

**JUDICIAL COUNCIL  
OF  
THE UNITED STATES ELEVENTH JUDICIAL CIRCUIT**

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On 29 May 2013, the Judicial Council approved the Eleventh Circuit Pattern Jury Instructions, Civil Cases (2013 revision). Since that date, the Council has approved revisions on 19 July 2017, 2 January 2018, and 24 January 2019, which are listed at the bottom of this memorandum.

On 10 December 2019, the Council also approved the following revised instruction for the Pattern Jury Instructions, Civil Cases:

**PRELIMINARY INSTRUCTIONS**

**1.1 General Preliminary Instruction**

All other instructions in the 2013 Pattern Jury Instructions for Civil Cases and previous revisions remain in effect, including the following revisions:

- On 19 July 2017, the Judicial Council approved, and announced in a memorandum on 28 August 2017, revisions to instructions 9.1, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.14, 9.15, 9.16, 9.18, 9.19, 9.20, 9.21, 9.22, 9.23, 9.24, 9.25, 9.26, 9.27, 9.28, 9.29, 9.30, 9.31, 9.32, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, as well as new instructions 9.33, 11.1, 11.2, 11.3, 11.4, and 11.5.
- On 2 January 2018, the Council approved, and announced in a memorandum on 9 January 2018, revisions to instructions 5.2, 5.3, 5.6, 5.8, 5.9, 5.10, 5.11, 5.12, as well as new instructions 5.1, 5.4, 5.5, 5.7, and 5.13.

- On 24 January 2019, the Council approved, and announced in a memorandum on 1 February 2019, revisions to instructions 4.1, 4.2, 4.6, and 4.7.

The May 2013 resolution of the Judicial Council of the Eleventh Circuit applies limitations and conditions upon the use and approval of the 2013 pattern jury instructions. Those limitations and conditions also apply to all of the instructions listed above.

The Pattern Jury Instruction Builder found on the public website for the Eleventh Circuit Court of Appeals at <http://pji.ca11.uscourts.gov> has been updated to reflect these changes.

FOR THE JUDICIAL COUNCIL:



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James P. Gerstenlauer  
Secretary to the Judicial Council

## **1.1 General Preliminary Instruction**

Members of the Jury:

Now that you've been sworn, I need to explain some basic principles about a civil trial and your duty as jurors. These are preliminary instructions. I'll give you more detailed instructions at the end of the trial.

The jury's duty:

It's your duty to listen to the evidence, decide what happened, and apply the law to the facts. It's my job to provide you with the law you must apply – and you must follow the law even if you disagree with it.

What is evidence:

You must decide the case on only the evidence presented in the courtroom. Evidence comes in many forms. It can be testimony about what someone saw, heard, or smelled. It can be an exhibit or a photograph. It can be someone's opinion.

Some evidence may prove a fact indirectly. Let's say a witness saw wet grass outside and people walking into the courthouse carrying wet umbrellas. This may be indirect evidence that it rained, even though the witness didn't personally see it rain. Indirect evidence like this is also called "circumstantial evidence" – simply a chain of circumstances that likely proves a fact.

As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Your job is to give each piece of evidence whatever weight you think it deserves.

What is not evidence:

During the trial, you'll hear certain things that are not evidence and you must not consider them.

First, the lawyers' statements and arguments aren't evidence. In their opening statements and closing arguments, the lawyers will discuss the case. Their remarks may help you follow each side's arguments and presentation of evidence. But the remarks themselves aren't evidence and shouldn't play a role in your deliberations.

Second, the lawyers' questions and objections aren't evidence. Only the witnesses' answers are evidence. Don't decide that something is true just because a lawyer's question suggests that it is. For example, a lawyer may ask a witness, "You saw Mr. Jones hit his sister, didn't you?" That question is not evidence of what the witness saw or what Mr. Jones did – unless the witness agrees with it.

There are rules of evidence that control what the court can receive into evidence. When a lawyer asks a witness a question or presents an exhibit, the opposing lawyer may object if [he/she] thinks the rules of evidence don't permit it. If I overrule the objection, then the witness may answer the question or the court

may receive the exhibit. If I sustain the objection, then the witness cannot answer the question, and the court cannot receive the exhibit. When I sustain an objection to a question, you must ignore the question and not guess what the answer might have been.

Sometimes I may disallow evidence – this is also called “striking” evidence – and order you to disregard or ignore it. That means that you must not consider that evidence when you are deciding the case.

I may allow some evidence for only a limited purpose. When I instruct you that I have admitted an item of evidence for a limited purpose, you must consider it for only that purpose and no other.

#### Credibility of witnesses:

To reach a verdict, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. When considering a witness’s testimony, you may take into account:

- the witness’s opportunity and ability to see, hear, or know the things the witness is testifying about;
- the witness’s memory;
- the witness’s manner while testifying;
- any interest the witness has in the outcome of the case;
- any bias or prejudice the witness may have;
- any other evidence that contradicts the witness’s testimony;

- the reasonableness of the witness’s testimony in light of all the evidence; and
- any other factors affecting believability.

At the end of the trial, I’ll give you additional guidelines for determining a witness’s credibility.

Description of the case:

This is a civil case. To help you follow the evidence, I’ll summarize the parties’ positions. The Plaintiff, [name of plaintiff], claims the Defendant, [name of defendant], [describe claim(s)]. [Name of defendant] denies those claims and contends that [describe counterclaims or affirmative defenses].

Burden of proof:

[Name of plaintiff] has the burden of proving [his/her/its] case by what the law calls a “preponderance of the evidence.” That means [name of plaintiff] must prove that, in light of all the evidence, what [he/she/it] claims is more likely true than not. So, if you could put the evidence favoring [name of plaintiff] and the evidence favoring [name of defendant] on opposite sides of balancing scales, [name of plaintiff] needs to make the scales tip to [his/her/its] side. If [name of plaintiff] fails to meet this burden, you must find in favor of [name of defendant].

To decide whether any fact has been proved by a preponderance of the evidence, you may – unless I instruct you otherwise – consider the testimony of all witnesses, regardless of who called them, and all exhibits that the court allowed,

regardless of who produced them. After considering all the evidence, if you decide a claim or fact is more likely true than not, then the claim or fact has been proved by a preponderance of the evidence.

[Optional: On certain issues, called “affirmative defenses,” [name of defendant] has the burden of proving the elements of a defense by a preponderance of the evidence. I’ll instruct you on the facts [name of defendant] must prove for any affirmative defense. After considering all the evidence, if you decide that [name of defendant] has successfully proven that the required facts are more likely true than not, the affirmative defense is proved.]

[Optional: [Name of defendant] has also brought claims for relief against [name of plaintiff] called counterclaims. On these claims, [name of defendant] has the same burden of proof that [name of plaintiff] has for [his/her/its] claims.]

#### Conduct of the jury:

While serving on the jury, you may not talk with anyone about anything related to the case. You may tell people that you’re a juror and give them information about when you must be in court. But you must not discuss anything about the case itself with anyone.

You shouldn’t even talk about the case with each other until you begin your deliberations. You want to make sure you’ve heard everything – all the evidence, the lawyers’ closing arguments, and my instructions on the law – before you begin

deliberating. You should keep an open mind until the end of the trial. Premature discussions may lead to a premature decision.

In this age of technology, I want to emphasize that in addition to not talking face-to-face with anyone about the case, you must not communicate with anyone about the case by any other means. This includes e-mails, text messages, phone calls, and the Internet, including social-networking websites and apps such as Facebook, Instagram, Snapchat, YouTube, and Twitter. You may not use any similar technology of social media, even if I have not specifically mentioned it here.

You must not provide any information about the case to anyone by any means whatsoever, and that includes posting information about the case, or what you are doing in the case, on any device or Internet site, including blogs, chat rooms, social websites, or any other means.

You also shouldn't Google or search online or offline for any information about the case, the parties, or the law. Don't read or listen to the news about this case, visit any places related to this case, or research any fact, issue, or law related to this case. The law forbids the jurors to talk with anyone else about the case and forbids anyone else to talk to the jurors about it. It's very important that you understand why these rules exist and why they're so important. You must base your decision only on the testimony and other evidence presented in the courtroom.

It is not fair to the parties if you base your decision in any way on information you acquire outside the courtroom. For example, the law often uses words and phrases in special ways, so it's important that any definitions you hear come only from me and not from any other source. Only you jurors can decide a verdict in this case. The law sees only you as fair, and only you have promised to be fair – no one else is so qualified.

Taking notes:

If you wish, you may take notes to help you remember what the witnesses said. If you do take notes, please don't share them with anyone until you go to the jury room to decide the case. Don't let note-taking distract you from carefully listening to and observing the witnesses. When you leave the courtroom, you should leave your notes hidden from view in the jury room.

Whether or not you take notes, you should rely on your own memory of the testimony. Your notes are there only to help your memory. They're not entitled to greater weight than your memory or impression about the testimony.

Course of the trial:

Let's walk through the trial. First, each side may make an opening statement, but they don't have to. Remember, an opening statement isn't evidence, and it's not supposed to be argumentative; it's just an outline of what that party intends to prove.

Next, [name of plaintiff] will present [his/her/its] witnesses and ask them questions. After [name of plaintiff] questions the witness, [name of defendant] may ask the witness questions – this is called “cross-examining” the witness. Then [name of defendant] will present [his/her/its] witnesses, and [name of plaintiff] may cross-examine them. You should base your decision on all the evidence, regardless of which party presented it.

After all the evidence is in, the parties’ lawyers will present their closing arguments to summarize and interpret the evidence for you, and then I’ll give you instructions on the law.

[Note: Some judges may wish to give some instructions before closing arguments. See Fed. R. Civ. P. 51(b)(3).]

You’ll then go to the jury room to deliberate.

#### **ANNOTATIONS AND COMMENTS**

No annotations associated with this instruction.