

WHAT'S NEW IN FEDERAL JURY INSTRUCTIONS--CIVIL

February 20, 2019

Bar Association of Metropolitan St. Louis

**The Hon. David D. Noce
United States Magistrate Judge**

**United States District Court
Eastern District of Missouri**

- 1. What was approved by the Committee on Model Jury Instructions for the District Courts of the Eighth Circuit ("Full Committee")
at the Eighth Circuit Judicial Conference in Des Moines, Iowa, in August 2018**

Membership of the 8th Circuit Jury Instruction Committee (Full Committee), Civil and Criminal Subcommittees, and Sub-Subcommittees on Criminal Death Penalty, Federal Employers Liability Act, Admiralty and Maritime

Chair of Full Committee (2019): District Judge Joan Ericksen (Minn.), outgoing Chair District Judge John M. Gerrard (Neb.)

Chair of Civil Subcommittee: Magistrate Judge David Noce

Chair of Criminal Subcommittee: Magistrate Judge Katherine Menendez

District Judges: Stephen R. Bough (W.D. Mo.), Timothy Brooks (E.D. Ark.), Richard Kyle (Minn.), Stephen N. Limbaugh Jr. (E.D. Mo.), D. Price Marshall (E.D. Ark.), Robert Pratt (Iowa), Karen Schreier (S. Dak.), Leonard Strand (Iowa), Billy Roy Wilson (E. D. Ark.), John Jarvey (S. D. Ia.)

Magistrate Judges: Beth Deere (E. D. Ark.), Matt Whitworth (W.D.Mo.), David D. Noce (E. D. Mo.), Abbie Crites-Leoni (E. D. Mo.), Willie J. Epps, Jr. (W. D. Mo.), William A. Knox (W. D. Mo.), Katherine M. Menendez (Minn.)

Attorneys: Dan Boatright (Kansas City), Ann Buckley (St. Louis), Martin Meyers (Kansas City), Charles Reis IV (St. Louis), Larry Schumaker (Kansas City), Roger Denton (St. Louis), Douglas Gossow (St. Louis), Paul Day (Kansas), Christopher Leach (Kansas City), Kevin Curran (St. Louis), Jennifer Horan (Little Rock), Michelle Jones (Minn.), Linda Marshall (Kansas City), Michael Norris (Neb.),

Michael Oliver (Jefferson City), Troy Stabenow (Jefferson City), Jim Wyrsh (Kansas City), Larry Pace (Kansas City), Charles Rogers (Kansas City), Jeffrey Valenti (Kansas City)

Reporter: Eric Brust, Eighth Circuit Law Librarian

a. Chapter 1 (Judge Noce): Preliminary Instructions (for Use at the Commencement of Trial)

Nos. 1.01, 1.02, 1.03, 1.06, 1.08, and 1.09 were "cleaned up," edited to make them easier to read, but without any substantive changes.

No. 1.01 is given before voir dire and has the usual admonitions about what is required and what not to do as a juror. More current terminology about digital "streaming" was added.

However, about a year ago the instruction was modified to include this DUE PROCESS language:

"And failure to follow the court's instructions could also result in you being held in contempt of the court and punished accordingly."

No. 1.07, on allowing jurors to ask questions, has been in the Civil Manual for quite some time.

b. Chapter 2 (Attorney Dan Boatright): Instructions for Use During Trial

**No. 2.01, Duties of the Jury; Recesses
"Digital streaming" was added.**

Case citations were updated and corrected. The committee members continually check the copy for currency, to be an aid to the people that use the Civil Manual, the judges and lawyers who practice in the District Courts of the Eighth Circuit.

c. Chapter 3 (Judge Beth Deere): Instructions for Use at Close of Trial

Case citations were checked and updated, including an Eighth Circuit citation for the proposition that the parties are not entitled to an instruction that the jury has the right to not reach a decision. Look it up!

d. Chapter 5 (Attorney Ann Buckley): Title VII Cases

Model Instruction 5.41 was revised to delete the note that suggested the possibility of submitting under a “determining factor” standard, as the Supreme Court made it clear in *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003), that “motivating factor” is the correct standard in a Title VII case. Another note, suggesting the possibility of submitting retaliation under Model Instruction 5.41, has also been deleted, as retaliation is covered in Chapter 10 and is submitted under a but-for standard.

e. Chapter 9 (Attorney Ann Buckley): Americans with Disabilities Act

Chapter 9 case citations were updated generally and citations were added for the ADA Amendments Act of 2008. In updating the case citations, the Civil Subcommittee became concerned about the references in the Overview and in certain of the Notes on Use concerning “motivating factor” as the standard. The Eighth Circuit, in two decisions, has questioned the continuing viability of the “motivating factor” standard in ADA cases, although it has not yet found it necessary to decide that issue. Both the Overview and Notes on Use have been revised to alert the reader to this issue.

f. Chapter 14 (Attorney Chad Reis): Family and Medical Leave Act

The Overview was updated to reflect recent case law because the prior version was last updated in 2009. The major change reflects the Eighth Circuit cases that recognize three categories of FMLA claims under 29 U.S.C. § 2615(a)(1)-(2). From

just entitlement and discrimination claims to the Eighth Circuit's current three categories of claims: (1) entitlement claims; (2) discrimination claims; and (3) retaliation claims.

This substantial change is reflected in the chapter's verdict directors. Nos. 14.40-14.49 are verdict directors for entitlement claims. Nos. 14.40-14.44 concern interference by an employer of taking FMLA leave an employee is entitled to. And Nos. 14.45-14.49 concern the failure of an employer to reinstate an employee to the position after an FMLA leave. The employer's intent is immaterial to an FMLA entitlement claim, so there is no “motivating” factor as an element to verdict directors 14.40-14.49.

All Notes on Use and Committee Comments were updated with recent case law.

g. Chapter 16 (Attorney Dan Boatright): Fair Labor Standards Act

The Full Committee's discussion involved how to instruct the jury on the distinction between a worker who was an "Employee" and one who is an "Independent Contractor." What you find in the Civil Manual now is

16.06 EXPLANATORY: DETERMINING EMPLOYEE STATUS

[NOTE: THIS IS A PROPOSED DRAFT INSTRUCTION. IT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE JURY INSTRUCTIONS COMMITTEE OF THE EIGHTH CIRCUIT. READERS' COMMENTS ABOUT THIS INSTRUCTION WILL BE WELCOMED BY THE CIVIL JURY INSTRUCTIONS SUBCOMMITTEE.]

[One of your roles in this case is to determine the answers to the following questions.] [On a verdict form you will be asked to] [You must] answer the following question(s)² about the working relationship between plaintiff and defendant.

Question No. 1: [Insert material, disputed question of fact. See Committee Comment below] [*E.g.*, Who set the means and manner in which plaintiff performed his/her work?].

Question No. 2: [Insert material, disputed question of fact] [*E.g.*, Did plaintiff have an opportunity to make a profit?].

Notes on Use

1. Use this instruction, and special verdict form 16.92, only when there are one or more disputed material facts with respect to the Court's determination of employee status. *See* 16.00 Overview, "Employee v. Independent Contractor."

2. This instruction is merely an example of two of the many factors that may be considered. *See Karlson v. Action Process Service & Private Investigations, LLC*, 860 F.3d 1089, 1092 (8th Cir. 2017). Court and counsel should review the factors at issue in the case at bar and compare them with current Eighth Circuit law.

Committee Comments

1. As more fully discussed in 16.00 Overview, "Employee v. Independent Contractor," "the ultimate question of 'whether or not an individual is an 'employee' within the meaning of the FLSA is a legal determination rather than a factual one.'" *Karlson v. Action Process Service & Private Investigations, LLC*, 860 F.3d 1089, 1092-93 (8th Cir. 2017) (quoting *Donovan v. Trans World Airlines, Inc.*, 726 F.2d 415, 417 (8th Cir. 1984)). Although the ultimate question is a legal one, the precise nature of an individual's duties and relationship with the alleged employer may involve disputed issues of fact. Where there are no disputed issues of material fact with respect to the nature of a plaintiff's duties and relationship with the alleged employer, the Court can and should make the ultimate legal determination before submitting the case to the jury. This instruction should be used only where the Court determines that one or more specific, disputed facts are material to the determination of employee status. In such a case, the Committee strongly encourages the parties and the Court to carefully examine relevant caselaw, and carefully craft special interrogatories that are limited to determination of those specific, disputed facts that are material to the Court's determination of the ultimate legal issue.

2. This Instruction is intended to be used with other instructions to submit all issues of liability and damages to the jury simultaneously. If the Court determines, based on the jury's factual findings on the issues submitted in the special interrogatories, that the plaintiff was not an employee, the Court should enter judgment in favor of the defendant as a matter of law with respect to any claim on which the existence of an employee relationship was an essential element of the claim.

h. Chapter 18 (Judge Bill Knox): Federal Railway Safety Act

This is a relatively new chapter. It had been on the 8th Circuit website as a work in progress. For some period, Judge Knox and his sub-subcommittee waited for the Eighth Circuit to decide whether plaintiff had to prove the defendant railroad "intentionally retaliated against plaintiff" because plaintiff engaged in protected activity such as reporting an on-the-job injury. *Blackorby v. BNSF Ry. Co.*, 849 F.3d 716, 722 (8th Cir. 2017), answered that issue in the affirmative. The subcommittee believes the instructions are now in compliance with *Blackorby*, *Kuduk v. BNSF Ry. Co.*, 768 F.3d 786 (8th Cir. 2014), and other 8th Circuit decisions. That issue is addressed in instruction No. 18.40

The only other matter of some concern is the definition of "clear and convincing evidence" set forth in instruction No. 18.20. What is on the website now is a middle ground definition.

**No. 18.20 DEFINITIONS: "GREATER WEIGHT OF THE EVIDENCE"
AND "CLEAR AND CONVINCING EVIDENCE"**

Plaintiff [insert name]'s claim must be proven 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.

Defendant [insert name]'s defense must be proven by "clear and convincing evidence." Clear and convincing evidence means that the thing to be proved is highly probable or reasonably certain. Clear and convincing evidence requires a higher degree of persuasion than the greater weight of the evidence.

You probably have heard the phrase "proof beyond a reasonable doubt." That is a stricter standard than both the "greater weight of the evidence" standard and the "clear and convincing evidence standard." The "proof beyond a reasonable doubt" standard applies in criminal cases, but not in this civil case; so put it out of your mind.

i. WHAT'S COMING:

- (i) A District Judge is interested in a user-friendly instructions resource, sort of a digital availability to do drafts.**
- (ii) An attorney asked about the absence of non-prisoner § 1983 instructions**
- (iii) The Committee exists to serve its primary customers: the trial judges and lawyers who practice in the district courts of the Eighth Circuit.**

2. WHAT'S NOT SO NEW, BUT STILL IMPORTANT!

- a. Manuals of pattern or model instructions for the district courts of the: First Circuit (criminal only), Third Circuit, Fifth Circuit, Sixth Circuit (criminal only), Seventh Circuit, Eighth Circuit, Ninth Circuit, Tenth Circuit (criminal only), and Eleventh Circuit.**
- b. None of the federal circuit manuals are generally mandatory. Caviness v. Nucor-Yamato Steel Co., 105 F.3d 1216, 1221 n. 2 (8th Cir. 1997)(civil cases); United States v. Ali, 63 F.3d 710, 714 n.3 (8th Cir. 1995) (criminal cases)**
- c. *The Manual of Model Civil Jury Instructions for the District Courts of the Eighth Circuit* is available: BUT BEWARE OF CURRENCY**

Paper book published by Thomson Reuters Westlaw

<http://www.juryinstructions.ca8.uscourts.gov/>

Westlaw Database:

LEXIS-NEXIS

Other legal publications: *Federal Jury Practice and Instructions, Civil and Criminal* (O'Malley, Grenig, and Lee) (Westlaw)

d. 8th Circuit Model Jury Instruction Manuals' organization:

(i) Criminal: by USC title and sections

(ii) Civil Organization of the individual chapters:

- x.00 Legal Overview (mini treatises of substantive areas)**
- x.01 to x.19 Explanatory Instructions (statements of specific legal principles)**
- x.20 to x.39 Definitions**
- x.40 to x.59 Elements of Claims**
- x.60 to x.69 Elements of Defenses**
- x.70 to x.79 Damages**
- x.80 to x.89 General Verdict Forms**
- x.90 to x.99 Special Verdict Forms**

e. 1.01 Explanatory: Instructions Before Voir Dire

1.02 Explanatory: Instructions at End of Voir Dire

1.03 Explanatory: General; Nature of Case; Burden of Proof; Duty of Jury; Cautionary

--Follow-up question: What's a Judge or Lawyer To Do? A: Contempt of Court?

d. Ordinary civil case burden of proof

3.04 now brackets "by the greater weight of the evidence"

"preponderance of the evidence" eliminated

e. Using parties' names with "plaintiff" and "defendant"

Your input will be happily received.

JURY INSTRUCTIONS CLE QUIZ

1. An objection to a proposed jury instruction is sufficient and complete if it states distinctly the matter objected to.
True False
Answer at Fed. R. Civ. P. 51(c)(1); Rodriguez-Marin v. Rivera-Gonzalez, 438 F.3d 72, 82 (1st Cir. 2006).

2. Without a proper objection at trial, an argument about jury instructions cannot be heard on appeal.
True False
Answer at Id. at 83.

3. Review for plain error can be made by the district court.
True False
Answer at Osorio v. Source Enterprises, Inc., 2007 WL 683985 at *9 (S.D.N.Y. 2007).

4. When a juror asks a question during deliberations, the court must respond.
True False
Answer at Estate of Knoster v. Ford Motor Co., 2006 WL 2561234 at * 5 (3rd Cir. 2006).

5. The term "althing" is very significant in the history of jury trials.
True False
Answer at Byock, Viking Age Iceland, at 176-77 (Penguin 2001).

6. The only way to present a straddle claim to the jury is through separately packaged elements instructions and verdict forms.
True False
Answer at Fed. R. Civ. P. 49.

7. When responding to a jury question during deliberations, the court must treat the response as an instruction subject to Rule 51.
True False
Answer at Estate of Knoster v. Ford Motor Co., 2006 WL 2561234 at * 5 (3rd Cir. 2006).
8. In employment discrimination case trials in the Eighth Circuit, when the plaintiff relies on prima facie evidence of discrimination, a pretext instruction may be given but is not always required?
True False
Answer at Moore v. Robertson Fire Protection Dist., 249 F.3d 786, 790 (8th Cir. 2001).
9. It is permissible for the court to allow a party to submit a special interrogatory for a strategic reason.
True False
Answer at Fed. R. Civ. P. 49(b); cf. Morton v. City of Chicago, 676 N.E.2d 985 (Ct. App. Ill. 1997).
10. Jury instructions need not be perfect.
True False
Answer at Taita Chem. Co., Ltd. v. Westlake Styrene, L.P., 351 F.3d 663, 667 (5th Cir. 2003).
11. A party is never excused from properly objecting to a jury instruction.
True False
Answer at Id. at 667-78.
12. During the charge conference, a general objection to an instruction will suffice.
True False
Answer at Id. at 668.
13. A proper, but off-the-record, objection can never be presented to the Court of Appeals.
True False

Answer at Fed. R. App. P. 10(c).

14. A cautionary, limiting instruction regarding an item of evidence published to the jury can always await the final instructions.
True False
Answer at Stockman v. Oakcrest Dental Center P.C., 480 F.3d 791 (6th Cir. 2007).
15. The Erie doctrine requires a district court to apply the forum state's mandatory jury instructions.
True False
Answer at Jones v. Griffey, 2004 WL 1488540 at * 2 (4th Cir. 2004); Fields v. Chicago, Rock Island, Etc., 532 F.2d 1211 (8th Cir. 1976).
16. The giving of an instruction published in the Manual of Pattern Instructions for the district courts of the circuit is presumptively proper and will be reversed only for clear error.
True False
Answer at Rahn v. Hawkins, 464 F.3d 813, 818 (8th Cir. 2006).
17. The Seventh Circuit is the "strictest enforcer of Rule 51."
True False
Answer at Zhang v. Am. Gem Seafoods, Inc., 339 F.3d 1020, 1030 (9th Cir. 2003).
18. When instructing on federal claims and similar state law claims, the district court must use the precise terms of the respective jurisdictions to describe them.
True False
Answer at Id. at 1029.
19. Whether instructions are capable of confusing and misleading the jury is a factual issue.
True False
Answer at Kopec v. Tate, 190 Fed. Appx. 125, 2006 WL 2164326 at * 1 (3rd Cir. 2006).
20. The English Common Law trial judges had a very practical way of dealing with deadlocked juries.
True False

Answer at Bushell's Case, CXXIV English Reports 1006, 1014 (Common Pleas 1670).

21. A trial judge can change his or her mind about one or more instructions, as long as the parties have an opportunity to make a proper objection to the change on the record during the jury's deliberations.

True False

Answer at Fed. R. Civ. P. 51(b); Schmitz v. Canadian Pac. Ry. Co., 454 F.3d 678, 684 (7th Cir. 2006).

22. It is always improper to allow a jury to resolve a question of law.

True False

Answer at Pelt v. U.S. Bank Trust Nat. Assn., 359 F.3d 764, 769 (5th Cir. 2004).

23. It is never too late to request a clarifying jury instruction.

True False

Answer at Productive Automated Systems Corp. v. CPI Systems, Inc., 61 F.3d 620 (8th Cir. 1995).

24. Using preliminary instructions before evidence is presented can help the jury understand the issues.

True False

Answer at Munsterman, Hannaford, and Whitehead, Jury Trial Innovations, at 151 (Nat. Center for State Courts 1997).

ANSWERS

- | | | |
|-----|-------|---------------------------------------|
| 1. | False | |
| 2. | False | Plain error |
| 3. | True | |
| 4. | True | |
| 5. | True | |
| 6. | False | Special interrogatories under Rule 49 |
| 7. | True | |
| 8. | True | |
| 9. | True | |
| 10. | True | |

- 11. False
- 12. False
- 13. False
- 14. False
- 15. False
- 16. False
- 17. False
- 18. False
- 19. False
- 20. True
- 21. False
- 22. True
- 23. True
- 24. True

TOTAL CORRECT: _____

(0 to 10---> .5 hr. of CLE credit; 11 to 20 --> .75 hr; 21 to 24 ---> 1.0 hr.)

TABLE OF CONTENTS

CIVIL JURY INSTRUCTIONS

[COMMITTEE ON MODEL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE EIGHTH CIRCUIT](#) ERROR! BOOKMARK NOT DEFINED.

[SUBCOMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS EIGHTH CIRCUIT](#) ERROR! BOOKMARK NOT DEFINED.

[SUBCOMMITTEE ON MODEL ADMIRALTY AND MARITIME JURY INSTRUCTIONS EIGHTH CIRCUIT](#) ERROR! BOOKMARK NOT DEFINED.

[SUBCOMMITTEE ON MODEL FEDERAL EMPLOYERS' LIABILITY ACT JURY INSTRUCTIONS EIGHTH CIRCUIT](#) .. ERROR! BOOKMARK NOT DEFINED.

[SUBCOMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS EIGHTH CIRCUIT](#) ERROR! BOOKMARK NOT DEFINED.

[SUBCOMMITTEE ON MODEL DEATH PENALTY JURY INSTRUCTIONS EIGHTH CIRCUIT](#) ERROR! BOOKMARK NOT DEFINED.

1. [PRELIMINARY INSTRUCTIONS FOR USE AT COMMENCEMENT OF TRIAL](#) ERROR! BOOKMARK NOT DEFINED.

[1.00 OVERVIEW](#) ERROR! BOOKMARK NOT DEFINED.

[1.01 EXPLANATORY: BEFORE VOIR DIRE](#) ERROR! BOOKMARK NOT DEFINED.

[1.02 EXPLANATORY: AT END OF VOIR DIRE](#) ERROR! BOOKMARK NOT DEFINED.

[1.03 EXPLANATORY: GENERAL; NATURE OF CASE; BURDEN OF PROOF; DUTY OF JURY; CAUTIONARY](#) ERROR! BOOKMARK NOT DEFINED.

[1.04 EXPLANATORY: EVIDENCE; LIMITATIONS](#) ERROR! BOOKMARK NOT DEFINED.

[1.05 EXPLANATORY: BENCH CONFERENCES AND RECESSES](#) ERROR! BOOKMARK NOT DEFINED.

[1.06 EXPLANATORY: NO TRANSCRIPT AVAILABLE \[NOTE-TAKING\]](#) ERROR! BOOKMARK NOT DEFINED.

[1.07 EXPLANATORY: QUESTIONS BY JURORS](#) ERROR! BOOKMARK NOT DEFINED.

[1.08 EXPLANATORY: CONDUCT OF THE JURY](#) ERROR! BOOKMARK NOT DEFINED.

[1.09 EXPLANATORY: OUTLINE OF TRIAL](#) ERROR! BOOKMARK NOT DEFINED.

2. [INSTRUCTIONS FOR USE DURING TRIAL](#) ERROR! BOOKMARK NOT DEFINED.

[2.00 OVERVIEW](#) ERROR! BOOKMARK NOT DEFINED.

[2.01 EXPLANATORY: DUTIES OF JURY; RECESSES](#) ERROR! BOOKMARK NOT DEFINED.

[2.02 EXPLANATORY: STIPULATED TESTIMONY](#) ERROR! BOOKMARK NOT DEFINED.

[2.03 EXPLANATORY: STIPULATED FACTS](#) ERROR! BOOKMARK NOT DEFINED.

[2.04 EXPLANATORY: JUDICIAL NOTICE](#) ERROR! BOOKMARK NOT DEFINED.

[2.05 EXPLANATORY: TRANSCRIPT OF TAPE-RECORDED CONVERSATION](#) ERROR! BOOKMARK NOT DEFINED.

[2.06 EXPLANATORY: PREVIOUS TRIAL](#) ERROR! BOOKMARK NOT DEFINED.

[2.07 EXPLANATORY: CROSS-EXAMINATION OF PARTY'S CHARACTER WITNESS](#) ERROR! BOOKMARK NOT DEFINED.

[2.08 EXPLANATORY: EVIDENCE ADMITTED AGAINST ONLY ONE PARTY](#) ERROR! BOOKMARK NOT DEFINED.

[2.09 EXPLANATORY: EVIDENCE ADMITTED FOR LIMITED PURPOSE](#) ERROR! BOOKMARK NOT DEFINED.

[2.10 EXPLANATORY: IMPEACHMENT OF WITNESS BY PRIOR CONVICTION](#) ERROR! BOOKMARK NOT DEFINED.

[2.11 EXPLANATORY: DEMONSTRATIVE SUMMARIES NOT RECEIVED AS EVIDENCE](#) ERROR! BOOKMARK NOT DEFINED.

[2.12 EXPLANATORY: RULE 1006 SUMMARIES](#) ERROR! BOOKMARK NOT DEFINED.

[2.13 EXPLANATORY: WITHDRAWAL](#) ERROR! BOOKMARK NOT DEFINED.

[2.14 EXPLANATORY: DEPOSITION EVIDENCE AT TRIAL](#) ERROR! BOOKMARK NOT DEFINED.

3. [INSTRUCTIONS FOR USE AT CLOSE OF TRIAL](#) ERROR! BOOKMARK NOT DEFINED.

[3.00 OVERVIEW](#) ERROR! BOOKMARK NOT DEFINED.

[3.01 EXPLANATORY: ADDITIONAL INSTRUCTIONS](#) ERROR! BOOKMARK NOT DEFINED.

[3.02 EXPLANATORY: JUDGE'S OPINION](#) ERROR! BOOKMARK NOT DEFINED.

3.03 EXPLANATORY: CREDIBILITY OF WITNESSES	ERROR! BOOKMARK NOT DEFINED.
3.04 EXPLANATORY: BURDEN OF PROOF (ORDINARY CIVIL CASE)	ERROR! BOOKMARK NOT DEFINED.
3.05 EXPLANATORY: WITHDRAWAL OF CLAIM OR DEFENSE	ERROR! BOOKMARK NOT DEFINED.
3.06 EXPLANATORY: ELECTION OF FOREPERSON; DUTY TO DELIBERATE; COMMUNICATIONS WITH COURT; CAUTIONARY; UNANIMOUS VERDICT; VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.
3.07 EXPLANATORY: "ALLEN" CHARGE TO BE GIVEN AFTER EXTENDED DELIBERATION	ERROR! BOOKMARK NOT DEFINED.
4. PRISONER/PRETRIAL DETAINEE CIVIL RIGHTS CASES	ERROR! BOOKMARK NOT DEFINED.
4.00 OVERVIEW	ERROR! BOOKMARK NOT DEFINED.
4.20 DEFINITION: COLOR OF STATE LAW (42 U.S.C. § 1983)	ERROR! BOOKMARK NOT DEFINED.
4.21 DEFINITION: PERVASIVE RISK OF HARM – CONVICTED PRISONERS (42 U.S.C. § 1983)	ERROR! BOOKMARK NOT DEFINED.
4.22 DEFINITION: SERIOUS MEDICAL NEED – CONVICTED PRISONERS (42 U.S.C. § 1983)	ERROR! BOOKMARK NOT DEFINED.
4.23 DEFINITION: DELIBERATE INDIFFERENCE – CONVICTED PRISONERS AND PRETRIAL DETAINEES (42 U.S.C. § 1983)	ERROR! BOOKMARK NOT DEFINED.
4.24 DEFINITION: MALICIOUSLY	ERROR! BOOKMARK NOT DEFINED.
4.25 DEFINITION: SADISTICALLY	ERROR! BOOKMARK NOT DEFINED.
4.40 ELEMENTS OF CLAIM: EXCESSIVE USE OF FORCE – ARREST OR OTHER SEIZURE OF PERSON BEFORE CONFINEMENT FOURTH AMENDMENT	ERROR! BOOKMARK NOT DEFINED.
4.41 ELEMENTS OF CLAIM: EXCESSIVE USE OF FORCE – PRETRIAL DETAINEES FIFTH AND FOURTEENTH AMENDMENTS	ERROR! BOOKMARK NOT DEFINED.
4.42 ELEMENTS OF CLAIM: EXCESSIVE USE OF FORCE – CONVICTED PRISONERS EIGHTH AMENDMENT	ERROR! BOOKMARK NOT DEFINED.
4.43 ELEMENTS OF CLAIM: DENIAL OF MEDICAL CARE – CONVICTED PRISONERS AND PRETRIAL DETAINEES (42 U.S.C. § 1983)	ERROR! BOOKMARK NOT DEFINED.
4.44 ELEMENTS OF CLAIM: FAILURE TO PROTECT FROM ATTACK - SPECIFIC ATTACK - CONVICTED PRISONERS - EIGHTH AMENDMENT (INCLUDING PRETRIAL DETAINEES - FOURTEENTH AMENDMENT)	ERROR! BOOKMARK NOT DEFINED.
4.45 ELEMENTS OF CLAIM: RETALIATION AGAINST PRISONERS FOR PARTICIPATING IN PROTECTED ACTIVITY	ERROR! BOOKMARK NOT DEFINED.
4.70 DAMAGES: ACTUAL - PRISONER CIVIL RIGHTS	ERROR! BOOKMARK NOT DEFINED.
4.71 DAMAGES: NOMINAL - PRISONER CIVIL RIGHTS	ERROR! BOOKMARK NOT DEFINED.
4.72 DAMAGES: PUNITIVE - CIVIL RIGHTS	ERROR! BOOKMARK NOT DEFINED.
4.80 GENERAL VERDICT FORM: ONE PLAINTIFF, TWO DEFENDANTS, ONE INJURY CASE	ERROR! BOOKMARK NOT DEFINED.
5. TITLE VII CASES	ERROR! BOOKMARK NOT DEFINED.
5.00 OVERVIEW (FOR ALL EMPLOYMENT CASES)	ERROR! BOOKMARK NOT DEFINED.
5.01 EXPLANATORY: "SAME DECISION"	ERROR! BOOKMARK NOT DEFINED.
5.02 EXPLANATORY: BUSINESS JUDGMENT	ERROR! BOOKMARK NOT DEFINED.
5.20 DEFINITION: PRETEXT	ERROR! BOOKMARK NOT DEFINED.
5.21 DEFINITION: MOTIVATING FACTOR	ERROR! BOOKMARK NOT DEFINED.
5.22 DEFINITION: AFTER-ACQUIRED EVIDENCE	ERROR! BOOKMARK NOT DEFINED.
5.23 DEFINITION: AGENCY	ERROR! BOOKMARK NOT DEFINED.
5.40 ELEMENTS OF CLAIM	ERROR! BOOKMARK NOT DEFINED.
5.41 ELEMENTS OF CLAIM: CONSTRUCTIVE DISCHARGE	ERROR! BOOKMARK NOT DEFINED.
5.70 DAMAGES: ACTUAL	ERROR! BOOKMARK NOT DEFINED.
5.71 DAMAGES: NOMINAL	ERROR! BOOKMARK NOT DEFINED.
5.72 DAMAGES: PUNITIVE	ERROR! BOOKMARK NOT DEFINED.
5.80 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.
5.81 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.
6. AGE DISCRIMINATION IN EMPLOYMENT ACT CASES	ERROR! BOOKMARK NOT DEFINED.
6.00 OVERVIEW	ERROR! BOOKMARK NOT DEFINED.
6.20 DEFINITION: WILLFULNESS	ERROR! BOOKMARK NOT DEFINED.

6.40 ELEMENTS OF CLAIM	ERROR! BOOKMARK NOT DEFINED.
6.41 ELEMENTS OF CLAIM: CONSTRUCTIVE DISCHARGE	ERROR! BOOKMARK NOT DEFINED.
6.70 DAMAGES: ACTUAL	ERROR! BOOKMARK NOT DEFINED.
6.71 DAMAGES: NOMINAL	ERROR! BOOKMARK NOT DEFINED.
6.80 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.
7. EQUAL PAY ACT CASES	ERROR! BOOKMARK NOT DEFINED.
7.00 OVERVIEW	ERROR! BOOKMARK NOT DEFINED.
7.20 DEFINITION: "SUBSTANTIALLY EQUAL"	ERROR! BOOKMARK NOT DEFINED.
7.40 ELEMENTS OF CLAIM	ERROR! BOOKMARK NOT DEFINED.
7.60 ELEMENTS OF DEFENSES	ERROR! BOOKMARK NOT DEFINED.
7.70 DAMAGES: ACTUAL	ERROR! BOOKMARK NOT DEFINED.
7.80 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.
8. HARASSMENT CASES UNDER TITLE VII, SECTIONS 1981 AND 1983, ADA, AND ADEA	ERROR! BOOKMARK NOT DEFINED.
8.00 OVERVIEW	ERROR! BOOKMARK NOT DEFINED.
8.01 EXPLANATORY: "SAME DECISION"	ERROR! BOOKMARK NOT DEFINED.
8.20 DEFINITION: SUPERVISORY LIABILITY	ERROR! BOOKMARK NOT DEFINED.
8.40 ELEMENTS OF CLAIM: HARASSMENT (BY SUPERVISOR WITH TANGIBLE EMPLOYMENT ACTION)	ERROR! BOOKMARK NOT DEFINED.
8.41 ELEMENTS OF CLAIM: HARASSMENT (BY SUPERVISOR WITH NO TANGIBLE EMPLOYMENT ACTION)	ERROR! BOOKMARK NOT DEFINED.
8.42 ELEMENTS OF CLAIM: HARASSMENT (BY NONSUPERVISOR)	ERROR! BOOKMARK NOT DEFINED.
8.60 ELEMENTS OF DEFENSE: AFFIRMATIVE DEFENSE (FOR USE IN SUPERVISOR CASES WITH NO TANGIBLE EMPLOYMENT ACTION)	ERROR! BOOKMARK NOT DEFINED.
8.70 ACTUAL DAMAGES	ERROR! BOOKMARK NOT DEFINED.
8.71 NOMINAL DAMAGES	ERROR! BOOKMARK NOT DEFINED.
8.72 PUNITIVE DAMAGES	ERROR! BOOKMARK NOT DEFINED.
8.80 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.
8.81 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.
9. AMERICANS WITH DISABILITIES ACT	ERROR! BOOKMARK NOT DEFINED.
9.00 OVERVIEW	ERROR! BOOKMARK NOT DEFINED.
9.01 EXPLANATORY: DISPARATE TREATMENT "SAME DECISION"	ERROR! BOOKMARK NOT DEFINED.
9.02 EXPLANATORY: BUSINESS JUDGMENT	ERROR! BOOKMARK NOT DEFINED.
9.20 DEFINITION: DISABILITY	ERROR! BOOKMARK NOT DEFINED.
9.21 DEFINITION: ESSENTIAL FUNCTIONS	ERROR! BOOKMARK NOT DEFINED.
9.22 DEFINITION: SUBSTANTIALLY LIMITS	ERROR! BOOKMARK NOT DEFINED.
9.40 ELEMENTS OF CLAIM: DISPARATE TREATMENT (ACTUAL DISABILITY)	ERROR! BOOKMARK NOT DEFINED.
9.41 ELEMENTS OF CLAIM: DISPARATE TREATMENT (PERCEIVED DISABILITY)	ERROR! BOOKMARK NOT DEFINED.
9.42 ELEMENTS OF CLAIM: REASONABLE ACCOMMODATION (SPECIFIC ACCOMMODATION IDENTIFIED)	ERROR! BOOKMARK NOT DEFINED.
9.43 ELEMENTS OF CLAIM: CONSTRUCTIVE DISCHARGE	ERROR! BOOKMARK NOT DEFINED.
9.60 ELEMENTS OF DEFENSE: "UNDUE HARDSHIP" - STATUTORY DEFENSE	ERROR! BOOKMARK NOT DEFINED.
9.61 ELEMENTS OF DEFENSE: "DIRECT THREAT" - STATUTORY DEFENSE	ERROR! BOOKMARK NOT DEFINED.
9.62 ELEMENTS OF DEFENSE: "GOOD FAITH" DEFENSE TO COMPENSATORY AND PUNITIVE DAMAGES	ERROR! BOOKMARK NOT DEFINED.
9.70 DAMAGES: ACTUAL	ERROR! BOOKMARK NOT DEFINED.
9.71 DAMAGES: NOMINAL	ERROR! BOOKMARK NOT DEFINED.
9.72 DAMAGES: PUNITIVE	ERROR! BOOKMARK NOT DEFINED.
9.80 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.
9.81 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.

<u>10.</u>	<u>EMPLOYMENT – RETALIATION (ANTI-DISCRIMINATION STATUTES)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>10.00 OVERVIEW</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>10.40 ELEMENTS OF CLAIM: RETALIATION FOR PARTICIPATION IN PROCEEDINGS UNDER EMPLOYMENT STATUTES</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>10.41 ELEMENTS OF CLAIM: RETALIATION FOR OPPOSITION TO HARASSMENT OR DISCRIMINATION</u>	ERROR! BOOKMARK NOT DEFINED.
	NOT DEFINED.	
	<u>10.42 ELEMENTS OF CLAIM: RETALIATION - THIRD PARTY REPRISAL FOR PARTICIPATION IN PROCEEDINGS UNDER EMPLOYMENT STATUTES</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>10.43 ELEMENTS OF CLAIM: RETALIATION - THIRD PARTY REPRISAL FOR OPPOSITION TO HARASSMENT OR DISCRIMINATION</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>10.70 ACTUAL DAMAGES</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>10.71 NOMINAL DAMAGES</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>10.72 PUNITIVE DAMAGES</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>10.80 GENERAL VERDICT FORM</u>	ERROR! BOOKMARK NOT DEFINED.
<u>11.</u>	<u>EMPLOYMENT – RACE DISCRIMINATION (42 U.S.C. § 1981)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>11.00 OVERVIEW</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>11.40 ELEMENTS OF CLAIM: MOTIVATING FACTOR (42 U.S.C. § 1981)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>11.41 ELEMENTS OF CLAIM: BUT-FOR CAUSATION (42 U.S.C. § 1981)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>11.70 DAMAGES: ACTUAL (42 U.S.C. § 1981)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>11.71 DAMAGES: NOMINAL (42 U.S.C. § 1981)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>11.72 DAMAGES: PUNITIVE (42 U.S.C. § 1981)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>11.80 GENERAL VERDICT FORM (42 U.S.C. § 1981)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>11.90 SPECIAL VERDICT FORM</u>	ERROR! BOOKMARK NOT DEFINED.
<u>12.</u>	<u>EMPLOYMENT – PUBLIC EMPLOYERS (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>12.00 OVERVIEW</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>12.20 DEFINITION: COLOR OF STATE LAW (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>12.21 DEFINITION: MOTIVATING FACTOR</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>12.40 ELEMENTS OF CLAIM: (SEX) DISCRIMINATION (MIXED MOTIVE) (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>12.41 ELEMENTS OF CLAIM: (SEX) DISCRIMINATION (DETERMINING FACTOR) (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	DEFINED.	
	<u>12.70 DAMAGES: ACTUAL (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>12.71 DAMAGES: NOMINAL (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>12.72 DAMAGES: PUNITIVE (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>12.80 GENERAL VERDICT FORM (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
<u>13.</u>	<u>EMPLOYMENT – FIRST AMENDMENT RETALIATION (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>13.00 OVERVIEW</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>13.40 ELEMENTS OF CLAIM: FIRST AMENDMENT RETALIATION (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>13.70 DAMAGES: ACTUAL (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>13.71 DAMAGES: NOMINAL (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>13.72 DAMAGES: PUNITIVE (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>13.80 GENERAL VERDICT FORM (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>13.90 SPECIAL VERDICT FORM: INTERROGATORIES ON “BALANCING” ISSUES (42 U.S.C. § 1983)</u>	ERROR! BOOKMARK NOT DEFINED.
	DEFINED.	
	<u>13.91 SPECIAL VERDICT FORM: INTERROGATORIES REGARDING “PROTECTED SPEECH” BALANCING ISSUES</u>	ERROR! BOOKMARK NOT DEFINED.
	BOOKMARK NOT DEFINED.	
<u>14.</u>	<u>EMPLOYMENT – FAMILY AND MEDICAL LEAVE ACT</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>14.00 OVERVIEW</u>	ERROR! BOOKMARK NOT DEFINED.
	<u>14.01 EXPLANATORY: “SAME DECISION”</u>	ERROR! BOOKMARK NOT DEFINED.

14.20 DEFINITION: "NEEDED TO CARE FOR"	ERROR! BOOKMARK NOT DEFINED.
14.21 DEFINITION: "SERIOUS HEALTH CONDITION"	ERROR! BOOKMARK NOT DEFINED.
14.22 DEFINITION: "SERIOUS HEALTH CONDITION" (ALTERNATE)	ERROR! BOOKMARK NOT DEFINED.
14.23 DEFINITION: "HEALTH CARE PROVIDER"	ERROR! BOOKMARK NOT DEFINED.
14.24 DEFINITION: "TIMELY NOTICE" - LEAVE FORESEEABLE¹	ERROR! BOOKMARK NOT DEFINED.
14.25 DEFINITION: "TIMELY NOTICE" - LEAVE UNFORESEEABLE¹	ERROR! BOOKMARK NOT DEFINED.
14.26 DEFINITION: "EQUIVALENT POSITION"	ERROR! BOOKMARK NOT DEFINED.
14.27 DEFINITION: "QUALIFYING EXIGENCY"	ERROR! BOOKMARK NOT DEFINED.
14.28 DEFINITION: "NEXT OF KIN" FOR LEAVE TO CARE FOR A COVERED SERVICEMEMBER WITH A SERIOUS INJURY OR ILLNESS	ERROR! BOOKMARK NOT DEFINED.
14.29 DEFINITION: "COVERED SERVICEMEMBER" FOR LEAVE TO CARE FOR A COVERED SERVICEMEMBER WITH A SERIOUS INJURY OR ILLNESS	ERROR! BOOKMARK NOT DEFINED.
14.30 DEFINITION: "SERIOUS INJURY OR ILLNESS" FOR LEAVE TO CARE FOR A COVERED SERVICEMEMBER WITH A SERIOUS INJURY OR ILLNESS	ERROR! BOOKMARK NOT DEFINED.
14.31 DEFINITION: "CONTINGENCY OPERATION"	ERROR! BOOKMARK NOT DEFINED.
14.32 DEFINITION: "AS SOON AS PRACTICABLE"	ERROR! BOOKMARK NOT DEFINED.
14.40 ELEMENTS OF CLAIM: ENTITLEMENT – TRADITIONAL INTERFERENCE (EMPLOYEE WITH A SERIOUS HEALTH CONDITION)	ERROR! BOOKMARK NOT DEFINED.
14.41 ELEMENTS OF CLAIM: ENTITLEMENT – TRADITIONAL INTERFERENCE (EMPLOYEE NEEDED TO CARE FOR SPOUSE, PARENT, SON OR DAUGHTER WITH A SERIOUS HEALTH CONDITION)	ERROR! BOOKMARK NOT DEFINED.
14.42 ELEMENTS OF CLAIM: ENTITLEMENT – TRADITIONAL INTERFERENCE (EMPLOYEE LEAVE FOR BIRTH, ADOPTION OR FOSTER CARE)	ERROR! BOOKMARK NOT DEFINED.
14.43 ELEMENTS OF CLAIM: ENTITLEMENT – TRADITIONAL INTERFERENCE (QUALIFYING EXIGENCY LEAVE RELATED TO COVERED MILITARY MEMBER)	ERROR! BOOKMARK NOT DEFINED.
14.44 ELEMENTS OF CLAIM: ENTITLEMENT – TRADITIONAL INTERFERENCE (EMPLOYEE NEEDED TO CARE FOR COVERED SERVICEMEMBER WITH A SERIOUS INJURY OR ILLNESS)	ERROR! BOOKMARK NOT DEFINED.
14.45 ELEMENTS OF CLAIM: ENTITLEMENT – FAILURE TO REINSTATE (EMPLOYEE WITH A SERIOUS HEALTH CONDITION)	ERROR!
BOOKMARK NOT DEFINED.	
14.46 ELEMENTS OF CLAIM: ENTITLEMENT – FAILURE TO REINSTATE (EMPLOYEE NEEDED TO CARE FOR A SPOUSE, SON OR DAUGHTER WITH A SERIOUS HEALTH CONDITION)	ERROR! BOOKMARK NOT DEFINED.
14.47 ELEMENTS OF CLAIM: ENTITLEMENT – FAILURE TO REINSTATE (EMPLOYEE LEAVE FOR BIRTH, ADOPTION OR FOSTER CARE)	ERROR! BOOKMARK NOT DEFINED.
14.48 ELEMENTS OF CLAIM: ENTITLEMENT – FAILURE TO REINSTATE (QUALIFYING EXIGENCY LEAVE RELATED TO COVERED MILITARY MEMBER)	ERROR! BOOKMARK NOT DEFINED.
14.49 ELEMENTS OF CLAIM: ENTITLEMENT – FAILURE TO REINSTATE (EMPLOYEE NEEDED TO CARE FOR COVERED SERVICEMEMBER WITH A SERIOUS INJURY OR ILLNESS)	ERROR! BOOKMARK NOT DEFINED.
14.50 ELEMENTS OF CLAIM: DISCRIMINATION OR RETALIATION (EMPLOYEE WITH A SERIOUS HEALTH CONDITION)	ERROR!
BOOKMARK NOT DEFINED.	
14.51 ELEMENTS OF CLAIM: DISCRIMINATION OR RETALIATION (EMPLOYEE NEEDED TO CARE FOR SPOUSE, PARENT, SON OR DAUGHTER WITH A SERIOUS HEALTH CONDITION)	ERROR! BOOKMARK NOT DEFINED.
14.52 ELEMENTS OF CLAIM: DISCRIMINATION OR RETALIATION (EMPLOYEE LEAVE FOR BIRTH, ADOPTION OR FOSTER CARE)	ERROR! BOOKMARK NOT DEFINED.
14.53 ELEMENTS OF CLAIM: DISCRIMINATION OR RETALIATION (QUALIFYING EXIGENCY LEAVE RELATED TO COVERED MILITARY MEMBER)	ERROR! BOOKMARK NOT DEFINED.
14.54 ELEMENTS OF CLAIM: DISCRIMINATION OR RETALIATION (EMPLOYEE NEEDED TO CARE FOR COVERED SERVICEMEMBER WITH A SERIOUS INJURY OR ILLNESS)	ERROR! BOOKMARK NOT DEFINED.
14.60 ELEMENTS OF DEFENSE: EXCEPTION TO JOB RESTORATION (KEY EMPLOYEE)	ERROR! BOOKMARK NOT DEFINED.
14.61 ELEMENTS OF DEFENSE: EXCEPTION TO JOB RESTORATION (EMPLOYEE WOULD NOT HAVE BEEN EMPLOYED AT TIME OF REINSTATEMENT)	ERROR! BOOKMARK NOT DEFINED.
14.70 DAMAGES: ACTUAL	ERROR! BOOKMARK NOT DEFINED.
14.80 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.

15. [EMPLOYMENT – FEDERAL EMPLOYERS' LIABILITY ACT](#)..... ERROR! BOOKMARK NOT DEFINED.

15.00 OVERVIEW (GENERAL)	ERROR! BOOKMARK NOT DEFINED.
15.01 DEFENSE THEORY INSTRUCTIONS - THREE OPTIONS OVERVIEW	ERROR! BOOKMARK NOT DEFINED.
15.20 DEFINITION: "NEGLIGENT" OR "NEGLIGENCE"	ERROR! BOOKMARK NOT DEFINED.
15.21 DEFINITION: "ORDINARY CARE"	ERROR! BOOKMARK NOT DEFINED.
15.22 DEFINITIONS: "NEGLIGENT" OR "NEGLIGENCE" AND "ORDINARY CARE" COMBINED	ERROR! BOOKMARK NOT DEFINED.
15.40 ELEMENTS OF CLAIM: GENERAL F.E.L.A. NEGLIGENCE	ERROR! BOOKMARK NOT DEFINED.
15.41 ELEMENTS OF CLAIM: BOILER INSPECTION ACT VIOLATION	ERROR! BOOKMARK NOT DEFINED.
15.42 ELEMENTS OF CLAIM: SAFETY APPLIANCE ACT VIOLATION	ERROR! BOOKMARK NOT DEFINED.
15.60 ELEMENTS OF DEFENSE: FAILURE OF PROOF ON ANY ELEMENT OF THE PLAINTIFF'S CASE LISTED IN THE ELEMENTS	ERROR! BOOKMARK NOT DEFINED.
15.61 ELEMENTS OF DEFENSE: FAILURE TO PROVE ANY FACT ESSENTIAL TO THE PLAINTIFF'S RIGHT TO RECOVER	ERROR!
BOOKMARK NOT DEFINED.	
15.62 ELEMENTS OF DEFENSE: AFFIRMATIVE DEFENSES	ERROR! BOOKMARK NOT DEFINED.
15.63 ELEMENTS OF DEFENSE: CONTRIBUTORY NEGLIGENCE	ERROR! BOOKMARK NOT DEFINED.
15.70 DAMAGES: INJURY TO EMPLOYEE	ERROR! BOOKMARK NOT DEFINED.
15.71 DAMAGES: DEATH OF EMPLOYEE	ERROR! BOOKMARK NOT DEFINED.
15.72 DAMAGES: PRESENT VALUE OF FUTURE LOSS	ERROR! BOOKMARK NOT DEFINED.
15.73 DAMAGES: INCOME TAX EFFECTS OF AWARD	ERROR! BOOKMARK NOT DEFINED.
15.80 GENERAL VERDICT FORM: CONTRIBUTORY NEGLIGENCE SUBMITTED	ERROR! BOOKMARK NOT DEFINED.
15.81 GENERAL VERDICT FORM: CONTRIBUTORY NEGLIGENCE NOT SUBMITTED	ERROR! BOOKMARK NOT DEFINED.
16. EMPLOYMENT – FAIR LABOR STANDARDS ACT	ERROR! BOOKMARK NOT DEFINED.
16.00 OVERVIEW	ERROR! BOOKMARK NOT DEFINED.
16.01 EXPLANATORY: DETERMINING HOURS WORKED	ERROR! BOOKMARK NOT DEFINED.
16.02 EXPLANATORY: MINIMUM WAGE	ERROR! BOOKMARK NOT DEFINED.
16.03 EXPLANATORY: MINIMUM WAGE CREDIT FOR BOARD AND LODGING	ERROR! BOOKMARK NOT DEFINED.
16.04 EXPLANATORY: OVERTIME COMPENSATION	ERROR! BOOKMARK NOT DEFINED.
16.05 EXPLANATORY: SALARY BASIS	ERROR! BOOKMARK NOT DEFINED.
16.06 EXPLANATORY: DETERMINING EMPLOYEE STATUS	ERROR! BOOKMARK NOT DEFINED.
16.20 DEFINITION: "HOURS WORKED"	ERROR! BOOKMARK NOT DEFINED.
16.21 DEFINITION: "WORKWEEK"	ERROR! BOOKMARK NOT DEFINED.
16.40 ELEMENTS OF CLAIM	ERROR! BOOKMARK NOT DEFINED.
16.60 ELEMENTS OF DEFENSE: EXECUTIVE EMPLOYEE EXEMPTION	ERROR! BOOKMARK NOT DEFINED.
16.61 ELEMENTS OF DEFENSE: ADMINISTRATIVE EMPLOYEE EXEMPTION	ERROR! BOOKMARK NOT DEFINED.
16.62 ELEMENTS OF DEFENSE: LEARNED PROFESSIONAL EXEMPTION	ERROR! BOOKMARK NOT DEFINED.
16.63 ELEMENTS OF DEFENSE: CREATIVE PROFESSIONAL EXEMPTION	ERROR! BOOKMARK NOT DEFINED.
16.64 ELEMENTS OF DEFENSE: COMPUTER EMPLOYEE EXEMPTION	ERROR! BOOKMARK NOT DEFINED.
16.70 DAMAGES	ERROR! BOOKMARK NOT DEFINED.
16.71 DAMAGES (ONLY HOURS WORKED SUBMITTED TO JURY)	ERROR! BOOKMARK NOT DEFINED.
16.72 DAMAGES: WILLFUL VIOLATION	ERROR! BOOKMARK NOT DEFINED.
16.80 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.
16.90 SPECIAL VERDICT FORM: INTERROGATORIES (DAMAGES)	ERROR! BOOKMARK NOT DEFINED.
16.91 SPECIAL VERDICT FORM: INTERROGATORIES (HOURS WORKED)	ERROR! BOOKMARK NOT DEFINED.
16.92 SPECIAL VERDICT FORM: EMPLOYEE STATUS	ERROR! BOOKMARK NOT DEFINED.
17. ADMIRALTY AND MARITIME	ERROR! BOOKMARK NOT DEFINED.
17.01 EXPLANATORY: NEGLIGENCE CLAIM UNDER THE JONES ACT	ERROR! BOOKMARK NOT DEFINED.
17.02 EXPLANATORY: JONES ACT--CAUSATION	ERROR! BOOKMARK NOT DEFINED.
17.03 EXPLANATORY: UNSEAWORTHINESS CLAIM AGAINST EMPLOYER	ERROR! BOOKMARK NOT DEFINED.
17.04 EXPLANATORY: UNSEAWORTHINESS CLAIM--CAUSATION	ERROR! BOOKMARK NOT DEFINED.
17.05 EXPLANATORY: LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT § 905(B)--TURN-OVER CLAIM--NEGLIGENCE STANDARD	ERROR! BOOKMARK NOT DEFINED.
17.06 EXPLANATORY: MAINTENANCE AND CURE--SUPPLEMENTAL	ERROR! BOOKMARK NOT DEFINED.

17.20 DEFINITION: JONES ACT--“COURSE OF EMPLOYMENT”	ERROR! BOOKMARK NOT DEFINED.
17.21 DEFINITION: JONES ACT--“NEGLIGENCE”	ERROR! BOOKMARK NOT DEFINED.
17.22 DEFINITION: “SEAMAN”	ERROR! BOOKMARK NOT DEFINED.
17.23 DEFINITION: JONES ACT--“VESSEL”	ERROR! BOOKMARK NOT DEFINED.
17.24 DEFINITION: “MARITIME EMPLOYMENT”	ERROR! BOOKMARK NOT DEFINED.
17.25 DEFINITION: LONGSHORE AND HARBOR WORKERS’ COMPENSATION ACT “COVERED PLACE OF INJURY”	ERROR!
BOOKMARK NOT DEFINED.	
17.26 DEFINITION: “NAVIGABLE WATERS”	ERROR! BOOKMARK NOT DEFINED.
17.27 DEFINITION: “MAINTENANCE” AND “CURE”	ERROR! BOOKMARK NOT DEFINED.
17.40 ELEMENTS OF CLAIM: NEGLIGENCE CLAIM UNDER THE JONES ACT	ERROR! BOOKMARK NOT DEFINED.
17.41 ELEMENTS OF CLAIM: UNSEAWORTHINESS CLAIM AGAINST EMPLOYER	ERROR! BOOKMARK NOT DEFINED.
17.42 ELEMENTS OF CLAIM: LONGSHORE AND HARBOR WORKERS’ COMPENSATION ACT § 905(b)--TURN-OVER CLAIM--ELEMENTS OF CLAIM	ERROR! BOOKMARK NOT DEFINED.
17.43 ELEMENTS OF CLAIM: GENERAL MARITIME LAW — NONEMPLOYEE-INVITEE’S NEGLIGENCE CLAIM--ELEMENTS	ERROR! BOOKMARK NOT DEFINED.
17.44 ELEMENTS OF CLAIM: GENERAL MARITIME LAW--NONEMPLOYEE- INVITEE’S CLAIM– CONTRIBUTORY NEGLIGENCE (COMPARATIVE FAULT)	ERROR! BOOKMARK NOT DEFINED.
17.60 ELEMENTS OF DEFENSE: JONES ACT--CONTRIBUTORY NEGLIGENCE (COMPARATIVE FAULT)	ERROR! BOOKMARK NOT DEFINED.
DEFINED.	
17.70 DAMAGES: COMPENSATORY (GENERAL)	ERROR! BOOKMARK NOT DEFINED.
17.71 DAMAGES: DEATH OF EMPLOYEE	ERROR! BOOKMARK NOT DEFINED.
17.72 DAMAGES: PUNITIVE	ERROR! BOOKMARK NOT DEFINED.
17.73 DAMAGES: PRESENT VALUE OF FUTURE DAMAGES	ERROR! BOOKMARK NOT DEFINED.
17.74 DAMAGES: DUTY TO MINIMIZE DAMAGES	ERROR! BOOKMARK NOT DEFINED.
17.75 DAMAGES: COMPENSATORY DAMAGES NOT TAXABLE	ERROR! BOOKMARK NOT DEFINED.
17.90 SPECIAL VERDICT FORM: INTERROGATORIES	ERROR! BOOKMARK NOT DEFINED.
18. EMPLOYMENT—FEDERAL RAILWAY SAFETY ACT	ERROR! BOOKMARK NOT DEFINED.
18.00 OVERVIEW (GENERAL)	ERROR! BOOKMARK NOT DEFINED.
18.20 DEFINITIONS: “GREATER WEIGHT OF THE EVIDENCE” AND “CLEAR AND CONVINCING EVIDENCE” ERROR!
BOOKMARK NOT DEFINED.	
18.40 ELEMENTS OF CLAIM: DISCRIMINATION DUE, IN WHOLE OR IN PART, TO ENGAGEMENT IN PROTECTED ACTIVITY	ERROR! BOOKMARK NOT DEFINED.
18.41 ELEMENTS OF CLAIM: MEDICAL ATTENTION (DENIAL, DELAY OR INTERFERENCE)	ERROR! BOOKMARK NOT DEFINED.
18.42 ELEMENTS OF CLAIM: MEDICAL ATTENTION (DISCIPLINE FOR REQUESTING OR FOLLOWING MEDICAL TREATMENT)	ERROR! BOOKMARK NOT DEFINED.
18.50 AFFIRMATIVE DEFENSE INSTRUCTION APPLICABLE TO VERDICT DIRECTORS 18.40 AND 18.42	ERROR! BOOKMARK NOT DEFINED.
DEFINED.	
18.70 DAMAGES: ACTUAL	ERROR! BOOKMARK NOT DEFINED.
18.72 DAMAGES: PUNITIVE	ERROR! BOOKMARK NOT DEFINED.
18.80 GENERAL VERDICT FORM APPLICABLE TO VERDICT DIRECTOR 18.41	ERROR! BOOKMARK NOT DEFINED.
18.81 GENERAL VERDICT FORM APPLICABLE TO VERDICT DIRECTORS 18.40 AND 18.42	ERROR! BOOKMARK NOT DEFINED.
19. ODOMETER FRAUD	ERROR! BOOKMARK NOT DEFINED.
19.00 OVERVIEW	ERROR! BOOKMARK NOT DEFINED.
19.40 ELEMENTS OF CLAIM	ERROR! BOOKMARK NOT DEFINED.
19.70 DAMAGES	ERROR! BOOKMARK NOT DEFINED.
19.80 GENERAL VERDICT FORM	ERROR! BOOKMARK NOT DEFINED.