

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ROSEMARY A. SALERNO,)
)
 Plaintiff,)
)
 v.) Case No. 19-0145-CV-W-BP
)
 MPI MANAGEMENT, LLC d/b/a)
 OLSHAN PROPERTIES, ET AL.,)
)
 Defendants.)

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Ladies and Gentlemen: I am now going to give you some instructions about this case and about your duties as jurors. At the end of the trial I will give you more instructions. I may also give you instructions during the trial. All instructions – those I give you now and those I give you later – are equally important and you must follow them all.

This is a civil case brought by plaintiff Rosemary A. Salerno against defendant MPI Management LLC. Plaintiff claims Defendant terminated her employment for discrimination and retaliation in violation of the Missouri Whistleblower's Protection Act, and further that Defendant retaliated against her by appealing her unemployment benefits and filing a small claims lawsuit against her. Defendant denies these claims. It will be your duty to decide from the evidence whether the Plaintiff is entitled to a verdict against the Defendant.

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations and experiences. After you have decided what the facts are, you will have to apply those facts to the law that I give you in these and my other instructions. That is how you will reach your verdict. Only you will decide what the facts are. However, you must follow my instructions, whether you agree with them or not. You have taken an oath to follow the law that I give you in my instructions.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any reasons they might have to testify a certain way, how they act while testifying, whether they said something

different at another time, whether their testimony is generally reasonable, and how consistent their testimony is with other evidence that you believe.

Do not let sympathy, or your own likes or dislikes, influence you. Bias based upon factors such as race, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status has no role in the pursuit of justice. Your conclusions in this case must be based on a fair and unbiased consideration of the evidence. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

Nothing I say or do during this trial is meant to suggest what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 2

When I use the word “evidence,” I mean the testimony of witnesses; documents and other things I receive as exhibits; facts that I tell you the parties have agreed are true; and any other facts that I tell you to accept as true.

Some things are not evidence. I will tell you now what is not evidence:

1. Lawyers’ statements, arguments, questions, and comments are not evidence.
2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits, are not evidence.
3. Objections are not evidence. Lawyers have a right – and sometimes a duty – to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a lawyer’s objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.
5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for. You need to pay close attention when I give an instruction about evidence that you can consider for only certain purposes, because you might not have that instruction in writing later in the jury room.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 3

During the trial, I will sometimes need to talk privately with the lawyers. I may talk with them here at the bench while you are in the courtroom, or I may call a recess and let you leave the courtroom while I talk with the lawyers. Either way, please understand that while you are waiting, we are working. We have these conferences to make sure that the trial is proceeding according to the law and to avoid confusion or mistakes. We will do what we can to limit the number of these conferences and to keep them as short as possible.

INSTRUCTION NO. 4

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written copy of the testimony to refer to. Because of this, you have to pay close attention to the testimony and other evidence as it is presented here in the courtroom.

If you wish, however, you may take notes to help you remember what witnesses say. If you do take notes, do not show them to anyone until you and your fellow jurors go to the jury room to decide the case after you have heard and seen all of the evidence. And do not let taking notes distract you from paying close attention to the evidence as it is presented. The courtroom deputy has provided each of you with a pad of paper and a pen or pencil. At each recess, leave them on your chair.

When you leave at night, your notes will be locked up and will not be read by anyone.

INSTRUCTION NO. 5

When the lawyers have finished questioning a witness, you may propose questions in order to clarify or help you understand the evidence. Your questions must be in writing and you will be provided note cards for this purpose. We will collect cards from each of you after the lawyers' questioning of each witness has concluded; this way, no one will know which of you asked questions. You must not put your name on your questions or discuss your questions with other jurors.

I will review your questions with the attorneys to make sure they are appropriate under the Rules of Evidence. I will ask the questions that are proper, although I might reword them slightly. I will not ask the questions that are not permitted under the Rules of Evidence, in which case you should not try to guess what the answer might have been. Also, you should not feel embarrassed or disappointed that your question was not asked; as I indicated in my earlier instruction, sometimes even the lawyers' questions are not allowed.

If I do ask your question you should not give the answer greater weight than you would give to any other testimony. Remember, you are not advocates for either side; you are impartial judges of the facts, and you must keep an open mind until you've heard all the evidence, the closing arguments, and my final instructions on the law.

INSTRUCTION NO. 6

Jurors, to make sure this trial is fair to all parties, you must follow these rules:

First, do not talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to consider your verdict. Do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Second, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone tries to talk to you about the case during the trial, please report it to the courtroom deputy.

Third, during the trial, do not talk with or speak to any of the parties, lawyers, or witnesses in this case – not even to pass the time of day. It is important not only that you do justice in this case, but also that you act accordingly. If a person from one side of the lawsuit sees you talking to a person from the other side – even if it is just about the weather – that might raise a suspicion about your fairness. So, when the lawyers, parties and witnesses do not speak to you in the halls, on the elevator or the like, you must understand that they are not being rude. They know they are not supposed to talk to you while the trial is going on, and they are just following the rules.

Fourth, you may need to tell your family, close friends, and other people that you are a part of this trial. You can tell them when you have to be in court, and you can warn them not to ask you about this case, tell you anything they know or think they know about this case, or talk about this case in front of you. But, you must not communicate with anyone or post information about the parties, witnesses, participants, evidence, or anything else related to this case. You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdict or

until I give you specific permission to do so. If you talk about the case with someone besides the other jurors during deliberations, it looks as if you might already have decided the case or that you might be influenced in your verdict by their opinions. That would not be fair to the parties, and it might result in the verdict being thrown out and the case having to be tried over again. During the trial, while you are in the courthouse and after you leave for the day, do not give any information to anyone, by any means, about this case.

For example, do not talk face-to-face or use any electronic device, such as a telephone, cell phone, smart phone, computer, or computer-like device. Likewise, do not use the Internet or any Internet service; do not text or send instant messages; do not go on an Internet chat room, blog, or other websites such as Facebook, YouTube, or Twitter. In other words, do not communicate with anyone about this case – except for the other jurors during deliberations – until I accept your verdict.

Fifth, do not do any research – on the Internet, in libraries, newspapers, or otherwise – and do not investigate this case on your own. Do not visit or view any place discussed in this case, and do not use the Internet or other means to search for or view any place discussed in the testimony. Also, do not look up any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or me.

Sixth, do not read any news stories or Internet articles or blogs that are about the case, or about anyone involved with it. Do not listen to any radio or television reports about the case or about anyone involved with it. I do not know whether there will be news reports about this case, but if there are, you might accidentally find yourself reading or listening to something about the case. If you want, you can have someone clip out any stories and set them aside to give to you after the trial is over.

The parties have a right to have you decide their case based only on evidence admitted here in court. If you research, investigate, or experiment on your own, or get information from other sources, your verdict might be influenced by inaccurate, incomplete, or misleading information. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through cross-examination. All of the parties are entitled to a fair trial and an impartial jury, and you have to conduct yourselves in a way that assures the integrity of the trial process. If you decide a case based on information not admitted in court, you will deny the parties a fair trial. You will deny them justice. Remember, you have taken an oath to follow the rules, and you must do so.

Seventh, do not make up your mind during the trial about what your verdict should be. Keep an open mind until after you and your fellow jurors have discussed all the evidence.

INSTRUCTION NO. 7

The trial will proceed in the following manner:

First, the plaintiff's lawyer may make an opening statement. Next, the defendant's lawyer may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the lawyers expect you will see and hear during the trial.

After opening statements, the plaintiff will then present evidence. The defendant's lawyer will have a chance to cross-examine the plaintiff's witnesses. After the plaintiff has finished presenting its case, the defendant may present evidence, and the plaintiff's lawyer will have a chance to cross-examine those witnesses.

After you have seen and heard all of the evidence from both sides I will instruct you further on the law. The lawyers will then make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence. After the closing arguments, you will go to the jury room to deliberate and decide on your verdict.

INSTRUCTION NO. 8

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am 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 at the beginning of and during the trial.

You will have copies of the instructions I am about to give you now in the jury room. Remember, you have to follow all instructions, no matter when I give them, and whether or not you have written copies.

INSTRUCTION NO. 9

I have not intended to suggest what I think your verdicts should be by any of my rulings or comments during the trial.

INSTRUCTION NO. 10

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

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 11

You are to consider 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 solely 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 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 the case.

INSTRUCTION NO. 12

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

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

INSTRUCTION NO. 13

You may not return a verdict for Plaintiff just because you might disagree with Defendant's decisions concerning Plaintiff's employment or believe such decisions to be harsh or unreasonable.

INSTRUCTION NO. 14

Your verdict must be for plaintiff on plaintiff's claim of gender discrimination if you believe:

First, defendant discharged plaintiff; and

Second, plaintiff's gender actually played a role in and had a determinative influence on such action, and;

Third, such conduct directly caused damage to plaintiff.

However, if any of the above elements has not been proved by the greater weight of the evidence, your verdict must be for Defendant.

Return your verdict on this claim on Verdict Form A.

INSTRUCTION NO. 15

If you find in favor of plaintiff under Instruction No. 14, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any actual damages including back pay, and any past and future emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-economic losses as a direct result of the occurrence mentioned in the evidence.

INSTRUCTION NO. 16

If you find the issues in favor of Plaintiff, and if you believe the conduct of Defendant as submitted in Instruction Number 14 was outrageous because of Defendant's evil motive or reckless indifference to the rights of others, then in addition to any damages to which you find Plaintiff entitled under Instruction Number 15, you may award Plaintiff an additional amount as punitive damages in such sum as you believe will serve to punish Defendant and to deter Defendant and others from like conduct.

You may consider harm to others in determining whether Defendant's conduct was outrageous. However, in determining the amount of any punitive damage award, you must not include damages for harm to others who are not parties to this case.

The burden of proof described in Instruction No. 12 does not apply to this instruction. You can award punitive damages under this instruction only if Plaintiff has clearly and convincingly established the facts necessary to recover punitive damages.

INSTRUCTION NO. 17

Your verdict must be for plaintiff on her retaliation claim under the Whistleblower Protection Act if you believe:

First, plaintiff either

- refused to participate in using funds raised as part of the Change for Charity Program to pay for expenses that were not related to the operation of the Change for Charity Program; *or*
- reported to her employer that using funds raised as part of the Change for Charity Program to pay for expenses that were not related to the operation of the Change for Charity Program violated the law, and

Second, defendant discharged plaintiff; and

Third, plaintiff's conduct as submitted in paragraph First actually played a role in and had a determinative influence on her discharge, and;

Fourth, as a direct result of her discharge, plaintiff sustained damage.

However, if any of the above elements has not been proved by the greater weight of the evidence, your verdict must be for Defendant.

Return your verdict on this claim on Verdict Form B.

INSTRUCTION NO. 18

If you find in favor of plaintiff under Instruction No. 17, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any back pay she lost as a direct result of the occurrence mentioned in the evidence.

INSTRUCTION NO. 19

If you find the issues in favor of Plaintiff, and if you believe the conduct of Defendant as submitted in Instruction Number 17 was outrageous because of Defendant's evil motive or reckless indifference to the rights of others, then in addition to any damages to which you find Plaintiff entitled under Instruction Number 18, you may award Plaintiff liquidated damages equal to twice the amount you award under Instruction Number 18 to punish Defendant and to deter Defendant and others from like conduct.

You may not consider harm to others in determining whether Defendant's conduct was outrageous.

The burden of proof described in Instruction No. 12 does not apply to this instruction. You can award liquidated damages under this instruction only if Plaintiff has clearly and convincingly established the facts necessary to recover liquidated damages.

INSTRUCTION NO. 20

Your verdict must be for plaintiff on her retaliation claim if you believe:

First, Plaintiff engaged in protected activity by making complaints of gender discrimination and;

Second, Defendant filed a small claims lawsuit against her; and

Third, Plaintiff's complaints of gender discrimination actually played a role in and had a determinative influence on Defendant's decision to file the small claims lawsuit against her, and;

Fourth, such conduct directly caused damage to Plaintiff.

However, if any of the above elements has not been proved by the greater weight of the evidence, your verdict must be for Defendant.

Return your verdict on this claim on Verdict Form C.

INSTRUCTION NO. 21

If you find in favor of plaintiff under Instruction No. 20, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any actual damages including past and future emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-economic losses as a direct result of the occurrence mentioned in the evidence.

INSTRUCTION NO. 22

If you find the issues in favor of Plaintiff, and if you believe the conduct of Defendant as submitted in Instruction Number 20 was outrageous because of Defendant's evil motive or reckless indifference to the rights of others, then in addition to any damages to which you find Plaintiff entitled under Instruction Number 21, you may award Plaintiff an additional amount as punitive damages in such sum as you believe will serve to punish Defendant and to deter Defendant and others from like conduct.

You may consider harm to others in determining whether Defendant's conduct was outrageous. However, in determining the amount of any punitive damage award, you must not include damages for harm to others who are not parties to this case.

The burden of proof described in Instruction No. 12 does not apply to this instruction. You can award punitive damages under this instruction only if Plaintiff has clearly and convincingly established the facts necessary to recover punitive damages.

INSTRUCTION NO. 23

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

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

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. However, you can deliberate or discuss this case only when all of the jurors are present inside the jury room and no one else is present. For example, if you take a break to use the restroom or obtain lunch, your deliberations must stop and must not resume until all jurors are again present.

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 come to 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 any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

Third, the previous rules I have given you regarding communication with other individuals and outside research still remain in place. Although you may now discuss the case among yourselves, you are still prohibited from discussing the case with anyone other than your fellow jurors or posting anything about the case on the internet. You are also prohibited from conducting any outside research on the case using any source, including the internet, libraries, dictionaries, or other reference material.

Fourth, 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 courtroom deputy 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.

Fifth, your verdict has to be based only 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.

Finally, the verdict form is your written decision in this case. The form reads: (read form). You will take these forms to the jury room, and when you have all agreed on the verdicts, your foreperson will fill in the forms, sign and date them and tell the courtroom deputy that you are ready to return to the courtroom.