

EIGHTH CIRCUIT MANUAL OF
MODEL JURY
INSTRUCTIONS

CIVIL

2013

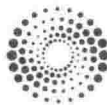
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For Use With Federal Jury Practice and Instructions

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS

FOR THE
DISTRICT COURTS
OF THE EIGHTH CIRCUIT

2013



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DEDICATION

The Committee is honored to dedicate these instructions to the Honorable Scott O. Wright, one of the founding fathers of the Judicial Committee on Model Jury Instructions for the Eighth Circuit. He served as Chairman of the Committee from its creation in 1983 and guided the Committee until 2009. His belief that jury trials are essential to our liberty, and his dedication to giving juries written instructions in language that could be understood by the average juror, have guided the Committee from its beginning. The leadership and encouragement of Scott Wright are largely responsible for the creation of the Committee and its continued existence.

It is a great privilege to recognize Scott's leadership on the Committee and to dedicate these Instructions in recognition of his outstanding contributions.

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INTRODUCTION

These model civil jury instructions have been prepared to help judges communicate more effectively with juries. The Manual is meant to provide judges and lawyers with models of clear, brief and simple instructions calculated to maximize juror comprehension. They are not intended to be treated as the only proper method of instructing a jury. *See United States v. Ridinger*, 805 F.2d 818, 821 (8th Cir. 1986). “The Model Instructions, . . . are not binding on the district courts of this circuit, but are merely helpful suggestions to assist the district courts.” *United States v. Norton*, 846 F.2d 521, 525 (8th Cir. 1988).

Every effort has been made to assure conformity with current Eighth Circuit law; however, it cannot be assumed that all of these model instructions in the form given necessarily will be appropriate under the facts of a particular case. The Manual covers issues on which instructions are most frequently given, but because each case turns on unique facts, instructions should be drafted or adapted to conform to the facts in each case. These instructions may be found on the Internet in both WordPerfect, Word, and pdf formats at <http://www.juryinstructions.ca8.uscourts.gov/>.

In drafting instructions, the Committee has attempted to use simple language, short sentences, the active voice, and to omit unnecessary words. We have tried to use plain language because giving a jury statutory language, or language from appellate court decisions, is often confusing.

We believe that instructions should be as brief as possible and limited to what the jury needs to know for the case. We recommend sending a copy of the instructions as given to the jury room.

Counsel are reminded of Civil Rule 51(c), which requires a specific objection, on the record, before the jury is instructed, if possible, and (d), which requires a proper, timely objection to preserve an instruction error for appeal, unless it amounts to plain error.

INTRODUCTION

The Committee expresses its appreciation to all members of the subcommittee, whose diligent research and commitment to this project are essential in continuing to revise current instructions and draft new ones. Special thanks go to Suzy Flippen, Judicial Assistant to Magistrate Judge Beth Deere, for her work in editing the instructions for publishing.

HOW TO USE THESE INSTRUCTIONS

The model civil jury instructions have been reorganized. The previous numbering system became unwieldy due to changes and additions to instructions over the years. Members of the Instruction Committee believe that users will find the new arrangement easier to use. Meanwhile, a Conversion Table will allow users to find a given instruction quickly using an “old” number.

The Committee has approved three major organizational changes to the manual. First, employment-related instructions have been broken down into separate chapters according to causes-of-action. In the 2012 manual, most employment-related instructions appear in Chapter 5. Through the years, additions to this Chapter (i.e., Family Medical Leave Act) have made it unmanageably large. The revised Chapter 5 covers only cases arising under Title VII of the Civil Rights Act of 1964. Instructions for other employment-related claims appear in separate, subsequent chapters.

The reorganized manual includes the following chapters:

<u>Chapter</u>	<u>Title</u>
1 - 4	(No change)
5	Title VII Cases
6	Age Discrimination in Employment Cases
7	Equal Pay Act Cases
8	Harassment Cases Under Title VII, Sections 1981 and 1983, ADA and ADEA
9	Americans with Disabilities Act
10	Retaliation (Anti-Discrimination Statutes)
11	Race Discrimination (42 U.S.C. § 1981)
12	Public Employers (42 U.S.C. § 1983)
13	First Amendment Retaliation (42 U.S.C. § 1983)
14	Family and Medical Leave Act

<u>Chapter</u>	<u>Title</u>
15	Federal Employers Liability Act
16	Fair Labor Standards Act
17	Admiralty and Maritime
18	Odometer Fraud

The second important organizational change is that the instructions in each chapter are divided into categories, such as Definitions, Elements of Claims, and Damages. Each category is assigned a decimal-numerical series for easy location and citation. The numbers assigned to categories remain constant from chapter to chapter.

To illustrate the decimal-numerical system for categories, consider the following: Under the new system, instructions that define legal words and terms appear in a category aptly titled Definitions. Definitions relevant to a particular cause of action are found under the chapter number for that claim, followed by decimals .20 through .39. So in an FELA case, for example, the definition of Ordinary Care is found at 15.21. (FELA instructions are found in Chapter 15; definitions are found at .20 through .39. Thus, the definition for ordinary care is found in Instruction 15.21.)

One advantage to the new numbering system is that it allows the Committee to add instructions without disrupting logical flow and sequence. It also should aid users in the search for the right instruction and in more easily assembling a set of instructions for a given claim.

The categories within each chapter are:

x.00	Legal Overview
x.01 to x.19	Explanatory Instructions ¹
x.20 to x.39	Definitions
x.40 to x.59	Elements of Claims
x.60 to x.69	Elements of Defenses
x.70 to x.79	Damages
x.80 to x.89	General Verdict Forms
x.90 to x.99	Special Verdict Forms

¹ *Explanatory Instructions* will contain instructions that do not easily fall into one of the other groups or types.

The third change users will notice in the reorganized instructions is a reduction in cross referencing. This means that some instructions will appear more than once in the manual. For example, punitive damages are available under both Title VII and the Americans with Disabilities Act (“ADA”). Thus, the identical punitive damages instruction appears in both Chapter 5 (Title VII) as 5.72, and in Chapter 9 (ADA) as 9.72. By including the instruction in both chapters, users are spared the task of flipping pages or scrolling to another section of the online manual. Reducing cross referencing also means that many definitions are set out within the substantive instructions to minimize the need to flip or scroll from place to place.

Users may also notice other changes to the model instructions. The Committee continues, of course, to revise instructions in reaction to changes in the law—both statutory and case law. In addition, however, users may notice that the Committee has revised many instructions to make them easier to understand—the “plain-language” project. The Committee is always open to suggestions to improve, amend, and make the model civil instructions easier to use and understand.

The Committee understands that judges follow different practices when it comes to jury instructions. Some judges send a full set of written instructions into the jury room after they have been read in open court. Other judges also provide jurors with written copies of the instructions to follow as they are read from the bench. Still other judges prefer not to provide the jury with any written instructions. These civil jury instructions have been arranged and drafted to accommodate any of these varying practices.

Model Instruction 1.01 is a general instruction which is intended to give jurors an overview of their initial duties as venire panel members. Its language, and that of Model Instruction 1.02, have been enhanced to impress upon a jury the importance of not using electronic media, or any other source, for information regarding the case in which the jurors are serving. Model Instruction 1.01 should be given before voir dire. Model Instruction 1.02 should be given at the conclusion of voir dire, right before the recess at which the judge and the attorneys discuss the strikes and select the petit panel.

Model Instruction 1.03 should be given at the commencement of trial (after the jurors are sworn and before opening statements). This instruction incorporates matters which are also addressed in Model Instructions 3.02 (Judge's Opinion) and 3.03 (Credibility of Witnesses). The Committee recommends that the general instructions that are given at the outset of the trial (Model Instructions 1.01 - 1.09) and those given during the middle of trial not be repeated at the time the case is submitted to the jury. Those general matters which are necessary to the jury's final deliberations are repeated in Model Instructions 2.01 - 2.14, and 3.01 - 3.07.

The Committee recognizes that varying burden-of-proof formulations are used in different jurisdictions. Judges and lawyers are often accustomed to using the burden-of-proof instruction found in the pattern civil jury instructions adopted by their particular states. Model Instruction 3.04 is a burden-of-proof instruction intended to accommodate the various formulations. However, the Committee recognizes that a judge may prefer to use the burden-of-proof formulation that is accepted in his or her state. If such a burden-of-proof instruction is used, the element/issue instructions must be modified accordingly.

The Committee recommends that written instructions sent into the jury room be numbered, in the order given, or accurately titled without numbering. If a "titling" method is used, the judge should be aware that the titles used in these instructions were not designed for such use and that an appropriately "neutral" method of expression should be used. Such instructions should also be free of any extraneous notations: for example, the model instruction number, the identity of the submitting party, committee notes, any notes by the court, and other such notations should not appear on the written instructions given to the jury.