

The Committee solicits comment on the following proposals by July 15, 2019. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

The Committee is considering the adoption of amended instructions designed to alert jurors to the concept of unconscious or implicit bias.

[AMENDED] M Civ JI 1.01 Introductory Comments

Ladies and gentlemen, I am Judge _____, and it is my pleasure to welcome you to the _____ Court.

You have been called here today for possible selection as a juror in a civil case. The remarks which I am about to make are intended as an outline of the trial of this case so that you may be generally aware of what occurs during a trial and some of the legal principles that control the conduct of civil cases.

I know that jury duty may be a new experience for some of you. Jury duty is one of the most serious duties that members of a free society are asked to perform. Our system of self-government could not exist without it.

The jury is an important part of this court. The right to a jury trial is an ancient tradition and part of our heritage. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law and your oath demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice. Therefore, jurors must be as free as humanly possible from bias, prejudice, or sympathy for either side. Each side in a trial is entitled to jurors who

keep open minds until the time comes to decide the case. Take the time you need to test what might be reflexive unconscious responses and to reflect carefully and consciously about the evidence. I caution you to avoid reaching conclusions that may have been influenced by unintended stereotypes or associations. You must each reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours. Working together will help achieve a fair result.

History

Amended January 1993, October 1993, and September 2007.

[AMENDED] M Civ JI 2.06 Jurors to Keep Open Minds

(1) Because the law requires that cases be decided only on the evidence presented during the trial and only by the deliberating jurors, you must keep an open mind and not make a decision about anything in the case until after you have (a) heard all of the evidence, (b) heard the closing arguments of counsel, (c) received all of my instructions on the law and the verdict form, and (d) any alternate jurors have been excused. At that time, you will be sent to the jury room to decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice or bias regarding race, sex, religion, national origin, age, handicap, disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties.

Each of us may have biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You

must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party, witness, or lawyer because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, witness, or lawyer.

Take the time you need to test what might be reflexive unconscious responses and to reflect carefully and consciously about the evidence. I caution you to avoid reaching conclusions that may have been influenced by unintended stereotypes or associations. You must each reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours. Working together will help achieve a fair result.

(2) [Alternative A] (Before you are sent to the jury room to decide the case, you may discuss the case among yourselves during recesses in the trial, but there are strict rules that must be followed.

First, you may only discuss the case when (a) all of you are together, (b) you are all in the jury room, and (c) no one else is present in the jury room. You must not discuss the case under any other circumstances. The reason you may not discuss the case with other jurors while some of you are not present is that all of you are entitled to participate in all of the discussions about the case.

Second, as I stated before, you must keep an open mind until I send you to the jury room to decide the case. Your discussions before then are only tentative.

Third, you do not have to discuss the case during the trial. But if you choose to do so, you must follow the rules I have given you.)

[Alternative B] (Before you are sent to the jury room to decide the case, you are not to discuss the case even with the other

(Continued on the following page)

70 From the Committee on Model Civil Jury Instructions

members of the jury. This is to ensure that all of you are able to participate in all of the discussions about the case, and so that you do not begin to express opinions about the case until it has been submitted to you for deliberation.)

Note on Use

The court will choose between Alternative A or B in paragraph 2 based on the court's decision whether to permit the jurors to discuss the evidence among themselves during trial recesses.

Comment

M Civ JI 2.05 and 2.06 were deleted in October 2011 and combined into a new instruction that was designated M Civ JI 2.06. This action reflected the September 2011 amendment to MCR 2.513(K), which granted the court discretion to permit juror discussion of the evidence during trial recesses. In January 2014, a large portion of M Civ JI 2.06 was transferred to M Civ JI 2.04.

History

Adopted October 2011. Amended January 2014.

[AMENDED] M Civ JI 3.02

Facts to Be Determined from Evidence

It is your duty to determine the facts from evidence received in open court. You are to apply the law to the facts and in this way decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice regarding race, sex, religion, national origin, age, handicap, disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties.

Each of us may have biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases. Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Witnesses can have the same implicit biases. As jurors you are be-

ing asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party, witness, or lawyer because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or any other factor irrelevant to the rights of the parties. Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, witness, or lawyer.

Comment

The subject matter of this instruction is often covered in greater detail by a number of separate instructions outlining the duties of the jury and admonishing them as to what should not enter into their deliberations. To inform the jury that they are to find the facts from the evidence, and to then apply the law to those facts, is the rule set forth in the Michigan cases. *Souvais v Leavitt*, 50 Mich 108; 15 NW 37 (1883); *Wisner v Davenport*, 5 Mich 501 (1858); *Erickson v Sovars*, 356 Mich 64; 45 NW2d 844 (1959).

The prohibition against sympathy or prejudice is equally applicable to both parties. Moreover, it is sufficient to caution the jury once against allowing sympathy and prejudice to enter into their consideration of the case. *Doyle v Dobson*, 74 Mich 562; 42 NW 137 (1889).

History

M Civ JI 3.02 was SJ1 1.01(3). Amended February 1991.

PROPOSED

The Committee is considering amending this instruction in order to conform it to a recent amendment to MCL 445.902(g).

[AMENDED] M Civ JI 113.03

Trade or Commerce—Definition

When I use the term “trade or commerce” I mean the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes. [“Trade or commerce” includes the advertising, solicitation, offering for sale

or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity.] [“Trade or commerce” does not include the purchase or sale of a franchise, but does include pyramid and chain promotions pyramid promotional schemes.]

Note on Use

Use only if there is an issue concerning whether defendant was acting in trade or commerce. Use the bracketed language only if appropriate. If a franchise, pyramid or chain promotion or pyramid promotional scheme is involved, additional instructions defining those terms may be necessary. Those instructions should be based on the definitions found in the Franchise Investment Law, MCL ~~445.1501 et seq.~~ 445.1502 and the Pyramid Promotional Scheme Act, MCL 445.2582.

Comment

MCL 445.902(g).

History

Added July 2012.

PROPOSED

The Committee is considering the adoption of new jury instructions for use in cases alleging a violation of the Michigan Sales Representatives' Commissions Act.

[NEW] M Civ JI 143.01

Commission—Defined

The term “commission” means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders or sales or as a percentage of the dollar amount of profits.

Comment

MCL 600.2961(1)(a).

[NEW] M Civ JI 143.02

Principal—Defined

The term “principal” means a person that either: manufactures, produces, imports, sells, or distributes a product in this

state; or contracts with a sales representative to solicit orders for or sell a product in this state.

Comment

MCL 600.2961(1)(d). “Person” is defined in MCL 600.2961(1)(b).

[NEW] M Civ JI 143.03

Sales Representative—Defined

The term “sales representative” means a person who contracts with or is employed by a principal for the solicitation of orders or sale of goods and is paid, in whole or in part, by commission. Sales representative does not include a person who places an order or sale for a product on his or her own account for resale by that sales representative.

Comment

MCL 600.2961(1)(e). “Person” is defined in MCL 600.2961(1)(b).

[NEW] M Civ JI 143.10

Payment of Commissions Due At The Time of Contract Termination

Michigan law requires all commissions that are due at the time of termination of a contract between a sale representative and a principal to be paid within 45 days after the date of termination.

Comment

MCL 600.2961(4).

[NEW] M Civ JI 143.11

Payment of Commissions That Become Due After Contract Termination

Michigan law requires commissions that become due after the contract termination date to be paid within 45 days after the date on which the commission became due.

Comment

MCL 600.2961(4).

[NEW] M Civ JI 143.12

When Commissions Become Due

The terms of the contract between the principal and sales representative determine when a commission becomes due.

If the time when the commission is due cannot be determined by a contract between the principal and sales representative, the past practices between the parties

shall control or, if there are no past practices, the custom and usage prevalent in this state for the business that is the subject of the relationship between the parties.

Comment

MCL 600.2961(2) and (3).

[NEW] M Civ JI 143.20

Failure to Pay Commissions Due At Time of Termination

Your verdict will be for [sales representative] if you find by a preponderance of the evidence that: (1) commissions were due at the time of termination of the contract between [sale representative] and [principal] and (2) [principal] failed to pay those commissions within 45 days after the date of termination. Otherwise, your verdict will be for [principal].

Comment

MCL 600.2961(4).

[NEW] M Civ JI 143.21

Failure to Pay Commissions Due After Termination

Your verdict will be for [sales representative] if you find by a preponderance of the evidence that: (1) commissions became due after the termination of the contract between [sale representative] and [principal] and (2) [principal] failed to pay those commissions within 45 days after the date on which the commissions became due. Otherwise, your verdict will be for [principal].

Comment

MCL 600.2961(4).

[NEW] M Civ JI 143.22

Actual Damages/Intentional Failure to Pay Commissions When Due

If your verdict is for [sales representative], then you shall award [sales representative] the actual damages caused by the failure to pay the commissions when due.

In addition, you must determine whether [principal] intentionally failed to pay the commission when due. If you find by a preponderance of the evidence that [principal] intentionally failed to pay the commission when due, then you shall award [sales representative] an amount in addition to actual

damages. That additional amount shall be the lesser of: (1) two times the amount of commissions due but not paid as required; or (2) \$100,000.00.

Comment

MCL 600.2961(5).

PROPOSED

[NEW] M Civ JI ____ . ____

Support Persons or Animals

You [are about to hear/have heard] testimony from a witness who I [will allow/have allowed] to be accompanied by a support [person/animal]. You should disregard the support [person/animal]’s presence and decide the case based solely on the evidence presented. You should not consider the witness’s testimony to be any more or less credible because of the [person/animal]’s presence. You must not allow the use of a support [person/animal] to influence your decision in any way.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee’s function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee’s responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

Chair: Hon. Mark T. Boonstra

Reporter: Timothy J. Raubinger

Members: Benjamin J. Aloia; Robert L. Avers; Hilary A. Ballentine; Hon. Jane M. Beckering; Mark R. Bendure; Hon. James N. Erhart; Hon. Kathleen A. Feeney; Gary N. Felty Jr.; William B. Forrest III; Hon. Michael F. Gadola; Donald J. Gasiorek; James F. Hewson; Hon. Michael L. Jaconette; Amy M. Johnston; C. Thomas Ludden; Daniel J. Schulte; Judith A. Susskind; Hon. Donald A. Teeple; Thomas Van Dusen; Thomas W. Waun.