

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**ROSS MACLIN #148084,**

Plaintiff,

v.

**KELLY HOLDEN and  
RICHARD CADY,**

Defendant.

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File No. 4:12-cv-12480

HON. Gershwin A. Drain

**JURY INSTRUCTIONS**

**Additional Keywords:**

Prisoner Civil Rights

1st Amendment

## CV 2.01 – **Introduction**

Members of the jury, I will now instruct you as to the law that you must follow in deciding this case.

I will start by explaining your duties and the general rules that apply in every civil case.

Then I will explain the elements of the claim(s) made by the plaintiff.

Then I will explain some rules that you must use in evaluating particular testimony and evidence.

Then the lawyers for the parties will make their closing arguments.

After closing arguments, I will then explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say.

## CV 2.02 - Jurors' Duties

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you have seen and heard in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide what claims, if any, plaintiff has proved by a preponderance of the evidence. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers may talk about the law during their arguments. But if what they say is different from what I say, you must follow what I say. What I say about the law controls. Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

**CV 2.03 - All Persons Equal Before the Law – Organizations**

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 of life.

## CV 2.04 - Evidence Defined

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; the depositions which were read into evidence or which you watched on the video screen, the stipulations that the lawyers agreed to; and the facts that I have judicially noticed.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record or I allowed some evidence to be considered by you for a limited purpose. You must completely ignore all of the things which are not in evidence or which I struck from the record, and you can consider the evidence which was admitted for a limited purpose only in your consideration of the limited purpose for which the evidence was admitted. Do not speculate about what a witness might have said or what an exhibit might have shown. Things that are not evidence are not to influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

## **CV 2.05 - Consideration of Evidence**

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

### **CV 2.05A – Curative Instruction Regarding Brother Letter**

You previously heard evidence regarding a letter from Brother. You may only use the letter to determine whether Defendants Holden and Cady relied on the information contained within the letter when they made their decision to confiscate Plaintiff Maclin’s typewriter – and for no other purpose.

You must not use or consider the letter to determine when the typewriter’s manufacture, model number, or suggested retail value because there is no evidence that indicates the information in the letter is accurate or who produced it. Plaintiff does not have the ability to cross-examine the author as to the truth of what is stated in this letter.

## CV 2.06 - Direct and Circumstantial Evidence

Now, some of you may have heard the terms "direct evidence" and "circumstantial evidence."

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that it is raining outside, and you believed the witness, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.



## CV 2.07 - Credibility of Witnesses

Another part of your duties as jurors is to decide how credible or believable each witness was. This is your duty, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

Let me suggest some things for you to consider in evaluating each witness's testimony. Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake. Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

Ask yourself if the witness had any relationship to any party in this case, or anything to gain or lose from the case, that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it

may; other times it may not. Consider whether the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake, or if it seemed deliberate.

And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

**CV 2.07A – Corrections Officers, Civilian Witnesses, and  
Plaintiff’s Status as Prisoner**

You have heard the testimony of witnesses who are prisoners and the testimony of witnesses who are corrections officers.

In evaluating this testimony, you are to apply the same standards of evaluation to each witness. You shall not give any greater or lesser weight to the testimony of a witness solely because of his occupation as a corrections officer.

The fact that Mr. Maclin was a prisoner at the time of the alleged violation has absolutely no bearing either on his constitutional right to file grievances and lawsuits, or on his right to recover damages if you find, based on the evidence in this trial, that his rights have been violated. You should evaluate his credibility in the same way that you would evaluate the credibility of any witness.

### **CV 2.08 - Number of Witnesses and Evidence Presented**

The number of witnesses who testified makes no difference.

Do not make any decision based only on the number of witnesses who testified or quantity of evidence presented. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves; and which evidence appeals to your minds as being most accurate and otherwise trustworthy. Concentrate on that, not the numbers.

**CV 2.08A - All Available Evidence Need Not Be Produced**

No party must call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

**CV 2.08C - Not Required to Accept Uncontradicted Testimony**

You are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor, or because of the inherent improbability of the witness's testimony, or for other reasons you find sufficient, that such testimony is not worthy of belief.

### **CV 2.14 - Lawyers' Objections**

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

And do not interpret my rulings on the lawyers' objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on any opinion I might have about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

### **CV 3.01 - Introduction**

That concludes the part of my instructions explaining your duties and the general rules that apply in every civil case. In a moment, I will explain the elements of the plaintiff's claim(s) against the defendant.

But before I do that, I want to emphasize that this trial is only on the particular claims alleged in plaintiff's complaint filed in this case. Your job is limited to deciding whether the plaintiff has proved the claim(s) alleged in this case.



### **CV 3.02 - Preponderance of the Evidence**

The burden is on the plaintiff to prove every essential element of a 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, you 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 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. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved by a preponderance of the evidence.

This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case. Furthermore, this does not require proof beyond a reasonable doubt. Proof beyond a reasonable doubt is a stricter standard that applies in criminal cases. It does not apply in civil cases such as this.

### CV 3.02A - **Burden of Proof**

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim [or defense] depends upon that fact. The party who has the burden of proving a fact must prove it by the preponderance of the evidence, which I have already defined for you.

If a preponderance of the evidence does not support each essential element of a claim, then the jury should find against the party having the burden of proof on that claim.

### **CV 3.03 – The Statute and Its Function**

Plaintiff Maclin asserts a claim against Corrections Officers Kelly Holden and Richard Cady under a federal civil rights law, 42 U.S.C. § 1983. Section 1983 creates a remedy when a Correction Officer through his or her actions or inactions deprives a person of rights secured to them by the United States Constitution.

Section 1983 itself does not establish or create any federally protected right. Rather, it allows the plaintiff in this case, Mr. Maclin, to enforce rights guaranteed to him by the Federal Constitution. Later in these instructions I will explain to you what these Federal Constitutional rights are, and what Mr. Maclin must show to demonstrate a violation of these rights by the defendant corrections officers.

### **CV 3.03A – Specific Elements of Claims – Prisoner’s Rights and Retaliation**

The First Amendment forbids prison officials from retaliating against inmates for engaging in constitutionally protected conduct. In this case, Plaintiff claims that Defendants retaliated against him for filing grievances and this lawsuit against prison staff.

In order to establish his claim for violation of the First Amendment, Mr. Maclin must prove his claims that Defendants Holden and Defendant Cady retaliated against him, by a preponderance of the evidence, by satisfying each of the following elements:

First: That Plaintiff engaged in constitutionally protected conduct.

Second: That Defendants Holden and Cady’s actions were adverse actions that would deter a person of ordinary firmness from exercising the right at stake.

Third: That there was a causal connection between the constitutionally protected conduct and the adverse action.

If you find that Mr. Maclin has proved each of these elements by a preponderance of the evidence, then you should find for Mr. Maclin, and go to consider the question of damages. If, on the other hand, you find that Mr. Maclin has failed to prove any of these things by a preponderance of the evidence, then you should find for Defendants, and you will not consider the question of damages.

However, even if the Plaintiff proves all three of these elements, if the Defendants can show by a preponderance of the evidence that they would have taken the same actions in the absence of the protected activity, they are entitled to a verdict in his favor.

**CV 3.03A(1) – Constitutionally Protected Conduct**

I will now give you more details on the first element.

As to the first element, in order to find for the Plaintiff, you must find that Mr. Maclin was engaged in constitutionally protected conduct when he filed grievances and this lawsuit against Corrections officers and therefore satisfied the first element.

The parties do not dispute that Plaintiff has satisfied this first element, and you need not consider it in your deliberations.

### **CV 3.03A(2) – Adverse Actions**

I will now give you more details on the second element:

The Plaintiff must next prove that the Defendants' actions were adverse and capable of deterring a person of ordinary firmness from continuing to engage in the previously found protected conduct while keeping in mind that prisoners may be able to tolerate more than the average citizen before the action is considered adverse.

Here, Mr. Maclin must prove by a preponderance of the evidence that Ms. Holden and Mr. Cady harassed or improperly threatened Mr. Maclin, or that Mr. Maclin suffered from an improper prison transfer, and that such action was capable of deterring a person of ordinary firmness from pursuing rights protected by the First Amendment.

The mere potential threat of disciplinary sanctions is sufficiently adverse to support a claim of retaliation. The unwarranted seizure of a prisoner's authorized property, whatever the monetary value may be, is an ignorable and cowardly abuse of authority.

### CV 3.03B - **Proximate Cause**

An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result, or a reasonably probable consequence of the act or omission.

### **CV 3.03C - Proximate Cause and Proximately Contributed**

As previously instructed, "proximate cause or proximately contributed" means, first, that there must have been a connection between the defendant's actions and the plaintiff's injury or damages and, second, that the occurrence which is claimed to have produced the injury or damages was a natural and probable result of the defendant's conduct.

A Defendant may be liable for the natural consequences of his actions, including acts giving rise to the ultimate harm, even if the harm is ultimately executed by someone else.

Motive is often very difficult to prove with direct evidence in retaliation cases, therefore, temporal proximity alone may be significant enough to constitute indirect evidence of a causal connection so as to create an inference of retaliatory motive.



### **CV 3.04 - Consider Damages Only If Necessary**

If the plaintiff has proven a claim against the defendant by a preponderance of the evidence, you must determine the damages to which the plaintiff is entitled. You should not interpret the fact that I am giving instructions about the plaintiff's damages as an indication in any way that I believe that the plaintiff should, or should not, win this case. It is your task first to decide whether the defendant is liable. I am instructing you on damages only so that you will have guidance in the event you decide that the defendant is liable and that the plaintiff is entitled to recover money from the defendant.

### CV 3.04A - **Damages - Reasonable - Not Speculative**

Damages must be reasonable. If you should find that the plaintiff is entitled to a verdict, you may award the plaintiff only such damages as will reasonably compensate the plaintiff for such injury and damage as you find, from a preponderance of the evidence in the case that was sustained as a proximate result of defendant's acts or omissions. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant. On the other hand, compensatory damages are not restricted to actual loss of time or money; they cover both the mental and physical aspects of injury--tangible and intangible. They are an attempt to restore the plaintiff, that is, to make the plaintiff whole or as the plaintiff was immediately prior to the injuries.

You are not permitted to award speculative damages. So, you are not to include in any verdict compensation for any prospective loss which, although possible, is not reasonably certain to occur in the future.

### **CV 3.05(1) – Compensatory Damages**

If you find Defendants Holden and Cady liable, then you must consider the issue of compensatory damages. You must award Mr. Maclin an amount that will fairly compensate him for any injury he actually sustained as a result of Defendant Holden and Cady's conduct.

Mr. Maclin must show that the injury would not have occurred without Defendant Holden and Cady's actions or inactions. Mr. Maclin must also show that Defendant Holden and Cady's actions or inactions played a substantial part in bringing about the injury, and that the injury was either a direct result or a reasonably probable consequence of Defendant Holden and Cady's actions or inactions,

Compensatory damages must not be based on speculation or sympathy. They must be based on evidence presented at trial, and only that evidence. Plaintiff has the burden of proving compensatory damages by a preponderance of the evidence.

Deprivations of First Amendment rights are themselves injuries, apart from any mental, emotional, or physical injury that might also arise from the deprivation.

Plaintiff can recover presumed damages for actual injuries caused by constitutional violations that are "likely to have occurred" but difficult to measure, even when the injury claimed is neither physical harm nor mental or emotional distress.

No formula exists to determine with precision compensatory damages. The amount is left to the sound discretion of you, the jury.

Mr. Maclin claims the following items of damages:

- The reasonable cost of property taken, including the typewriter and accessories
- The reasonable value of his lost wages
- Damages for retaliation
- Damages because of hardship related to the transfer to the up north facility

### **CV 3.05(2) – Nominal Damages**

If you return a verdict for Mr. Maclin, but find that Mr. Maclin has failed to prove compensatory damages, then you must award nominal damages of \$1.00.

A person whose federal rights were violated is entitled to a recognition of that violation even if he suffered no actual injury. Nominal damages of \$1.00 are designed to acknowledge the deprivation of a federal right, even where no actual injury occurred.

However, if you find actual injury occurred, you must award compensatory damages, as I previously instructed you, rather than nominal damages.

### **CV 3.05(3) – Punitive Damages**

In addition to compensatory or nominal damages, you may consider awarding Mr. Maclin punitive damages. A jury may award punitive damages to punish Defendant Holden and Cady, or to deter Defendants' Holden and Cady and others from committing such conduct in the future.

Mr. Maclin must prove by a preponderance of the evidence that Defendant Holden and Cady at least acted wantonly, with reckless disregard of/or maliciously in violating Mr. Maclin's federally protected rights.

A defendant who has been found liable for First Amendment retaliation has engaged in conduct that warrants consideration of an award of punitive damages

Conduct is malicious if it is accompanied by ill will, spite or is done for the purpose of injuring Mr. Maclin.

Conduct is wanton if the person committing the violation recklessly or callously disregarded the plaintiff's rights.

If you find that it is more likely than not that Defendant Holden and Cady acted maliciously or wantonly in violating Mr. Maclin's federal rights, then you may award punitive damages against Defendant Holden and Cady. However, an award of punitive damages is discretionary. You must use sound reasoning in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either party. In determining the amount of any punitive damages, you should consider the following factors:

- The reprehensibility of Defendant Holden and Cady's conduct;
- The impact of Defendant Holden and Cady's conduct on Mr. Maclin;
- The relationship between Defendant Holden and Cady and Mr. Maclin;
- The likelihood that Defendant Holden and Cady would repeat the conduct if an award of punitive damages is not made;
- Defendant Holden and Cady's financial condition;
- The relationship of any award of punitive damages to the amount of actual harm Mr. Maclin suffered.

### CV 4.01 - **Introduction**

That concludes the part of my instructions explaining the elements of the claim(s) made by plaintiff and how to calculate damages if you find that damages should be awarded. Next I will explain some rules that you must use in considering some of the testimony and evidence.



### **CV 4.02A - Stipulations of Fact and Judicial Notice**

The parties have agreed to certain facts that have been given to you. You should therefore treat these facts as having been proved.

The Court has taken judicial notice of certain facts that have been given to you. You should therefore treat the judicially noticed facts as conclusive.

### **CV 4.06 - Witness Who Has Been Interviewed by an Attorney**

It has been brought out that an attorney has talked with witnesses. There is nothing wrong with an attorney talking with a witness for the purpose of learning what the witness knows about the case and what testimony the witness will give.

#### CV 4.07 - Impeachment - Inconsistent Statement (**Prior Conviction**)

A witness may be discredited or "impeached" by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, 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 that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

The fact that a witness has previously been convicted of a felony, or a crime involving dishonesty or false statement, is also a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness' credibility, but is one of the circumstances you may take into account in determining the weight to be given to his or her testimony.

CV 4.08 - Impeachment by Prior Inconsistent **Statement Not Under Oath**

You have heard the testimony of Defendants Kelly Holden and Richard Cady. You have also heard that before this trial that each of these witnesses made a statement that may be different from that witness's testimony here in court.

This earlier statement was brought to your attention only to help you decide how believable a witness's testimony was. You cannot use it as proof of anything else. You can only use it as one way of evaluating this witness's testimony here in court.

### **CV 4.09 - Impeachment of a Witness by Prior Conviction**

You have heard the testimony of Ross Maclin. You have also heard that before this trial this witness was convicted of a crime.

This earlier conviction was brought to your attention only as one way of helping you decide how believable this witness's testimony was. Do not use it for any other purpose. It is not evidence of anything else.

## CV 9.01 - Introduction

Now let me conclude by explaining some things about your deliberations in the jury room, and your possible verdicts.

The first thing that you should do in the jury room is choose someone to be your foreperson. This person will help to guide your discussions, and will speak for you here in court. Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any question or message, you must write it down on a piece of paper, sign it, and then give it to the jury officer. The officer will give the message to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any question or message normally should be sent to me through your foreperson.

You will be given the documents that were admitted into evidence. If you want to see any of the exhibits that were admitted into evidence and which you do not have, you may send me a message, and those exhibits will be provided to you.

One more thing about messages. Do not ever write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that you are split, or whatever your vote happens to be. That should stay secret until you are finished.

### CV 9.02 - **Research and Investigation**

Remember that you must make your decision based only on the evidence that you saw and heard here in court. The instructions I have given you throughout trial also apply to your deliberations. Do not try to gather any information about the case on your own. Do not bring any book, like a dictionary, or anything else with you to help you with your deliberations. Do not conduct any independent research, reading, or investigation about the case.

In addition to not discussing the case with anyone in person or on the telephone, you are not to use electronic communications about this case with anyone until you have reached your final conclusion in the case and you are told that you can discuss the case under the conditions that I will describe to you at that time. It would violate your oath, for example, to try to keep a family member, friend, or the media up-to-date or otherwise communicate with non-jurors about the trial either during the trial proceedings or while you are in the jury room. Such communications, whether you intend so or not, would involve people who are not jurors in possibly influencing you in your decision at the conclusion of the trial. These people have not taken your oath to make a decision based solely on the evidence that you hear in court.

Remember, that both parties are entitled to a fair trial by you and you must follow the instructions as to the law that I am giving you now and that I gave you throughout the trial. Make your decision based only on the evidence that you saw and heard here in court.

### CV 9.04 - **Duty to Deliberate**

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach an agreement of five out of seven of you. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong. But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that--your own vote. It is important for you to reach agreement, but only if you can do so honestly and in good conscience.

Also, be mindful that you each may process information differently or have different approaches to your deliberations. For example, some of you may need to think quietly while others may want to openly discuss their thoughts. It may take more time for some of you, than for others, to reach a decision. Be patient and considerate of each other's needs as you deliberate. Try your best to work out your differences.

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. Listen carefully to what the other jurors have to say, and then decide for yourself whether plaintiff's claims were proved by a preponderance of the evidence.



### **CV 9.04A - Notes**

During the trial, I permitted you to take notes and I have noticed that several of you have done so. As I said at the beginning of the trial, there is always a tendency to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus was not written down, may have taken on greater importance later in the trial in light of all the evidence presented. Therefore, you are again instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and may not be a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

### **CV 9.05 - Verdict Form**

I have prepared verdict forms for your use. A verdict form is simply the written notice of your decision. Whatever decision you reach in this case must be the decision of five out of seven of you. When you agree upon a verdict, it will be received as your verdict.

When you answer one or all of these questions regarding one of the Defendants, you should then answer the questions for the other Defendant. Your foreperson should sign and date both verdict forms.

After both verdict forms are completed, your foreperson should give a written note to the bailiff. That person will deliver that note to me, you will be called into the courtroom, and your foreperson will deliver the verdict to me in the courtroom. The parties will then be informed of your verdicts.

### **CV 9.09 - Court Has No Opinion**

Let me emphasize something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves whether the plaintiff's claims were proved by a preponderance of the evidence.