

**JURY INSTRUCTION # 1**  
**DUTY OF COURT AND JURORS**

Now that you've heard the evidence and the arguments, it becomes my duty to give you the instructions as to the law applicable to this case.

It's your duty as jurors to follow the law as I state it to you and to apply the law to the facts as you find them from the evidence in this case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of the rule of law stated by me.

Counsel has quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by the counsel and that stated by the Court in these instructions, you are of course to be governed by the Court's instruction.

**JURY INSTRUCTION # 2**  
**COURT'S OPINION**

Nothing that I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It's not my function to determine the facts, but rather yours.

**JURY INSTRUCTION # 3**  
**NO BIAS, PREJUDICE OR SYMPATHY**

You must perform your duties as jurors without bias or prejudice to any party. The law does not permit you to be governed by sympathy, prejudice or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

**JURY INSTRUCTION # 4**  
**EQUALITY UNDER THE LAW**

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

**JURY INSTRUCTION # 5**  
**STATEMENTS BY COUNSEL**

Statements and arguments of counsel are not evidence in this case. When, however, the attorneys on both sides stipulate or agree as to evidence of a fact, the jury must, unless instructed otherwise, accept the stipulation and regard that fact as proven.

**JURY INSTRUCTION # 6**  
**EVIDENCE**

Unless you are otherwise instructed, the evidence in this case always consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been stipulated or admitted.

Any evidence to which an objection was sustained by the Court or any evidence ordered stricken must be entirely disregarded.

If a lawyer asks a witness a question which contains an assertion of fact, you may not consider that assertion as evidence of that fact. The lawyer's statements are not evidence.

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, 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 any 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.

**JURY INSTRUCTION # 7**  
**BURDEN OF PROOF**

The burden is on the plaintiff in a civil action such as this to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the plaintiff's claim by a preponderance of the evidence, then the jury should find for the defendant as to that claim.

To establish by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in this case means such evidence as when considered and compared with that opposed to it, has more convincing force and produces in your minds belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proven by a preponderance of the evidence in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them and all exhibits received into evidence regardless of who may have produced them.

**JURY INSTRUCTION # 8**  
**BURDEN OF PROOF - MEANING**

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression, “if you find” or “if you decide,” I mean you must be persuaded considering all the evidence in the case that the proposition is more probably true than not true.



**JURY INSTRUCTION # 9**  
**DEFINITION OF "DIRECT" AND "CIRCUMSTANTIAL" EVIDENCE**

There are, generally speaking, two types of evidence from which a jury may properly assess the truth as to the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

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 be given to either direct or circumstantial evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

**JURY INSTRUCTION # 10**  
**WEIGHING THE EVIDENCE**

You are to consider only the evidence in this case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in the light of your experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in this case.

**JURY INSTRUCTION # 11**  
**ABSENCE OF EVIDENCE**

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.

**JURY INSTRUCTION # 12**  
**CONSTRUCTIVE KNOWLEDGE**

If it appears from the evidence that a person had information which would lead a reasonably prudent person to make inquiry through which he would surely learn certain facts, then this person may be found to have had actual knowledge of those facts, the same as if he made such inquiry and had actually learned such facts.

That is to say, the law will charge a person with notice and knowledge of whatever he would have learned upon making such inquiry as it would have been reasonable to expect him to make under the circumstances.

**JURY INSTRUCTION # 13**  
**KNOWLEDGE OR NOTICE**

Knowledge or notice may also be established by circumstantial evidence. If it appears that a certain condition has existed for a substantial period of time, and that the defendant had regular opportunities to observe the condition, then you may draw the inference that he had knowledge of the condition.

**JURY INSTRUCTION # 14**  
**FAILURE TO PRODUCE**

If a party fails to produce evidence which is under his control and reasonably available to him and not reasonably available to the adverse party, then you may infer that the evidence is unfavorable to the party who could have produced it and did not.

**JURY INSTRUCTION # 15**  
**TESTIMONY OF WITNESSES**

You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses which does not produce in your minds belief of the likelihood of truth, as against the testimony of a lesser number of witnesses or other evidence which does not produce such belief in your minds.

The test is not which side brings the greater number of witnesses, or presents the greater quantity of evidence; but which witnesses, and which evidence, appeals to your minds as being most accurate, and otherwise trustworthy.

The testimony of a single witness which produces in your minds belief in the likelihood of truth is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even though a number of witnesses may have testified to the contrary, if, after consideration of all the evidence in the case, you hold greater belief in the accuracy and reliability of the one witness.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You 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 this case, you may consider, among other things:

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

**JURY INSTRUCTION # 16**  
**WITNESS - CREDIBILITY**

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind and demeanor or manner while on the stand. Consider the witness' ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness' testimony is either supported or contradicted by other evidence in the case.



**JURY INSTRUCTION # 17**  
**WITNESS – NEED NOT BE BELIEVED**

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from an innocent error or an intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

You may, in short, accept or reject the testimony of any witness in whole or in part.

**JURY INSTRUCTION # 18**  
**IMPEACHMENT OF A WITNESS**

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something which is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

**JURY INSTRUCTION # 19**  
**STATEMENT AGAINST INTEREST**

You may consider statements given by parties under oath before trial as evidence of the truth of what they said in the earlier statements, as well as in deciding what weight to give their testimony.

Evidence that at some other time a witness, not a party to this action, has said or done something which is inconsistent with the witness' testimony at trial, may be considered for the sole purpose of judging the credibility of the witness but may never be considered as evidence of proof of the truth of any such statement.

When, however, the witness is a party to the case, and by such statement or other conduct, admits some fact or facts against his interest, then such statement or conduct, if knowingly made or done, may be considered as evidence of the truth of the fact or facts so admitted by such party as well as for the purpose of judging the credibility of the party as a witness.

An act or omission is knowingly done, if done voluntarily and intentionally and not because of mistake or accident or some other innocent reason.

**JURY INSTRUCTION # 20**  
**FIRST AMENDMENT RETALIATION**

Plaintiffs are claiming that defendants retaliated against them for exercising their First Amendment rights. In order to establish a First Amendment retaliation claim, plaintiffs must prove:

- (1) That plaintiffs were engaged in a Constitutionally protected activity;
- (2) An adverse action was intentionally taken against the plaintiffs that would deter a person of ordinary firmness from continuing to engage in that conduct;
- (3) Plaintiff's protected activity was a reason, alone or with other reasons, for the adverse action or that moved Defendant toward its decision to take the action; and
- (4) That Plaintiffs were harmed as a result.

If you find that plaintiffs have proved each of these elements by a preponderance of the evidence, then you must find for the plaintiffs on this issue. However, if you find that the plaintiffs did not prove every one of these elements by a preponderance of the evidence, then you must find for the defendants.

**JURY INSTRUCTION # 21**  
**NATURE OF THE ACTION – 14TH AMENDMENT**

Plaintiffs claim defendants, while acting under color of state law, intentionally discriminated against plaintiffs based on plaintiff's gender in violation of plaintiff's constitutional rights under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Defendants deny they violated plaintiffs' rights in any way, and assert that they treated Plaintiffs fairly and that decisions concerning Township business were based on sound and legitimate business factors, unrelated to Plaintiffs' alleged petitions or gender.

**JURY INSTRUCTION # 22**  
**EQUAL PROTECTION**

Plaintiffs are claiming that defendants discriminated against them because of gender. In order to establish this Equal Protection claim, plaintiffs must prove:

- (1) That plaintiffs were part of a protected group;
- (2) That plaintiffs were qualified for the jobs/work in question;
- (3) That there was an adverse action taken motivated in whole or in part by plaintiffs' gender;
- (4) There was different treatment to a similarly-situated non-protected person resulting in injury to Plaintiffs; and
- (5) That Plaintiffs were harmed as a result.

**JURY INSTRUCTION # 23**  
**EQUAL PROTECTION - GENDER**  
**(as modified)**

The Plaintiff, Sarah “Sadie” Leonard, must prove that she was discriminated against because of gender.

The discrimination must have been intentional. It cannot have occurred by accident. Intentional discrimination means that one of the motives or reasons for Defendants’ conduct was gender. Gender does not have to be the only reason, or even the main reason, but it does have to be one of the reasons that made a difference in determining Defendants’ conduct towards the Plaintiff.

**JURY INSTRUCTION # 24**  
**LIABILITY OF MUNICIPALITY**

A municipality, such as a township, can be liable for its own acts, or for actions taken pursuant to a policy, custom or practice and where, and only where, a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.

In this case, plaintiffs seek to hold Montrose Township responsible for the alleged conduct of its supervisor, defendant Emmendorfer. Montrose Township can only be responsible for the individual actions of its supervisor, defendant Emmendorfer, if he is responsible for establishing final government policy respecting the activity alleged.

Plaintiffs must demonstrate, by a preponderance of the evidence, that, through its deliberate conduct, Montrose Township was the "moving force" behind the damages and the alleged decision was made with the requisite degree of culpability and must demonstrate a direct causal link between the Township's actions and the deprivation of federal rights.

Additionally, plaintiffs must establish the state of mind required to prove the underlying violation. Accordingly, proof that Montrose Township's legislative body has intentionally deprived plaintiffs of a federally protected right necessarily establishes that Montrose Township acted culpably.



**JURY INSTRUCTION # 25**  
**SAME ACTION REGARDLESS OF PROTECTED ACTIVITY/GENDER**

If you find plaintiffs have proved each element of their claims by a preponderance of the evidence, then you must consider whether Defendants would have reached the same decision in the absence of petitioning activity or gender. If you find Defendants have proved by a preponderance of the evidence that they would have selected a different vendor whether or not plaintiffs engaged in petitioning activity or gender, then you must return a verdict for Defendants and against Plaintiffs.

**JURY INSTRUCTION # 26**  
**REASONABLENESS OF DECISION(S)**

Your task is to determine whether Defendants discriminated and/or retaliated against Plaintiffs. You are not to substitute your judgment for Defendants' business judgment, or decide this case based on what you would have done.

However, you may consider the reasonableness, or lack of reasonableness, of Defendants' stated business judgment along with all of the other evidence in determining whether or not Defendants discriminated and/or retaliated against Plaintiffs.

**JURY INSTRUCTION # 27**  
**CALCULATING DAMAGES**

I am now going to instruct you on how to calculate damages. The fact that I do so does not mean that I think you should award any damages. That is entirely for you to decide.

For each claim on which the Defendants are liable, Plaintiffs are entitled to recover an amount which will reasonably compensate them for the loss and damage they have suffered as a result of Defendants' unlawful conduct. Conduct by Defendants that do not cause harm do not entitle the Plaintiffs to damages. By the same token, harm to the Plaintiffs which is not the result of unlawful conduct by Defendants, does not entitle Plaintiffs to damages.

If you find that plaintiffs have proved any of their claims against any of defendants, then you must determine what amount of damages, if any, plaintiffs are entitled to recover. Plaintiffs must prove their damages by a preponderance of the evidence.

If you find that plaintiffs have failed to prove any of their claims, then you will not consider the question of damages.

**JURY INSTRUCTION # 28**  
**DAMAGES**

If you find in favor of plaintiffs then you must award plaintiffs such sum as you find from the preponderance of the evidence will fairly and justly compensate plaintiffs for any damages you find plaintiffs sustained as a direct result of Defendants' conduct. You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering the plaintiff has experienced; and the nature and extent of the injury.
2. The wages, salary, profits and the reasonable value of the earning capacity plaintiffs have lost.

When it is difficult to quantify precisely the damages caused by that injury, presumed damages may be awarded, but the award must focus on the real damages sustained and not on either the abstract value of the constitutional right at issue or the importance of that right in our system of government.

Throughout your deliberations you must not engage in any speculation, guess, or conjecture and you must not award any damages under this instruction by way of punishment or through sympathy. On the other hand, the law does not require that the plaintiffs prove the amount of their losses with mathematical precision. It is sufficient if there is a reasonable basis for computation, even if the result is only approximate.

**JURY INSTRUCTION # 29**  
**COMPENSATION FOR EMOTIONAL DISTRESS**

Although medical evidence is not necessary in order for a plaintiff to be compensated for emotional distress, damages for mental and emotional distress will not be presumed, and must be proven by competent evidence. Michigan law allows recovery for mental anguish based on the plaintiff's own testimony; however, there must be specific and definite evidence of a plaintiff's mental anguish, anxiety or distress.

**JURY INSTRUCTION # 30**  
**NOMINAL DAMAGES**

If you find that the Plaintiffs are entitled to a verdict in accordance with these instructions, but do not find that the Plaintiffs have sustained substantial damages, you may return a verdict for the Plaintiffs in some nominal sum such as one dollar, as actual damages.

**JURY INSTRUCTION # 31**  
**PUNITIVE DAMAGES**

In addition to actual damages, the law permits the jury, under certain circumstances, to award the injured person punitive and exemplary damages, in order to punish the wrongdoer for some extraordinary misconduct, and to serve as an example or warning to others not to engage in such conduct.

If you find from a preponderance of the evidence in this case that the Plaintiffs are entitled to a verdict for actual or compensatory damages, and you further find that the act or omission of the Defendants which proximately caused actual injury or damage to the Plaintiffs was maliciously or wantonly or oppressively done, then you may, but are not required to, add to the award of actual damages such amount as you shall agree to be proper as punitive and exemplary damages.

An act or failure is maliciously done if prompted or accompanied by ill will or spite or grudge, either toward the injured person individually, or toward all persons in one or more groups or categories of which the injured person is a member.

An act or failure to act is wantonly done if done in reckless or callous disregard of, or indifference to the rights of one or more persons including the injured person.

An act or failure to act is oppressively done if done in a manner or way which injures or damages or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness or disability or misfortune of another person.

**JURY INSTRUCTION # 32**  
**MITIGATION OF DAMAGES**

If you find plaintiffs were injured as a result of conduct by defendants in violation of Section 1983, you must determine whether plaintiffs could have done something to lessen the harm suffered. Defendants have the burden to prove by a preponderance of the evidence that plaintiffs could have lessened or reduced the harm done to plaintiffs and that plaintiffs failed to do so.

If defendants establish by a preponderance of the evidence that plaintiffs could have reduced the harm done to plaintiffs but failed to do so, plaintiffs are entitled only to damages sufficient to compensate for the injury that plaintiffs would have suffered had plaintiffs taken appropriate action to reduce harm.



**JURY INSTRUCTION # 33**  
**AVOIDANCE OF DOUBLE RECOVERY**

If you find Defendants violated more than one of plaintiffs' rights, plaintiffs are entitled to be compensated only for the injuries they actually suffered. Thus if the defendants violated more than one of plaintiffs' rights but the resulting injury was no greater than it would have been had defendants violated only one of those rights, you should award an amount of compensatory damages no greater than you would award if defendants had violated only one of the plaintiffs' rights.

However, if you find defendants violated more than one of plaintiffs' rights and you can identify separate injuries resulting from the separate violations, you should award an amount of compensatory damages equal to the total of the damages you believe will fairly and just compensate plaintiffs for the separate injuries they have suffered.

**JURY INSTRUCTION # 34**  
**DAMAGES – INSTRUCTIONS ARE FOR GUIDANCE**

The fact that I've instructed you on the measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiffs from a preponderance of the evidence in this case in accordance with the other instructions.

**JURY INSTRUCTION # 35**  
**JURY COMMUNICATIONS**

If you wish to communicate with me or examine the exhibits while you're deliberating, please have your foreperson write a note, give it to the clerk. It's not proper to talk directly with the Judge, attorneys, court officers or other persons involved in the case even if the discussion has nothing to do with the case.

So, from this point forward, all communications of any kind will be by written note or I will address you such as this in the courtroom.

During your deliberations and before you reach a verdict, you must not disclose anything about your discussions to anyone outside the jury room, not even how your voting stands. Therefore, until you reach a verdict, do not disclose that information even in the courtroom.

**JURY INSTRUCTION # 36**  
**JURY DELIBERATIONS - CONDUCT**

If differences of opinion arise, you should discuss them in a spirit of fairness and frankness. No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So, you should all feel free to speak your minds. You should express not only your opinions, but also the facts and reasons upon which you base it.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you're convinced that it's wrong. However, none of you should surrender your honest conviction as to the weight and effect of the evidence or lack of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

**JURY INSTRUCTION # 37**  
**JURY DELIBERATIONS**

When you go to the jury room, your deliberations should be conducted in a businesslike manner. You should first select a foreperson. She or he should see to it that the discussion goes forward in an orderly fashion and that each juror has a full opportunity to discuss the issues.

When six (6) of eight (8) of you agree upon a verdict, it will be received as your verdict. In other words, in this matter, your verdict does not have to be unanimous.

**JURY INSTRUCTION # 38**  
**CONDUCT OF THE JURY**

Let me finish up by repeating something I said to you earlier. Nothing that I've said or done during this trial was meant to influence your decision in any way. Nothing said in these instructions, nothing in any form of verdict prepared for your convenience is to suggest or convey to you in any manner, any intimation as to what verdict I think you should return. What the verdict shall be is the exclusive duty and responsibility of the jury. As I have told you, you are the sole judges of the facts.

I'm going to ask now that you go to the jury room. However, do not begin discussing about the case until my clerk has handed you the verdict form.