

## INSTRUCTION NO. 1

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial are still in effect. Now I'm going to give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others because they are all important. This is true even though I am not going to repeat some of the instructions I gave you before and during the trial.

You will have copies of the instructions I am about to give you now in the jury room. This does not mean they are more important than my earlier instructions. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

## INSTRUCTION NO. 2

There are rules you must follow when you go to the jury room to deliberate and return with your verdict:

*First*, you must select a foreperson. That person will preside over your discussions and speak for you all here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

Each of you must make your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But do not come to a decision just because other jurors think it is right, or just to reach a verdict.

Remember you are not for or against a party. You are judges—judges of the facts. Your only job is to study the evidence and decide what is true.

*Third*, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the court security officer; and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone—including me—how many jurors are voting for any side.

*Fourth*, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

### INSTRUCTION NO. 3

I haven't intended to suggest what I think your verdict should be by any of my rulings or comments during the trial. During the trial I have asked some witnesses questions. Do not try to guess my opinion about any issues in the case based on the questions I asked.

## INSTRUCTION NO. 4

In deciding what the facts are, you will have to decide what testimony you believe and what testimony you don't believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider several things: the witnesses' intelligence; their opportunity to have seen or heard the things they testify about; their memories; any motives they may have for testifying a certain way; their demeanor while testifying; whether they said something different at an earlier time; the general reasonableness of their testimony; and the extent to which their testimony is consistent with other evidence that you believe.

A caution about considering a witness's demeanor while testifying. Many folks are nervous just being in court. And there are bold liars and shy truth tellers. Use your common sense and be

discerning when judging someone's credibility based on their demeanor on the stand.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, a lapse of memory, or a lie – and that may depend on whether it has to do with an important fact or only a small detail.

## INSTRUCTION NO. 5

In considering the evidence in this case, you aren't required to set aside your common sense or common knowledge. Consider the evidence in light of your own observations and experiences in the affairs of life. Use your common sense.

## INSTRUCTION NO. 6

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved if you find that it is more likely true than not true. You decide that by considering all the evidence, and then deciding what evidence is more believable. The greater weight of the evidence is not established by who has the most witnesses or exhibits. You are, instead, looking for the truth in the whole case.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” The standard of “proof beyond a reasonable doubt” applies in criminal cases, but not in this civil case; so put it out of your minds.

## INSTRUCTION NO. 7 – Sexual Assault

Your verdict must be for Croston and against Cooksey on Croston’s sexual assault claim if all the following elements have been proved:

*First*, Cooksey engaged in a sex act with Croston that was unwelcome and involuntary;

*Second*, in doing so, Cooksey acted with deliberate indifference;

*Third*, as a direct result, Croston was injured; and

*Fourth*, Cooksey acted under color of state law.

If any of these elements has not been proved, then your verdict must be for Cooksey on Croston’s sexual assault claim.

[Adapted from Eighth Circuit Model Instruction 4.43 and *Freitas v. Ault*, 109 F.3d 1335 (8th Cir. 1997).]

## INSTRUCTION NO. 8 – Sexual Harassment

Your verdict must be for Croston and against Cooksey on Croston’s sexual harassment claim if all the following elements have been proved:

*First*, Cooksey sexually harassed Croston;

*Second*, in doing so, Cooksey acted with deliberate indifference;

*Third*, as a direct result, Croston was injured; and

*Fourth*, Cooksey acted under color of state law.

“Sexual harassment” is any unwelcome actions, words, or advances of a sexual nature.

If any of these elements has not been proved, then your verdict must be for Cooksey on Croston’s sexual harassment claim.

[Adapted from Eighth Circuit Model Instruction 4.43 and *Freitas v. Ault*, 109 F.3d 1335 (8th Cir. 1997).]

## INSTRUCTION NO. 9 – Verbal Threat

Your verdict must be for Croston and against Cooksey on Croston’s verbal threat claim if all the following elements have been proved:

*First*, Cooksey made an objectively credible threat to Croston’s life;

*Second*, in doing so, Cooskey acted with deliberate indifference;

*Third*, Cooksey’s threat injured Croston by causing Croston to fear for his life;

*Fourth*, Cooksey acted under color of state law.

If any of these elements has not been proved, then your verdict must be for Defendant Cooksey.

[Adapted from Eighth Circuit Model Instruction 4.43, *Irving v. Dormire*, 519 F.3d 441, 448–51 (8th Cir. 2008), and *Burton v. Livingston*, 791 F.2d 97 (8th Cir. 1986).]

## INSTRUCTION NO. 10

Deliberate indifference is established if Cooksey actually knew of a substantial risk of serious harm to Croston and if Cooksey nevertheless recklessly disregarded that risk. Negligence or inadvertence does not constitute deliberate indifference.

## INSTRUCTION NO. 11

Acts are done under color of law when a person acts, or purports to act, in the performance of official duties under any state, county, or municipal law, ordinance, or regulation.

## INSTRUCTION NO. 12

If you find in favor of Croston, then you must award him an amount of money that will fairly compensate him for any damages you find he sustained as a direct result of Cooksey's conduct as submitted in Instructions 7, 8, and 9. You should consider the following elements of damages:

*First:* Any physical pain and mental or emotional suffering Croston has experienced and is reasonably certain to experience in the future; and

*Second:* The nature and extent of any injury, and whether that injury is temporary or permanent.

Whether either of these elements of damage has been proved by the evidence is for you to decide. Remember, throughout your deliberations you must not engage in speculation, guesswork, or

conjecture, and you must not award any damages under this Instruction by way of punishment or through sympathy.

### INSTRUCTION NO. 13

If you find in favor of Croston under Instructions 7, 8, and 9, but you find that his damages have no monetary value, then you must award Croston \$1.00 in nominal damages.

## INSTRUCTION NO. 14

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award punitive damages.

If you find in favor of Croston under Instructions 7, 8, or 9, and if it has been proved that Cooksey's conduct was malicious or recklessly indifferent to Croston's rights, then you may, but are not required to, award Croston an additional amount of money as punitive damages. These damages are for the purposes of punishing Cooksey for engaging in misconduct and discouraging Cooksey and others from engaging in similar misconduct in the future. You should presume that Croston has been made whole for his injuries by damages awarded under Instructions 12 and 13.

If you decide to award punitive damages, you should consider the following in deciding the amount:

*First:* How reprehensible Cooksey's conduct was. Consider (1) whether the harm Croston suffered was physical or economic or both; (2) whether there was violence, deceit, intentional malice, or reckless disregard for human health or safety; (3) whether Cooskey's conduct that harmed Croston also posed a risk of harm to others; and (4) whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed Croston.

*Second:* How much harm Cooksey's wrongful conduct caused Croston.

*Third:* In light of Cooksey's financial condition, what amount of punitive damages, in addition to the other damages already awarded, is needed to punish Cooksey for his wrongful conduct toward Croston and to discourage Cooksey and others from similar wrongful conduct in the future.

The amount of any punitive damages award must bear a reasonable relationship to the harm caused to Croston.

## INSTRUCTION NO. 15

The fact that I've instructed you on damages is not intended to suggest what I think your liability verdict should be. I've given instructions on damages, as I do in all cases, for your guidance in the event you find for Croston on liability. But the question of damages is entirely distinct and different from the question of liability. Do not consider damages until you have first considered and decided whether Cooksey violated Croston's rights.

## INSTRUCTION NO. 16

This case is submitted to you on questions. Your answers to these questions will be your verdict in this case.

The questions ask whether or not you find certain facts. You may find a fact only if it has been proven by the greater weight of the evidence. See Instruction No. 6.

I'm going to hand out the verdict forms now and go over them with you.

## INSTRUCTION NO. 17

You will take these Questions to the jury room, and when each of you has agreed on the answers, your foreperson will fill in the form for each Question that you are called upon to answer to reflect your unanimous decision, your foreperson will sign and date them, and then advise the court security officer that you are ready to return to the courtroom.

I add the caution that nothing said in the instructions – and nothing in the Questions – is intended to suggest what answers I think you should give. How you chose to answer the Questions is solely and exclusively your responsibility.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson, or by one or more

members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of the Jury on any subject touching the merits of the case, other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the court security officer to act as bailiff that he, and all other persons, are forbidden from communicating in any way or manner with any member of the Jury on any subject touching the merits of the case. Bear in mind also that you must never reveal to any person, not even to the Court, how the Jury stands, numerically or otherwise, on the issue presented to you unless or until you reach a unanimous verdict.

Court security officer, do you solemnly swear to keep this Jury together in the jury room, and not to permit any person to speak

to or communicate with them, concerning this case, nor to do so yourself unless by order of the Court or to ask whether they have agreed on a verdict, and to return them into the Courtroom when they have so agreed, or when otherwise ordered by the Court, so help you God?