

**Proposed Instruction No. 1 (Plaintiff)**

Members of the jury, I will now instruct you on the law that you must follow in deciding this case. I will also give [each of] you a copy of these instructions to use in the jury room.

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you saw and heard here in court. This is your job, not my job or anyone else's job.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, gender identity, or sex.

You must not take anything I said or did during the trial as indicating that I have an opinion about the evidence or about what I think your verdict should be.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.01**

**Plaintiffs**

**\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.**

**Proposed Instruction No. 1 (Defendant)**

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, or fear to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.01**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions.

**Proposed Joint Instruction No. 2 (Agreed)**

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.02**

**Agreed**

**Proposed Joint Instruction No. 3 (Agreed)**

In this case, some of the defendants are government entities. All parties are equal before the law. A government entity is entitled to the same fair consideration that you would give any individual person.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.03**

**Agreed**

**Proposed Instruction No. 4 (Plaintiff)**

You must make your decision based only on the evidence that you saw and heard here in court. Do not consider anything you may have seen or heard outside of court, including anything from the newspaper, television, radio, the Internet, social media, text messages, emails, or any other source.

The evidence includes only what the witnesses said when they were testifying under oath[,] [[and] the exhibits that I allowed into evidence[,] [and] the stipulations that the lawyers agreed to]. [A stipulation is an agreement that [certain facts are true] [or] [that a witness would have given certain testimony.]]

[In addition, [you may recall that] I [have] accepted [describe facts] as proved. You must accept those facts as true.]

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer said is different from the evidence as you remember it, the evidence is what counts. The lawyers' questions and objections likewise are not evidence.

Lawyers have a duty to object if they think a question is improper. If I sustained objections to questions the lawyers asked, you must not speculate on what the answers might have been.

If, during the trial, I struck testimony or exhibits from the record, or told you to disregard something, you must not consider it.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.04**

**Plaintiff**

\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.

**Proposed Instruction No. 4 (Defendant)**

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.04**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions that combine this into Proposed 1.04.

**Proposed Instruction No. 5 (Defendant)**

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.06**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions that combine this into another instruction.

**Proposed Instruction No. 6 (Plaintiff)**

If you have taken notes during the trial, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. Each of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.07**

**Plaintiff**

\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.



**Proposed Instruction No. 6 (Defendant)**

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.07**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions that combine this into 1.07.

**Proposed Joint Instruction No. 7 (Agreed)**

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.08**

**Agreed**

**Proposed Instruction No. 8 (Plaintiff)**

You will recall that during this trial I instructed you that I admitted [*describe evidence if practicable*] for a limited purpose. You must consider this evidence only for the limited purpose of [*describe purpose*].

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.09**

**Plaintiff**

\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.

**Proposed Instruction No. 8 (Defendant)**

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.09**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions.

**Proposed Instruction No. 9 (Plaintiff)**

Give the evidence whatever weight you decide it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own everyday experience.

People sometimes look at one fact and conclude from it that another fact exists. This is called an inference. You are allowed to make reasonable inferences, so long as they are based on the evidence.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.11**

**Plaintiff**

**\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.**

**Proposed Instruction No. 9 (Defendant)**

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.11**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions.

**Proposed Instruction No. 10 (Plaintiff)**

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is evidence that does not require an inference. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.12**

**Plaintiff**

\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.

**Proposed Instruction No. 10 (Defendant)**

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.12**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions.



**Proposed Instruction No. 11 (Plaintiff)**

Part of your job as jurors is to decide how believable each witness was, and how weight to give each witness's testimony. You may accept all of what a witness says, part of it, or none of it.

Some factors you may consider include:

- the witness's ability and opportunity to see, hear, or know the things the witness testified about;
- the witness's memory;
- the witness's demeanor;
- whether the witness had any bias, prejudice, or other reason to lie or slant the testimony;
- the truthfulness, accuracy, and reasonableness of the witness's testimony in light of the other evidence presented; and
- inconsistent [or consistent] statements or conduct by the witness.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.13**

**Plaintiff**

\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.

**Proposed Instruction No. 11 (Defendant)**

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.13**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions.

**Proposed Instruction No. 12 (Plaintiff)**

You have heard evidence that before the trial, [a] witness[es] made [a] statement[s] that may be inconsistent with [his; her; their] testimony here in court.

[If an earlier statement was made under oath, or by *[party name]*, then you can consider the earlier statement as evidence of the truth of whatever the witness said in the earlier statement, and to help you decide how believable the witness's testimony was here in court.]

[If an earlier statement was not made under oath, then you may consider an inconsistent statement made before the trial only to help you decide how believable the witness's testimony was here in court.]

[If you decide that, before the trial, a witness acted in a manner that is inconsistent with the witness's testimony here in court, you may consider the earlier conduct only to help you decide how believable that witness's testimony was here in court.]

[In considering a prior inconsistent statement [or conduct], you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.]

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.14**

**Plaintiff**

\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.

**Proposed Instruction No. 12 (Defendant)**

You may consider statements given by a party or witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statements or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.14**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions.

**Proposed Joint Instruction No. 13 (Agreed)**

It is proper for a lawyer to meet with any witness in preparation for trial.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.16**

**Agreed**

[Only needed if subject of trial testimony]

**Proposed Joint Instruction No. 14 (Agreed)**

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.17**

**Agreed**

**Proposed Instruction No. 15 (Plaintiff)**

A party need not call as a witness every person who might have knowledge of the facts related to this trial. Similarly, a party need not present as exhibits all papers and things mentioned during this trial.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.18**

**Plaintiff**

**\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.**

**Proposed Instruction No. 15 (Defendant)**

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.18**

**Defendants**

\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions.



**Proposed Instruction No. 16 (Plaintiff)**

Certain [summaries; charts] were shown to you to help explain other evidence that was admitted. [*Specifically identify the demonstrative exhibit, if appropriate.*] These [summaries/charts] are not themselves evidence or proof of any facts[, so you will not have these particular [summaries; charts] during your deliberations]. [If they do not correctly reflect the facts shown by the evidence, you should disregard the [summaries; charts] and determine the facts from the underlying evidence.]

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.24**

**Plaintiff**

**\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.**

**Proposed Instruction No. 16 (Defendant)**

Certain demonstrative exhibits and/or PowerPoint presentations have been shown to you. Those items are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.24**

**Defendants**

**\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions**

**Proposed Instruction No. 17 (Defendant)**

You must give separate consideration to each claim and each party in this case. Although there are two defendants, it does not follow that if one is liable, any of the others is also liable.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.25**

**Defendants**

\*\*Plaintiff objects because there is only one claim and either all defendants are liable or none are.

**Proposed Joint Instruction No. 18 (Agreed)**

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.27**

**Agreed**

**Proposed Instruction No. 19 (Defendant)**

If you decide for the Defendants on the question of liability, then you should not consider the question of damages.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.31**

**Defendants**

\*\*Plaintiff objects because this will be included in issue instructions.

**Proposed Joint Instruction No. 20 (Plaintiff)**

Once you are all in the jury room, the first thing you should do is choose a [foreperson; presiding juror]. The [foreperson; presiding juror] should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. You may discuss the case only when all jurors are present.

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as [*list current technology or services likely to be used, e.g., cell phone, computer, text messaging, instant messaging, the Internet, websites, social media, or any other method of communication*].

If you need to communicate with me while you are deliberating, send a note through the [Marshal; court security officer]. The note should be signed by the [foreperson; presiding juror], or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. [Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.]

If you send me a message, do not include the breakdown of any votes you may have conducted

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.33**

**Plaintiff**

**\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.**

**Proposed Instruction No. 20 (Defendants)**

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court. Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in, date, the appropriate form, and all of you will sign it.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.32**

**Defendants**

**\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions**

**Proposed Joint Instruction No. 21 (Agreed)**

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally. If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.33**

**Agreed**



**Proposed Instruction No. 22 (Plaintiff)**

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence. You should deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Proposed Revised Seventh Circuit Pattern Jury Instructions (civil) 1.35**

**Plaintiff**

\*\*Defendants object to this instruction because the Seventh Circuit has not yet adopted this instruction and the comment period remains open until January 24, 2024.

**Proposed Instruction No. 22 (Defendant)**

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 1.34**

**Defendants**

**\*\*Plaintiff objects to this instruction because the Seventh Circuit has proposed revised instructions**

**Proposed Joint Instruction No. 23 (Agreed)**

We are about to take our first break during the trial, and I want to remind you of the instruction I gave you earlier. Until the trial is over, you are not to discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. If anyone approaches you and tries to talk to you about the case, do not tell your fellow jurors but advise me about it immediately. Do not read or listen to any news reports of the trial. Finally, remember to keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

I may not repeat these things to you before every break that we take, but keep them in mind throughout the trial.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 2.01**

**Agreed**

**Proposed Instruction No. 24 (Agreed)**

If you find that Plaintiff has proved his claims against Defendants, then you must determine what amount of damages, if any, Plaintiff is entitled to recover. Plaintiff must prove his damages by a preponderance of the evidence. If you find that Plaintiff has failed to prove his claim, then you will not consider the question of damages.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 3.09**

**Agreed**

**Plaintiff's Proposed Issue Instruction 1**

Plaintiff Salvatore Zicarelli claims that Defendant Sheriff of Cook County violated the “Family and Medical Leave Act,” which is often referred to by its initials, “FMLA.” This law entitles an eligible employee to take up to 12 weeks of unpaid leave during any 12-month period because of employee’s serious health condition that makes him unable to perform the functions of his position.

The FMLA gives the employee the right following FMLA leave to return to the position he held when the leave began. The statute protects an employee’s attempt to exercise FMLA rights, meaning that it is illegal to discourage an employee from using FMLA leave.

**Seventh Circuit Pattern Jury Instruction 10.1, modified to fit the law that applies to this case, as set out in *Zicarelli v. Dart*, 35 F.4th 1079 (7th Cir. 2022).**

**Plaintiff**

\*\*Defendants object to this instruction because it does not accurately reflect the holding in *Zicarelli v. Dart*, 35 F.4th 1079 (7th Cir. 2022).

## Plaintiff's Proposed Issue Instruction 2

The following facts are not in dispute:

1. The plaintiff had several serious health conditions, including PTSD and anxiety, requiring time off from work due to anxiety and flashbacks, lack of concentration.
2. Plaintiff applied for FMLA leave in 2014 and 2015 for the next year.
3. The Sheriff granted plaintiff's request for FMLA leave each year on an "intermittent basis" of 7 episodes a month up to 1 day per episode."
4. On September 15, 2016, plaintiff's treating psychiatrist, Dr. Danish Hangora, recommended that plaintiff take 8 weeks off and attend a partial hospitalization to secure treatment for psychological programs.
5. Thereafter, plaintiff spoke with the Sheriff's FMLA manager, Wylola Shinnawi, to discuss taking more FMLA leave,
6. After speaking with Shinnawi, Plaintiff resigned from his employment with the Sheriff on September 20, 2016.

Plaintiff claims that the Sheriff's FMLA manager interfered with his right to exercise FMLA leave, and that this interference caused him to resign. The Sheriff denies each contention.

To succeed on this claim plaintiff must prove that the Sheriff's FMLA manager interfered with his right to exercise FMLA leave. If you find for the defendant Sheriff on this issue, you should return a verdict for the defendant.

If you find in favor of plaintiff on the issue of interference, then you should decide whether this interference caused plaintiff to resign. If you find for the defendant Sheriff on the issue of interference, you should return a verdict for the defendant.

If you have found for the plaintiff on both issues, you should then turn to the amount of lost wages and benefits, if any, to which plaintiff is entitled.

The FMLA authorizes damages for wages, salary, benefits, or other compensation lost. The statute does not allow damages for emotional distress.

Plaintiff has presented evidence about the wages and benefits he would have received had he not resigned. Defendant has argued that this amount should be reduced because plaintiff did not mitigate his damages. Defendant has the burden of proof on this issue.

If you find that Defendant has proven a failure to mitigate, you should reduce any amount you might award Plaintiff for lost wages or benefits by the amount you find he reasonably would have earned during the period for which you are awarding lost wages or benefits.

If you find that plaintiff has not proved that he is entitled to compensation for lost wages or benefits, then you should return a verdict in favor of plaintiff and against defendant in the amount of one dollar.

[authority on next page]

*Zicarelli v. Dart*, 35 F.4th 1079 (7th Cir. 2022), Seventh Circuit Pattern Jury Instruction 10.1. *Trahanas v. N.W. U.*, 64 F.4th 842, 858 (7th Cir. 2023) (no emotional distress damages); *Simon v. Coop. Educ. Serv. Agency #5*, 46 F.4th 602, 611 n.3 (7th Cir. 2022) (availability of nominal damages is an open question)

**Plaintiff**

\*\*Defendants object to this instruction because it does not accurately reflect the holding in *Zicarelli v. Dart*, 35 F.4th 1079 (7th Cir. 2022). Several of the bases for Defendants' objections are addressed in Defendants' motions in limine. The final sentence of the instruction does not accurately reflect the holding of *Simon v. Coop. Educ. Serv. Agency #5*, 46 F.4th 602, 611 n.3 (7th Cir. 2022) (plaintiff sought only injunctive and declaratory relief not a damage award at trial and therefore attorney fees were allowable).

Plaintiff's Proposed Form of Verdict

**VERDICT FORM**

Check either "for plaintiff" or "for defendant" and, if "for plaintiff" fill in the amount of damages:

We, the jury, find:

\_\_\_\_\_ For plaintiff and award lost wages and benefits in the amount of \$\_\_\_\_\_.

\_\_\_\_\_ For defendant.

Each member of the jury must sign on one of the lines below. The foreperson also should write today's date on the appropriate line. After the signatures and date have been added, please return the entire Verdict Form to the court security officer.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

Date: \_\_\_\_\_

**Plaintiff**

\*\*Defendants object to the verdict form based on issues raised in Defendants' motions in limine.



**Defendants' Proposed Instruction No. 1**

Plaintiff claims that Defendants violated the "Family and Medical Leave Act," which is often referred to by its initials, "FMLA." This law entitles an eligible employee to take up to 12 weeks of unpaid leave during any 12-month period because of employee's serious health condition that makes him unable to perform the functions of his position.

The FMLA gives the employee the right following FMLA leave to return to the position he held when the leave began.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 10.1**

**Defendants**

\*\*Plaintiff objects because the issues have been narrowed by the decision of the Seventh Circuit.

**Defendants' Proposed Instruction No. 2**

To succeed on this claim, Plaintiff must prove all of the following by a preponderance of the evidence:

First: Plaintiff had post-traumatic stress disorder.

Second: the condition was a serious health condition. I will define "serious health condition" for you in a moment.

Third: Defendants had appropriate notice of Plaintiff's need for leave. I will define "appropriate notice" for you in a moment.

Fourth: Defendants interfered with his right to take FMLA leave by discouraging him from taking leave. I will define "discourage" for you in a moment.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 10.2 (as modified)**

**Defendants**

\*\*Plaintiff objects because the issues have been narrowed by the decision of the Seventh Circuit to the single question of whether the Sheriff's Office violated § 2615(a)(1) when Shinnawi allegedly discouraged him from taking leave and as to whether these actions prejudiced him.

**Defendants' Proposed Instruction No. 3**

The phrase “serious health condition” means a mental condition that makes him unable to perform the functions of his position.

Plaintiff must prove he had a serious health condition, otherwise you must find Defendants not liable.

**Source: 7th Cir. Pattern Jury Instruction 10.6**

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 10.6 (modified)**

**Defendants**

\*\*Plaintiff objects because the issues have been narrowed by the decision of the Seventh Circuit to the single question of whether the Sheriff’s Office violated § 2615(a)(1) when Shinnawi allegedly discouraged him from taking leave and as to whether these actions prejudiced him.

**Defendants' Proposed Instruction No. 4**

Plaintiff must give Defendant at least 30 days notice before FMLA leave was to begin as appropriate notice. If that was not possible, Plaintiff must have given notice as soon as both possible and practical, taking into account all of the facts and circumstances. Plaintiff must have given at least verbal notice sufficient to make Defendant aware that he needed FMLA leave. Plaintiff did not need to mention the FMLA or use any specific words if he gave Defendant enough information that Defendant knew, or should have known, that Plaintiff needed FMLA leave.

If an employer has customary notice procedures regarding requests for leave, the employer may require the employee to comply with its procedures.

Plaintiff must prove he gave appropriate notice, otherwise you must find Defendants not liable.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 10.8 (as modified based on comment c)**

**Defendants**

\*\*Plaintiff objects because the issues have been narrowed by the decision of the Seventh Circuit to the single question of whether the Sheriff's Office violated § 2615(a)(1) when Shinnawi allegedly discouraged him from taking leave and as to whether these actions prejudiced him. In addition, this is an instruction for the denial of FMLA leave, rather than, as here, whether the Sheriff's Office discouraged plaintiff from exercising his FMLA rights.

**Defendants' Proposed Instruction No. 5**

In deciding whether plaintiff proved the fourth part of [defendants' proposed instruction no. 2], the critical question is whether the employer's actions would discourage a reasonable employee from taking FMLA leave and cause him to be prejudiced. This test uses an objective standard, based on how a reasonable employee might react, not the plaintiff's subjective feelings. An employee who is particularly sensitive to an employer's slights receives no greater protection than one who is able to shrug them off.

To find the Sheriff's Office liable for FMLA interference, Plaintiff must show that he was discouraged from taking FMLA leave and was prejudiced by his conversation with Shinnawi. If you do not find that Plaintiff proved he was discouraged and prejudiced, you must find for the Sheriff's Office and against Plaintiff.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

*Preddie v. Bartholomew Consolidated School Corp.*, 799 F.3d 806, 818 n.35 (7th Cir. 2015); *Freelain v. Village of Oak Park*, 888 F.3d 895, 902 (7th Cir. 2018); *Ziccarelli v. Dart*, 35 F.4th 1079, 1089 (7th Cir. 2022)

**Defendants**

\*\*Plaintiff objects: This case is judged by a subjective standard. The Seventh Circuit rejected "how a reasonable employee might react" in its adverse ruling on plaintiff's constructive discharge claim.

**Defendants' Proposed Instruction No. 6**

To find Wylola Shinnawi individually liable for FMLA interference as described in [defendants' proposed instruction no. 2], Plaintiff must prove that Shinnawi had the ability to discipline him or had decision making authority over his employment. If you find that Shinnawi did not have the ability to discipline Plaintiff or have decision making authority over his employment, you must find for Shinnawi and against Plaintiff.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

*Katz v. Northwest Orthopaedics & Sports Med. Ltd.*, No. 18 CV 4515, 2020 U.S. Dist. LEXIS 73225 \* 24-27, 2020 WL 1986965 \* 24-27 (N.D. Ill. April 27, 2020); *Alessia v. Rhee*, No. No. 19 C 7576, 2021 U.S. Dist. LEXIS 136276 \*5-8; 2021 WL 3043423\*5-8 (N.D. Ill. March 17, 2021); *Ziccarelli v. Dart*, 35 F.4th 1079, 1092 (7th Cir. 2022)

**Defendants**

**\*\*Plaintiff is withdrawing Shinnawi as a defendant and therefore instruction is not needed.**

**Defendants' Proposed Instruction No. 7**

[only required if the court denies Defendants' damages motion in limine]

Defendants argue that Plaintiff's claim for lost wages or benefits should be reduced by their entirety. Defendants must prove by a preponderance of the evidence that (1) Plaintiff did not take reasonable actions to reduce his damages, and (2) Plaintiff reasonably might have found comparable employment if he had taken such action. If you find that Defendants have proven both those things, you should reduce any amount you might award Plaintiff for lost wages or benefits by the amount he reasonably would have earned during the period for which you are awarding lost wages or benefits.

GIVEN:\_\_\_\_\_

REFUSED:\_\_\_\_\_

GIVEN AS MODIFIED:\_\_\_\_\_

**Seventh Circuit Pattern Jury Instructions (civil) 10.10**

**Plaintiff does not object to this instruction, although it is included in plaintiff's issue instruction and should only be given once.**

**Defendants**

**DEFENDANTS' PROPOSED SPECIAL VERDICT FORM**

**Question 1:**

Did Plaintiff have post-traumatic stress disorder?

☐ Yes      ☐ No

(If you answered "Yes," answer Question 2; otherwise, sign, and return this verdict form).

**Question 2:**

Was the condition a serious health condition?

☐ Yes      ☐ No

(If you answered "Yes," answer Question 3; otherwise, sign, and return this verdict form).

**Question 3:**

Did Plaintiff provide appropriate notice of his need for leave?

☐ Yes      ☐ No

(If you answered "Yes," answer Question 4; otherwise, sign, and return this verdict form).

**Question 4:**

Did Plaintiff comply with the Sheriff's procedures to provide appropriate notice of his need for leave?

☐ Yes      ☐ No

(If you answered "Yes," answer Question 5; otherwise, sign, and return this verdict form).

**Question 5:**

Did Wylola Shinnawi interfere with Plaintiff's right to take FMLA leave by discouraging him from taking leave?

☐ Yes      ☐ No

(If you answered "Yes," answer Question 6; otherwise, sign, and return this verdict form).



**Question 6:**

Did Plaintiff suffer any harm based on his conversation with Wylola Shinnawi?

☐ Yes

☐ No

(If you answered “Yes,” answer Question 7; otherwise, sign, and return this verdict form).

**Question 7:**

Did Plaintiff take reasonable actions to reduce his damages?

☐ Yes

☐ No

(If you answered “Yes,” answer Question 8; otherwise, sign, and return this verdict form).

**Question 8:**

Could Plaintiff reasonably have found comparable employment if he had taken such action?

☐ Yes

☐ No

(If you answered “Yes,” answer Question 9; otherwise, sign, and return this verdict form).

**Question 9:**

Was Plaintiff’s decision to retire reasonable?

☐ Yes

☐ No

(If you answered “Yes,” answer Question 10; otherwise, sign, and return this verdict form).

**Question 10:**

Has Plaintiff suffered a net loss of wages and benefits as a result of his conversation with Wylola Shinnawi?

☐ Yes

☐ No

(If you answered “Yes,” answer Question 11; otherwise, sign, and return this verdict form).

**Question 11:**

Did Wylola Shinnawi act in good faith when talking to Plaintiff in September 2016?

☐ Yes

☐ No

(If you answered "No," answer Question 12; otherwise, sign, and return this verdict form).

**Question 12:**

Did Wylola Shinnawi have the ability to discipline Plaintiff or have decision making authority over his employment?

☐ Yes

☐ No

(If you answered "Yes," answer Question 13; otherwise, sign, and return this verdict form).

**Question 13:**

What was the amount of damages that Plaintiff lost up to the time of trial?

ANSWER: \$

You have now reached the end of the Verdict Form and should review it to ensure it accurately reflects your unanimous determinations. The Presiding Juror should then sign and date the Verdict Form in the spaces below. Once this is done, notify the Court Security Officer that you have reached a verdict. The Presiding Juror should keep the Verdict Form and bring it when the jury is brought back into the courtroom.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Presiding Juror

**\*\*Plaintiff objects to this form of verdict. It includes special interrogatories that are not material to this case and refers to Shinnawi, who is being dropped as a defendant.**