
Model Civil Jury Instructions

**Michigan Supreme Court
November 2016**

Chapter 1: Preliminary Instructions Before Jury Selection

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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. 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.

History

Amended January 1993, October 1993, September 2007.

M Civ JI 1.02 Defining Legal Names of Parties and Counsel

This is a civil case involving [*describe case briefly*], which I will explain more fully later.

The person bringing this case is called the plaintiff. The plaintiff is [*state plaintiff's name and indicate where seated*]. The lawyer for the plaintiff is [*state lawyer's name and indicate where seated*]. The person defending the case brought by the plaintiff is called the defendant. The defendant is [*state defendant's name and indicate where seated*]. The lawyer for the defendant is [*state lawyer's name and indicate where seated*]. [*Describe the function of other persons seated at the counsel table*].

History

Amended January 1993, October 1993, September 2007.

M Civ JI 1.03 Explanation of Jury Selection and Voir Dire

A trial begins with jury selection. The purpose of this process is to obtain information about you that will help us choose a fair and impartial jury to hear this case.

During jury selection [the lawyers and] I will ask you questions. The questions are meant to find out if you know anything about the case. Also, we need to find out if you have any opinions or personal experiences that might influence you for or against a party or witness. One of these could cause you to be excused, even though you may be otherwise qualified to be a juror.

The questions may probe deeply into your attitudes, beliefs, and experiences. The law requires that we get this information so that an impartial jury can be chosen. They are not meant to be an unreasonable prying into your private life.

If you do not hear or understand a question, you should say so. If you do understand it, you should answer it truthfully and completely. Please do not hesitate to speak freely about anything you believe we should know.

During jury selection you may be excused from serving on the jury in one of two ways. First, I may excuse you for cause; that is, I may decide that there is a valid reason why you cannot or should not serve in this case. The second way to be excused is by one of the lawyers. The law gives the lawyers for each side the right to excuse a limited number of jurors without giving any reason for doing so. If you are excused, don't feel bad or take it personally.

During the course of the jury selection process, if there is any matter you wish to discuss in private, please raise your hand or write a note to the bailiff.

History

M Civ JI 1.03 was added September 1980. Amended October 1993, March 1996, September 2007.

M Civ JI 1.04 Juror Oath Before Voir Dire

I will now ask you to swear or affirm to answer truthfully, fully, and honestly all the questions that you will be asked about your qualifications to serve as a juror in this case. Please stand and raise your right hand.

“Do you solemnly swear or affirm that you will truthfully and completely answer all questions about your qualifications to serve as jurors in this case?”

History

M Civ JI 1.04 was added October 1993. Amended September 2007.

M Civ JI 1.05 Prospective Jurors—Health and Other Problems

(a) The witnesses who may be called in this case are: [read list of witnesses without designation of party who will call them]. Does anyone know the [defendant / defendants], the [plaintiff / plaintiffs], or any of the lawyers or witnesses?

(b) We think this trial will last for [number of days / number of weeks]. If you believe that the length of the trial will be a real hardship for you, please let me know now.

(c) Some of you may have health problems that would prevent you from serving on a jury. Does anyone have a physical, mental, or other problem that may prevent you from serving on the jury? For example, does anyone have a medical problem that makes you unable to sit for two or three hours at a time? Does anyone have a sight or hearing problem?

(d) Under guidelines established by the Michigan Supreme Court, I have approved a media request for cameras to be used during trial. I'll discuss this more later, but one of the rules is that you cannot be filmed or photographed. However, if you believe that the presence of the cameras will interfere with your ability to concentrate and render a fair and impartial verdict, raise your hand.

Note on Use

Subsection (d) would only be read if the trial judge has allowed cameras in the courtroom as permitted by Michigan Supreme Court Administrative Order 1989-1. The subsection contemplates follow-up questions if a juror indicates his or her ability to concentrate or render a fair verdict would be impaired.

History

M Civ JI 1.05 was added October 1993. Amended March 1996, September 2007, October 2013.

M Civ JI 1.10 Juror Oath Following Selection

I will now ask you to swear or affirm to perform your duty to try the case justly and to reach a true verdict. Please stand and raise your right hand.

“Do you solemnly swear or affirm that, in this case now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, so help you God?”

History

M Civ JI 1.10 was added October 1993. Amended September 2007.

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M Civ JI 2.01 Responsibilities of Judge and Jury

Now I am going to briefly explain to you my responsibilities as judge and your responsibility as jurors.

My responsibilities as the judge in this trial are to make sure that the trial is run fairly and efficiently, to make decisions about evidence, and to instruct you about the law that applies to this case. You must take the law as I give it to you. Nothing I say is meant to reflect my own opinions about the facts of the case.

Your responsibility as jurors is to decide what the facts of the case are. This is your job, and no one else's. You must think about all the evidence and all the testimony and then decide what each piece of evidence means and how important you think it is.

History

Amended January 1993, September 2007.

M Civ JI 2.02 Description of Trial Procedure

Now I will briefly explain the general order of procedure in the trial from this point forward. First, the lawyer for the plaintiff makes an opening statement in which [he / she] outlines [his / her] theory of the case. The lawyer for the defendant can then make an opening statement, or [he / she] can wait until later. These opening statements are not evidence. They are only intended to assist you in understanding the viewpoints and claims of the parties.

After the opening statements, we will begin the taking of evidence. Plaintiff's lawyer will present evidence first. [He / she] may call witnesses to testify and may also offer exhibits such as documents or physical objects. Defendant's lawyer has a right to cross-examine the witnesses called by the plaintiff. Following the plaintiff's presentation, the defendant has the opportunity to present evidence. Plaintiff's lawyer has a right to cross-examine the witnesses called by the defendant. [During the taking of evidence the lawyers may be allowed to present interim commentary regarding evidence that has been submitted. This commentary is not evidence. Like the opening statements, it is only intended to assist you in understanding the viewpoints and claims of the parties.]

After all the evidence has been presented, the lawyers for each side will make their closing arguments to you in support of their cases. You are again reminded that the statements of the lawyers are not evidence but are only intended to help you in understanding the evidence and the way each side sees the case. You must base your decision only on the evidence.

In this case, the Plaintiff has brought [a claim / claims] involving [state nature of claims]. [Insert instructions regarding the elements of all civil claims (including definitions of legal terms), legal presumptions, and burdens of proof.]

Because no one can predict the course of a trial, these instructions may change at the end of the trial; if so, you should follow the instructions given at the conclusion of the trial. You will be given a written copy of the instructions I have just read for your use during the trial.

Note on Use

The words "plaintiff" and "defendant" may be replaced by "petitioner" and "respondent" in cases in which the latter terms are used to describe the parties.

Because the elements of civil claims may include legal terms, e.g. proximate cause, ordinary care, invitee, licensee, and allowable expenses, definitions of those legal terms should also be given

The bracketed language should not be given if the court has determined before trial that interim commentary will not be permitted. If interim commentary is permitted, M Civ JI 3.16 should be given immediately before the commentary.

Comment

The 2011 amendments reflect the amendments to MCR 2.513(A) and (D) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. These amendments require the court to include in its preliminary instructions the elements of all civil claims, as well as legal presumptions and burdens of proof. Additionally, the court is given discretion to permit the parties to present interim commentary.

History

Amended January 1993, September 2007, October 2011.

M Civ JI 2.02A Cameras in the Courtroom

In order to increase public knowledge of court proceedings and to make the courts as open as possible, the Michigan Supreme Court allows cameras in courtrooms as long as certain guidelines are followed. One of those guidelines is that no one is allowed to film or photograph you, so you will not end up on television or in the newspaper.

The presence of cameras does not make this case more important than any other. All trials are equally important to the parties. You should not draw any inferences or conclusions from the fact that cameras are present at this particular trial. Also, since the news media is generally able to decide what portions of the trial they wish to attend, their attendance may be periodic from day to day. You are not to concern yourself with why certain witnesses are filmed and/or photographed and others are not. Whether a particular witness is filmed and/or photographed is not any indication as to the value of, or weight to be given to, that witness's testimony.

Your complete attention must be focused on the trial. You should ignore the presence of the cameras. If you find at any time that you are unable to concentrate because of the cameras, please notify me immediately through the bailiff so that I can take any necessary corrective action.

Note on Use

This instruction would only be given if the trial judge has allowed cameras in the courtroom as permitted by Michigan Supreme Court Administrative Order 1989-1. M Civ JI 60.01A would also be given before the jury deliberates.

History

M Civ JI 2.02A was added October 2013.

M Civ JI 2.03 Jury Deliberation; Jurors as Triers of Fact

After all of the evidence has been presented and the lawyers have given their arguments, I will give you detailed instructions about the rules of law that apply to this case. Then you will go to the jury room to decide on your verdict.

The responsibility of the jury is to determine the facts. You are the judges of the facts. You determine the weight, effect, and value of the evidence, as well as the credibility of the witnesses. You must consider and weigh the testimony of all witnesses who appear before you, and you determine whether to believe any witnesses and the extent to which any witness should be believed. It is your responsibility to consider any conflicts in testimony which may arise during the course of the trial. Your decision as to any fact in the case is final. On the other hand, it is your duty to accept the law as I instruct you.

History

Amended January 1993, September 2007.

M Civ JI 2.04 Jury Must Only Consider Evidence; What Evidence Is / Prohibited Actions by Jurors

(1) Your determination of the facts in this case must be based only upon the evidence admitted during the trial. Evidence consists of the sworn testimony of the witnesses. It also includes exhibits, which are documents or other things introduced into evidence.

*(It may also include some things which I specifically tell you to consider as evidence.)

(2) There are some things presented in the trial that are not evidence, and I will now explain what is not evidence:

(a) The lawyers' statements, commentaries, and arguments are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge. However, an admission of a fact by a lawyer is binding on [his / her] client.

(b) Questions by the lawyers, you or me to the witnesses are not evidence. You should consider these questions only as they give meaning to the witnesses' answers.

(c) My comments, rulings, [summary of the evidence,] and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law, and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express a personal opinion about the case. If you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion. You are the only judges of the facts, and you should decide this case from the evidence.

(3) In addition, you are not to consider anything about the case from outside of the courtroom as it is not evidence admitted during the trial. Under the law, the evidence you consider to decide the case must meet certain standards. For example, witnesses must swear to tell the truth, and the lawyers must be able to cross-examine them. Because information obtained outside of the courtroom does not have to meet these standards, it could give you incorrect or misleading information that might unfairly favor one side, or you may begin to improperly form an opinion on information that has not been admitted. This would compromise the parties' right to have a verdict rendered only by the jurors and based only on the evidence you hear and see in the courtroom. So, to be fair to both sides, you must follow these instructions. I will now describe some of the things you may not consider from outside of the courtroom:

(a) Newspaper, television, radio and other news reports, emails, blogs and social media posts and commentary about this case are not evidence. Until I discharge you as jurors, do not search for, read, listen to, or watch any such information about this case from any source, in any form whatsoever.

(b) Opinions of people outside of the trial are not evidence. You are not to discuss or share information, or answer questions, about this case at all in any manner with anyone—this includes family, friends or even strangers—until you have been discharged as a juror. Don't allow anyone to say anything to you or say anything about this case in your presence. If anyone does, advise them that you are on the jury hearing the case, ask them to stop, and let me know immediately.

(c) Research, investigations and experiments not admitted in the courtroom are not evidence. You must not do any investigations on your own or conduct any research or experiments of any kind. You may not research or investigate through the Internet or otherwise any evidence, testimony, or information related to this case, including about a party, a witness, an attorney, a court officer, or any topics raised in the case.

(d) Except as otherwise admitted in trial, the scene is not evidence. You must not visit the scene of the occurrence that is the subject of this trial. If it should become necessary that you view or visit the scene, you will be taken as a group. You must not consider as evidence any personal knowledge you have of the scene.

(4) To avoid even the appearance of unfairness or improper conduct on your part, you must follow the following rules of conduct:

(a) While you are in the courtroom and while you are deliberating, you are prohibited altogether from using a computer, cellular telephone or any other electronic device capable of making communications. You may use these devices during recesses so long as your use does not otherwise violate my instructions.

(b) Until I have discharged you as a juror, you must not talk to any party, lawyer, or witness even if your conversation has nothing to do with this case. This is to avoid even the appearance of impropriety.

(5) If you discover that any juror has violated any of my instructions about prohibited conduct, you must report it to me.

(6) After you are discharged as a juror, you may talk to anyone you wish about the case. Until that time, you must control your natural desire to discuss the case outside of what I've said is permitted.

*Use the sentence in parentheses if it is applicable.

If a fact is admitted by a lawyer, this shall be explained to the jury as binding on his or her client to the extent of the admission, regardless of evidence to the contrary.

If a specific admission, such as negligence or contributory negligence, is made, then the court should explain that particular admission to the jury when giving the instructions on that subject.

Comment

Occasionally lawyers argue on matters that are within their personal knowledge but are not of record, or in the heat of forensic attack will make statements not based on the evidence. Ordinarily this is objected to and a request is made to instruct the jury to disregard the statement, but it is impossible or impractical to object to every such statement. It is therefore proper to inform the jury that arguments and statements of counsel not based on the evidence should be disregarded. *Dalm v Bryant Paper Co*, 157 Mich 550; 122 NW 257 (1909).

For admissions on the pleadings, see MCR 2.111(E); for admissions by a lawyer in the course of trial, see *Ortega v Lenderink*, 382 Mich 218; 169 NW2d 470 (1969).

Subsection (2)(c) is so worded to inform the jury that comments the judge might make on the evidence are not binding on them. *Cook v Vineyard*, 291 Mich 375; 289 NW 181 (1939).

Since the remarks and rulings of the trial judge may erroneously be interpreted by the jury as comments on the evidence, this instruction is proper. *Mawich v Elsey*, 47 Mich 10; 10 NW 57 (1881).

The bracketed language reflects the amendment to MCR 2.513(M) effective September 1, 2011. This amendment permits the court to sum up the evidence under certain conditions. Any summary of the evidence by the court should be immediately preceded by M Civ JI 3.17.

History

Amended January 1993, September 2007, January 2014.

M Civ JI 2.05 Jurors to Keep Open Minds [*Instruction Deleted*]

Comment

This instruction was deleted by the Committee in October 2011. The instruction was deleted because its provisions were consolidated with M Civ JI 2.06 in response to the amendment of MCR 2.513. The new consolidated instruction has been designated M Civ JI 2.06.

History

Amended February 1991, January 1993, September 2007. Deleted October 2011.

M Civ JI 2.06 Prohibited Actions by Jurors

(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 regarding race, sex, religion, national origin, age, handicap, or any other factor irrelevant to the rights of the parties.

(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 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 2.512(F), which stated that the court may, at its discretion, direct the jury to discuss the evidence during trial recesses.

History

Adopted October 2011. Amended January 2014.

M Civ JI 2.07 Jurors Not to Consider Information Received outside Presence of Court [*Instruction Deleted*]

History

This instruction was deleted by the Committee September 1, 2009. The instruction was deleted because its provisions were combined with MCJI 2.06 in response to the amendment of MCR 2.511.

M Civ JI 2.08 Objections; Out-of-Presence Hearings

A trial follows established rules of procedure and evidence. During the trial the lawyers might make objections and motions. I will rule on these objections and motions according to the law. Don't conclude from any of my rulings that I have an opinion on the case or that I favor one side or the other. If I sustain an objection to a question and do not permit the witness to answer, don't guess what the answer might have been or draw any inference from the question itself.

Sometimes the lawyers and I are required to consider objections and motions outside your hearing. We may take care of these matters at the bench or in my chambers, or I may excuse you so that we can take care of them in the courtroom. It is impossible to predict when such a conference may be required or how long it will last. I will conduct these conferences so as to use as little of your time as possible. I may also have to take care of other matters which have nothing to do with this case. Do not concern yourselves with any of these matters which must be decided out of your presence or hearing.

History

Amended January 1993, September 2007.

M Civ JI 2.09 Court to Instruct on Law

I might give you more instructions during the course of the trial, and at the end of the trial I will give you detailed instructions about the law you are to apply to the case.

History

M Civ JI 2.09 was added September 1980. Amended September 2007.

M Civ JI 2.10 Inability to Hear Witness or See Exhibit

Please let me know immediately if you cannot hear a witness or see what is being demonstrated.

Note on Use

Following this instruction, the Court may explain to the jury the anticipated schedule of recesses and adjournments as well as any expected interruptions or distractions, the availability of restaurants, restrooms, etc.

History

M Civ JI 2.10 was added September 1980. Amended October 1993.

M Civ JI 2.11 Questions by Jurors Allowed

During the testimony of a witness, you might think of an important question that you believe will help you better understand the facts in this case. Please wait to ask the question until after the witness has finished testifying and both sides have finished their questioning. If your question is still unanswered, write the question down, raise your hand, and pass the question to the bailiff. The bailiff will give it to me. Do not ask the witness the question yourself, show the question to the other jurors, or announce what the question is.

There are rules of evidence that a trial must follow. If your question is allowed under those rules, I will ask the witness your question. If your question is not allowed, I will either rephrase it or I will not ask it at all.

Note on Use

If questions from jurors are allowed, this instruction may be used. The questioning of, and the method of such questioning of, witnesses by jurors is within the discretion of the trial judge. The court does not have to allow such questioning, but must recognize that it has discretion to do so. *People v Heard*, 388 Mich 182 (1972).

MCR 2.513(I), as amended by the Michigan Supreme Court effective September 1, 2011, requires, among other things, the court to employ a procedure that ensures that the parties have an opportunity outside the hearing of the jury to object to the questions.

Comment

MCR 2.513(I).

History

M Civ JI 2.11 was added October 1993. Amended October 1994, September 2007, October 2011.

M Civ JI 2.12 Caution about Publicity in Cases of Public Interest [*Instruction Deleted*]

History

This instruction was deleted by the Committee September 1, 2009. The instruction was deleted because its provisions were combined with MCJI 2.06 in response to the amendment of MCR 2.511.

M Civ JI 2.13 Note Taking by Jurors Allowed / Not Allowed

(a) *(You may take notes during the trial if you wish, but of course you don't have to. If you do take notes, you should be careful that it does not distract you from paying attention to all the evidence. When you go to the jury room to decide your verdict, you may use your notes to help you remember what happened in the courtroom. If you take notes, do not let anyone see them. After you have begun your deliberations, it is then permissible to allow other jurors to see your notes. [You must turn your notes over to the bailiff during recesses.] The notes will be destroyed at the end of the trial.)

(b) *(I do not believe that it is helpful for you to take notes because you might not be able to give your full attention to the evidence. So please do not take any notes while you are in the courtroom.)

Note on Use

*The court may use paragraph (a) or paragraph (b), depending on whether the jurors are allowed to take notes.

If paragraph (a) is given, the bracketed sentence in that paragraph may be read if the court wants to assure that notes are not seen by anyone except the jurors.

Paragraph (b) should be given only when a juror requests to take notes and the court decides not to allow note taking.

Comment

The 2011 amendment reflects the amendment to MCR 2.513(H) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment requires the court to ensure that all juror notes are collected and destroyed at the conclusion of trial. The amended instruction informs the jurors of that fact.

History

M Civ JI 2.13 was added October 1993. Amended December 1994, October 2011.

M Civ JI 2.14 Reference Documents

You will now be given [a reference document / reference documents / a notebook] including [*describe contents, including list of witnesses, relevant statutory provisions, documents*]. [The parties have stipulated that the contents of the (document / documents / notebook) are admitted as exhibits.] [In the event (one / one or more of) the (document / documents / contents of the notebook) (is / are) not admitted, you must disregard (it / them) at the end of the trial.] You must turn your [reference document / reference documents / notebook] over to the bailiff during recesses. The [reference document / reference documents / notebook] will be destroyed at the end of the trial.

Note on Use

Jurors may be told that they can write in their notebook. Because jurors may have written in their notebook, any additions to the notebook made during trial should be made by court personnel or the jurors in order to prevent the parties from observing any writings made by the jurors.

Comment

The 2011 adoption of this instruction reflects the amendment to MCR 2.513(E) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment gives the court the discretion to authorize or require counsel to provide the jurors with a reference document or notebook. Informing the jurors that the reference document/notebook will be destroyed is consistent with MCR 2.513(H), which provides that the court is to ensure that all juror notes are collected and destroyed at the conclusion of trial.

History

M Civ JI 2.14 was added October 2011.

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M Civ JI 3.01 Faithful Performance of Duties; Jury to Follow Instructions

Members of the jury, the evidence and argument in this case have been completed and I will now instruct you on the law. That is, I will explain the law that applies to this case.

Faithful performance by you of your duties is vital to the administration of justice.

The law you are to apply in this case is contained in these instructions, and it is your duty to follow them. In other words, you must take the law as I give it to you. You must consider them as a whole and not pick out one or some instructions and disregard others.

Following my instructions you will go to the jury room and deliberate and decide on your verdict.

Comment

This instruction is designed to prevent jurors from capriciously selecting one of several statements of law and using it in their deliberations out of context with the whole charge. *People v Gardner*, 143 Mich 104 (1906); *Kempsey v McGinniss*, 21 Mich 123 (1870).

History

M Civ JI 3.01 was SJI 1.01(1), (2). Amended January 1982, September 2007.

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, or any other factor irrelevant to the rights of the parties.

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 (1989).

History

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

M Civ JI 3.03 Admission of Evidence

The evidence you are to consider consists of testimony of witnesses *(and exhibits offered and received) **(and your view of the [premises / scene / object]). The admission of evidence in court is governed by rules of law. From time to time it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings, and you must not consider *(any exhibit to which an objection was sustained or) any testimony *(or exhibit) which was ordered stricken.

Note on Use

*Omit the references to exhibits if there are no exhibits.

**The phrase in parentheses should be read to the jury if the court has permitted a jury view and has determined that the view constitutes evidence. Appropriate designation of the kind of view may be selected instead of the bracketed words. If the court determines that the view is not evidence, this phrase in parentheses should not be read, and in lieu of it M Civ JI 3.12 should be given.

Michigan cases are in conflict on whether a jury view constitutes evidence. Generally the jury can consider information obtained by them from the view only to assist them in understanding evidence presented in open court, *Valenti v Mayer*, 301 Mich 551; 4 NW2d 5 (1942); but in some cases, the view itself may be evidence. *Sunday v Wolverine Service Stations*, 265 Mich 19; 251 NW 402 (1933).

Comment

Although some rulings on evidence are made out of the jury's hearing, the great bulk of such rulings are made in the presence of the jury, who hear not only the reasons for objections but often the reasons for rulings as well. Whether offered evidence is admitted or excluded, the jury may be influenced by what it hears, and, consequently, it is proper to tell them of the Court's duty in these matters and admonish them to ignore stricken or excluded evidence and the reasons for the rulings.

History

M Civ JI 3.03 was SJI 1.01(4). Amended January 1992.

M Civ JI 3.04 Attorneys' Statements Not Evidence; Admission by Attorney [*Instruction Deleted*]

Comment

This instruction was deleted by the Committee in January 2014. The instruction was deleted because its provisions were consolidated with M Civ JI 2.04 in order to streamline the instructions and make them more understandable and logical for the jurors.

History

M Civ JI 3.04 was SJI 1.01(5). Amended September 2007, October 2011. Deleted January 2014.

M Civ JI 3.05 Corporations Entitled to Unprejudiced Treatment

The corporation [plaintiff / defendant] in this case is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and it is your duty to decide the case with the same impartiality you would use in deciding a case between individuals.

Note on Use

This instruction should be given only in those cases where there are both corporate and individual parties.

Comment

The subject matter of this instruction is an exception to the general rule prohibiting the singling out of evidence or a particular party or witness. In view of the possibility that some jurors might have various attitudes prejudicial to corporations, a jury should be informed that a corporation is to be treated no differently from an individual. *Cornell v Manistee & N R Co*, 117 Mich 238; 75 NW 472 (1898).

History

M Civ JI 3.05 was SJI 1.01(6).

M Civ JI 3.06 Whether Party Is Insured Is Irrelevant

Whether a party is insured has no bearing whatever on any issue that you must decide. Don't even discuss or speculate about insurance.

Note on Use

This instruction is to be used only where the subject of liability insurance has been brought out during the trial and has no bearing on any of the issues. It has no application, for example, in an action on an insurance policy.

Comment

Rule 411 of the Michigan Rules of Evidence provides that “[e]vidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully.” See also MCL 500.3030. MRE 411 further provides that evidence of insurance need not be excluded if offered “for another purpose, such as proof of agency, ownership or control, if controverted, or bias or prejudice of a witness.” See also *Gegan v Kemp*, 302 Mich 218 (1942) (insurance adjuster’s statements used for impeachment).

Where insurance coverage of a party has been improperly disclosed, an instruction that it has no bearing on the case is proper. *Ehlers v Barbeau*, 291 Mich 528 (1939); see also *Cassidy v McGovern*, 86 Mich App 321 (1978) (tort action under Michigan no-fault act).

History

M Civ JI 3.06 was SJI 1.01(7). Amended September 2007.

M Civ JI 3.07 Evidence Introduced for a Limited Purpose

Whenever evidence was received for a limited purpose or limited to [one party / certain parties], you must not consider it for any other purpose or as to any other [party / parties].

Note on Use

This instruction should be used only when evidence has been limited to a specific purpose or to specific parties. When used, the particular evidentiary limitation as to purpose or party shall be explained, either here or under another more appropriate instruction. (An example of such use would be where evidence was introduced on negligence of one plaintiff but it was not applicable to another of the parties plaintiff. In the section on negligence, the Court should specifically point out that the particular evidence that was admitted as to party A is not binding on party B.)

Comment

This instruction should be used when evidence has been restricted to a given purpose, or admitted against one or more but not all of the parties. An example of the first limitation occurs when prior inconsistent statements are admitted solely for impeachment purposes and not as substantive evidence. See MRE 801. Similarly, evidence may be admissible against one party while inadmissible as to another.

Rule 105 of the Michigan Rules of Evidence is consistent with this instruction. It requires that on request the Court instruct the jury as to the restriction on the evidence.

History

M Civ JI 3.07 was SJI 1.01(8).

M Civ JI 3.08 Judge's Opinion as to Facts Is to Be Disregarded [*Instruction Deleted*]

Comment

This instruction was deleted by the Committee in January 2014. The instruction was deleted because its provisions were consolidated with M Civ JI 2.04 in order to streamline the instructions and make them more understandable and logical for the jurors.

History

Amended October 2011. Deleted January 2014.

M Civ JI 3.09 Jury to Consider All the Evidence

In determining whether any fact has been proved, you shall consider all of the evidence bearing on that fact without regard to which party produced the evidence.

Note on Use

If evidence has been received for a limited purpose or is limited to a particular party or parties, M Civ JI 3.07 must also be given.

Comment

This instruction states the familiar principle that once evidence is admitted, it is in the case for all purposes and every party is entitled to the benefit of the evidence whether he or she or the adversary produced it.

History

M Civ JI 3.09 was SJI 1.02.

M Civ JI 3.10 Circumstantial Evidence

Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

Facts can also be proved by indirect or circumstantial evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water, that would be circumstantial evidence that it is raining.

Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove or disprove a proposition. You must consider all the evidence, both direct and circumstantial.

History

M Civ JI 3.10 is a revision of SJI 1.03. Amended February 1981, September 2007.

M Civ JI 3.11 Jurors May Take into Account Ordinary Experience and Observations

You have a right to consider all the evidence in the light of your own general knowledge and experience in the affairs of life, and to take into account whether any particular evidence seems reasonable and probable. However, if you have personal knowledge of any particular fact in this case, that knowledge may not be used as evidence.

Comment

Because jurors have been told it is their duty to determine the facts from evidence produced in open court, M Civ JI 3.02, it is proper also to inform them that they may rely on their general intelligence and knowledge of affairs. *Rajnowski v Detroit, BC & A R Co*, 74 Mich 15 (1889).

History

M Civ JI 3.11 was SJI 1.04. Amended September 2007.

M Civ JI 3.12 Jury View of Premises / Scene / Object

Your view of the [premises / scene / object] was intended to help you understand the evidence. You are not to consider as evidence anything you may have learned from the view which was not covered by the testimony *(and exhibits) received in evidence.

Note on Use

This instruction should be used only when the Court has permitted a view of something other than an exhibit and has determined that the view does not constitute evidence. Appropriate designation of the kind of view may be selected instead of the bracketed words. This instruction may be given even though the court convenes at the scene and takes testimony, because the jury still might have seen or heard things not covered by the testimony. The instruction may be given before or at the time of the view.

If the court has determined that a jury view does constitute evidence, this instruction should not be given. See Note on Use to M Civ JI 3.03.

*The words in parentheses may be used if appropriate.

In condemnation cases, M Civ JI 90.22 should be given in lieu of this instruction.

Comment

The authority to have the jury view the scene comes from MCR 2.513(J).

Generally the jury can consider information obtained by them from the view only to assist them in understanding evidence presented in open court, *Valenti v Mayer*, 301 Mich 551; 4 NW2d 5 (1942); but in some cases, the view itself may be evidence. *Sunday v Wolverine Service Stations*, 265 Mich 19; 251 NW 402 (1933).

The jury view is appropriate in all civil actions, but is completely discretionary with the trial judge. MCR 2.513(J).

History

M Civ JI 3.12 was SJI 1.04(A).

M Civ JI 3.13 Fact Judicially Noticed

In this case, you must accept it as a fact that [*identify fact judicially noticed*].

Note on Use

This instruction should be used only in cases in which a fact has been judicially noticed. The instruction conforms with Rule 201(f) of the Michigan Rules of Evidence. Rule 201(f) provides: “In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed.”

History

M Civ JI 3.13 was added February 1, 1981.

M Civ JI 3.15 Prior Inconsistent Statement of Witness

If you decide that a witness said something earlier that is not consistent with what the witness said at this trial, you may consider the earlier statement in deciding whether to believe the witness, but you may not consider it as proof of the facts in this case.

However, there [is an exception / are exceptions]. You may consider an earlier statement as proof of the facts in this case if:

- (a) the statement was made by the plaintiff, the defendant, or an agent or employee of either party; or
- (b) the statement was given under oath subject to the penalty of perjury at a trial, hearing, [*describe other proceeding*], or in a deposition; or
- (c) the witness testified during the trial that the earlier statement was true.

Note on Use

This instruction should not be given if all prior inconsistent statements of witnesses are admissible as substantive evidence.

If all prior inconsistent statements are admissible only for credibility, only the first paragraph of this instruction should be given.

If some prior inconsistent statements of witnesses are admissible for credibility and some as substantive evidence, both paragraphs of this instruction should be given, but the trial judge should select only the subsections of paragraph two that are applicable.

Comment

A witness may be impeached through a showing of prior statements inconsistent with his or her testimony. *Gilchrist v Gilchrist*, 333 Mich 275 (1952); *Michigan Pipe Co v North British & Mercantile Insurance Co*, 97 Mich 493 (1893); *Geerds v Ann Arbor R Co*, 181 Mich 12 (1914). A prior inconsistent statement given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, may also be considered as substantive evidence. MRE 801(d)(1)(A). If the witness adopts by admission the truth of the prior inconsistent statement, that may also become substantive evidence. *Schratt v Fila*, 371 Mich 238 (1963).

Prior inconsistent conduct that is not intended as an assertion is admissible as competent proof but conduct intended as an assertion is subject to the hearsay objection. MRE 801(a), (c).

A statement offered against a party that is his or her own statement is admissible as substantive evidence. MRE 801(d)(2). The witness must testify that the statement was made

statement by an agent or employee concerning a matter within the scope of the agency or employment and made during the existence of the relationship (MRE 801(d)(2)(D)).

History

M Civ JI 3.15 (former M Civ JI 5.01) was SJI 3.01. Amended December 1982, November 1983, August 1991, October 1993, February 1998. Renumbered from M Civ JI 5.01 to M Civ JI 3.15 January 1999. Amended September 2007.

M Civ JI 3.16 Interim Commentary by Attorneys

At this juncture in the trial, the court finds it appropriate to allow each party to provide interim commentary. The lawyers' commentaries are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept things that the lawyers say that are supported by the evidence or by your own common sense and general knowledge. All of my earlier instructions regarding basing your decision on the evidence and law continue to apply.

Note on Use

The court may place reasonable time limits on the interim commentary.

Comment

The 2011 adoption of this instruction reflects the amendment to MCR 2.513(D) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment gives the court discretion to permit the parties to present interim commentary.

History

M Civ JI 3.16 was added October 2011.

M Civ JI 3.17 Summary of Evidence by Judge

I will now summarize the evidence for you. It is intended only as a summary and you should consider all of the evidence when deciding this case, even if I do not mention all of the evidence in this summary. Remember that it is your job to decide what the facts of this case are. This is your job and nobody else's. It is for you to determine the weight of the evidence and the credit to be given to the witnesses, and you are free to decide that something I have not mentioned, but which has been admitted into evidence, is significant to your decision. You are not bound by my summary of the evidence. [Summary is then given.]

Again, it is for you to determine for yourself the weight of the evidence and the credit to be given to the witnesses. You are not bound by my summation.

Comment

The 2011 adoption of this instruction reflects the amendment to MCR 2.513(M) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment permits the court to sum up the evidence under certain conditions.

History

M Civ JI 3.17 was added October 2011.