I have no opinion about who or what you should believe or about how you should decide this case. So please do not take anything I say or do during the trial as suggesting what to believe or how to decide this case.

Be Fair¹

Our system of justice depends on judges like me and jurors like you being able and willing to make careful and fair decisions. All people deserve fair and equal treatment in our system of justice, regardless of their race, national origin, religion, age, ability, gender, sexual orientation, education, income level, or any other personal characteristic. You have agreed to be fair. I am sure that you want to be fair, but that is not always easy.

One difficulty comes from our own built-in expectations and assumptions. They exist even if we are not aware of them and even if we believe we do not have them. Some of you may have heard this called "implicit" bias and that is what I'm talking about. We judges have the same problem as everyone else, so let me share a few strategies that we have found useful.

¹ See Supreme Judicial Court Model Jury Instructions on Implicit Bias.

First, slow down; do not rush to a decision. Hasty decisions are more likely to reflect stereotypes or hidden biases.

Second, keep an open mind. Avoid drawing conclusions until the end of the case, when you and your fellow jurors deliberate. Remember that when you deliberate, you will have all the evidence and all the time you need to make a careful decision. So, there truly is no need to start making your mind up before then.

Third, you should listen closely to all the witnesses. That is the best way to ensure that you decide this case based on the evidence and the law, instead of upon unsupported assumptions.

Fourth, as you listen to testimony about the people involved in this case, consider them as individuals, rather than as members of a particular group.

Finally, I might ask myself: Would I view the evidence differently if the people were from different groups, such as different racial, ethnic, or gender identity groups?

At the end of the case, I will remind you of these strategies and ask you to focus on the evidence instead of any unsupported assumptions you may have. All we ask is that you, individually and as a group, do your best to resolve this case based upon the evidence and law, without sympathy, bias, or prejudice, to the best of your ability as human beings.

Legal Principles

(a) Standard of Proof

When a person [company/business] files a civil case, s/he/it has the burden of proof. That means that she/he/it must present enough evidence to prove his/her/its claims. What is enough evidence?

I will explain at the end of the trial each of the specific things that PLF must prove. PLF must show that each of these things is **more likely true than not**

true. The lawyers or I may use the phrase “more probable than not,” and that means the same thing as “more likely true than not true.”²

Now, from time to time during the trial, I may refer to proof or to proving something. By this, I mean showing that PLF’s version of the facts is more likely true than not true, based upon evidence and any reasonable conclusions from the evidence.

If you find that the evidence supporting DFT’s version of the facts is more persuasive, or that the evidence on the two sides is equally persuasive—50/50—then you must decide in favor of DFT.

<If D has the burden of proof on any issue> There are some issues on which DFT has the burden of proof, and I’ll explain those later. But where DFT has the burden of proof on a particular issue, DFT similarly must show that something is more likely true than not true.

(b) Elements of the Claims

<Include where appropriate. For example, in a medical malpractice case the judge should explain that the jury will have to decide certain issues based only on any credible expert testimony.>

During the Trial

(a) Note Taking by Jurors

At the end of the trial, when you meet in private to deliberate, you will have all of the exhibits with you. We cannot provide you with transcripts of any

² This model instruction does not use the phrase “preponderance of the evidence,” because such legal language often confuses jurors. Some judges may prefer to use that traditional phrase, either on the court’s own initiative, or in response to a party’s request or objection. If a party starts using that phrase in front of the jury, a judge may find it necessary to explain the meaning of “preponderance of the evidence,” instead of leaving the jury to wonder what it means. The judge may want to explain: “The parties may refer to proof by a ‘preponderance of the evidence,’ but that legal phrase simply means the same thing I have told you, namely proof that something is more likely true than not true.” See, e.g., *Sargent v. Mass. Accident Co.*, 307 Mass. 246, 250 (1940).

witness's testimony, however. So you will have to rely on your memory of what each witness tells you.

You may take notes during the trial, if you wish. Our court officers will give you a notebook or notepad and a pen or pencil. Some jurors find it helpful to take notes while listening to the evidence; it may help them focus on the testimony and remember what the witnesses said. Some of you may not want to take any notes, which is fine. Whether you take notes is entirely up to you.

Whether you take notes or not, you need to pay close attention to each witness and what they say. In deciding who and what to believe, you should watch and listen to each witness carefully. Think about whether the witness seems believable, whether the witness's memory seems reliable, and anything else about how the witness testifies and what the witness says that helps you decide whether and how much to believe the witness.

When you deliberate at the end of the trial, remember that it is your memory that counts. Your notes may help jog your memory about what a witness said, but they are not a substitute for what you or other jurors remember about the testimony. Do not assume that because you or another juror wrote something down that it is more accurate than your or another juror's memory of what the witness actually said.

Your notes are confidential. No one, including me, will read them. The court officers will collect your notebooks and pens at the end of each trial day and keep them safe until they are returned to you the next morning. When the trial is over, the court officers will destroy the notes.

(b) Questions by Jurors < *only if applicable; otherwise delete* >

I will give you a chance to propose a few follow-up questions to witnesses who testify during the trial. This is how that will work.

When a witness has finished answering all the questions asked by the lawyers, I will give you a moment to write down any other questions that

you want to ask the witness. You may use a blank piece of paper from your notebook to write out your question. Please put your seat number on the paper. Our court officer will collect your questions and hand them to me.

Then I will review your questions with the lawyers. Sometimes a juror proposes a question that we cannot ask the witness to answer. That is because the same rules of evidence that apply to the lawyers' questions also apply to your questions. If I do not ask the witness to answer your question, or if I ask it in a different way, please do not be offended. I am just following the rules of evidence.

If I ask the witness to answer any of your questions, I will then give the lawyers a chance to ask follow-up questions on that subject.

(c) Juror Comfort

If you have any trouble hearing or seeing during the trial, please raise your hand or let a court officer know, and we will make any necessary adjustments. We generally take a morning recess at about 11:00 A.M., but if you need a break at any other time, raise your hand or let a court officer know and we will take a break.

(d) Communicating with the Judge

If you need to communicate with me during the trial, please let a court officer know or give the court officer a note to bring to me.

(e) Cautions to Jurors

Finally, there are a few things that you need to do, and other things that you must not do, during this trial.

- Keep an open mind throughout the trial. You must not decide the case until after you have heard and seen all of the evidence and listened to my final instructions at the end of the trial.
- Do not discuss the evidence or this case with other jurors until you start your formal deliberations at the end of the trial. This is

because it can be hard to keep an open mind if two or more of you start discussing the case in the middle of the trial.

- Do not talk to or communicate with anyone else about this case until after you reach and deliver your verdict, and I tell you that you have completed your jury service. This is because you have to decide this case based solely on the evidence presented in this court room, and must not consider other information or opinions.
- When I say that you may not communicate with anyone about the case before you have reached a verdict, that means you may not do so in any way, including through a cell phone or other device. So until you reach a verdict, you may not text, chat, email, tweet, blog, or post anything about the case, using social media, other electronic media, or anything else. You have to wait until the trial is over and you have reached a verdict before you say anything about this case to others.
- You may not talk to the lawyers, parties, or witnesses during the trial. If the attorneys or other trial participants see you and turn away, they are not being rude; they are simply following the rule that they may not speak with you during the trial.
- During this trial, please do not read, watch, or listen to anything about this case that may appear in any news media, social media, or other source. If there is any press or other coverage about this case, you must ignore it.
- Do not do any research or investigation about the case, online or in any other way, or have anyone else do so for you. Do not visit any place mentioned during the trial. Do not Google or search for the names of anyone participating in this case or for anything else about it. Once again, this is because you must decide this case based only on the evidence and the law presented to you in the courtroom.

The rules that I just explained are very important. I will keep reminding you of them and ask if you have been able to comply with them. If anything happens that seems to be inconsistent with these rules, please do not

discuss it with other jurors; instead, let a court officer know and I will speak with you privately.

Conclusion

I know that you will try this case according to the oath that you have taken as jurors. When you took that oath, you promised that you would “well and truly try the issue between the plaintiff and the defendant according to the evidence.” If you follow that oath, approach this case with an open mind, and make your decisions fairly and without prejudice or bias or sympathy for anyone, then you will arrive at a fair and just verdict.

It is now time for the opening statements. You will hear first from the plaintiff’s lawyer.