

PRELIMINARY JURY INSTRUCTIONS

Instruction No. 1

Ladies and Gentlemen:

Now that you have been sworn, I will briefly tell you something about your duties as jurors and give you some instructions. At the end of the trial I will give you more detailed instructions, and those instructions will control your deliberations.

It will be your duty to decide the facts. You must decide the facts only from the evidence produced in court. You must not speculate or guess about any fact. You must not be influenced by sympathy or prejudice.

You will hear the evidence, decide the facts, and then apply these facts to the law I will give to you. That is how you will reach your verdict. In doing so you must follow that law whether you agree with it or not.

You must not take anything I may say or do during the trial as indicating any opinion I have about the facts. You, and you alone, are the judges of the facts.

Instruction No. 2

Because this is a juvenile case involving the termination of parental rights, the rules that apply are different from other court hearings or trials. The law provides that the general public be excluded from trials concerning the termination of parental rights, and that those admitted because they have a direct interest in the case or the work of the court, including jurors, shall not disclose any information obtained during the trial. Anyone violating this prohibition could be found in contempt of court.

Alternative Instruction No. 2

Because this is a juvenile case involving the termination of parental rights, the rules that apply are different from other court hearings or trials. The public will be permitted to enter the courtroom and observe, but they as well as you, the jurors, are ordered not to disclose outside of this courtroom any personal information that could identify the child, any of his family members, caregivers, guardians, and anyone else mentioned during the trial. Unlike other types of trials, this prohibition will not be lifted after the verdict is read. It will remain in effect forever. Failure to comply with this prohibition could be deemed contempt of court and could result in criminal sanctions including a fine or imprisonment.

Instruction No. 3

You will decide what the facts are from the evidence presented here in court. That evidence will consist of testimony of witnesses, any documents and other things received into evidence as exhibits, and any facts stipulated to by the parties or which you are instructed to accept.

You will decide the credibility and weight to be given to any evidence presented in the case, whether it be direct evidence or circumstantial evidence.

Direct evidence is offered as direct proof of a fact, such as the testimony of an eyewitness. Circumstantial, or indirect, evidence is offered as proof of one or more facts from which you could find that another fact has been proved, even though it has not been proved directly.

Instruction No. 4

Admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence.

If an objection to a question is sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit is offered into evidence and an objection to it is sustained, you must not consider that exhibit as evidence. If testimony is ordered stricken from the record, you must not consider that testimony for any purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility or weight you should give to any evidence that has been admitted.

Instruction No. 5

In the opening statements and closing arguments the lawyers will talk to you about the law and the evidence. What the lawyers say is not evidence, but it may help you to understand the law and the evidence.

Instruction No. 6

Burden of proof means burden of persuasion. The state has the burden of proof and must persuade you by clear and convincing evidence that its allegations are true. This means that the state must convince you by the evidence that its allegations are highly probable. This standard is more exacting than the standard of more probably true than not true, but it is less exacting than the standard of proof beyond a reasonable doubt.

In determining whether the state has met its burden of proof, you will consider all the evidence, no matter by whom it was presented.

Instruction No. 7

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not be given a written transcript of any testimony; you should pay close attention to the testimony as it is given.

You have been provided with note pads and pencils. The court encourages you to take notes during the trial if you wish to do so. Do not let note taking distract you so that you miss hearing or seeing other testimony. Leave your notes and notebooks in the courtroom during recesses. You may take them with you and use them during your deliberations with other jurors in the jury room at the end of the trial. Whether you take notes or not, you should rely upon your own memory of what was said and not be overly influenced by the notes of other jurors. After you have rendered your verdict, the bailiff will collect your notes and destroy them.

Do not be influenced at all by my taking notes at times. What I write down may have nothing to do with what you will be concerned with at this trial.

Instruction No. 8

I am now going to say a few words about your conduct as jurors. I am going to give you some do's and don'ts, mostly don'ts, which I will call "The Admonition."

Do wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury.

Do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place. Do not talk to anyone about the case, or about anyone who has anything to do with it, and do not let anyone talk to you about those matters, until the trial has ended and you have been discharged as jurors. Until then, you may tell people you are on a jury, and you may tell them the estimated schedule for the trial, but do not tell them anything else except to say that you cannot talk about the trial until it is over.

If someone should try to talk to you about the case, stop them or walk away. If you should overhear others talking about the case, stop them or walk away. If anything like this does happen, report it to me or any member of my staff as soon as you can.

To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, or witnesses about anything until the case is over, even if it has nothing to do with the case.

Do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

Before each recess, I will not repeat the entire Admonition I have just given you. I will probably refer to it by saying, "Please remember the Admonition," or something like that. However, even if I forget to make any reference to it, remember that the Admonition still applies at all times during the trial.

Instruction No. 9

There may or may not be news media coverage of the trial. What the news media covers is up to them. If there is media coverage, you must avoid it during the trial. If you do encounter something about this case in the news media during the trial, end your exposure to it immediately and report to me as soon as you can. If there are cameras in the courtroom during the trial, do not be concerned about them. Court rules require that the proceedings be photographed or televised in such a way that no juror can be recognized.

Instruction No. 10

If at any time during the trial you have difficulty hearing or seeing something that you should be hearing or seeing, or if you get into personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other personal matters relating to jury service, feel free to ask the bailiff or one of the court staff. But remember that the Admonition applies to court staff, as it does to everybody else, so do not try to discuss the case with court staff.

If you have a question you would like to ask a witness during the trial, write your question down, but do not sign it. Hand the question to the bailiff. If you have a question for a witness who is about to leave the witness stand, signal the bailiff or me before the witness leaves the stand.

I will discuss the question with the lawyers. If I decide the question is proper, an answer will be provided at the earliest logical opportunity. Keep in mind, however, that the rules of evidence or other rules of law may prevent some questions from being asked. I will apply the same legal standards to your questions as I do to the questions asked by the lawyers.

If a particular question is not asked, do not guess why or what the answer might have been. The failure to ask a question is not a reflection on the person asking it, and you should not attach any significance to the failure to ask a question.

During the course of the trial the recess or break periods may be longer than indicated by the Court. These “delays” are necessitated by either matters related to this trial or to the Court’s obligation to manage other cases pending before the Court. I apologize for any inconvenience this may cause and hope that you understand these delays are simply unavoidable.

Instruction No. 11

The law provides for a jury of eight person in a case such as this. In any case lasting several days, we seat alternate jurors so that, if a juror becomes ill or has a personal emergency, the trial can continue without that juror.

At the end of the case, alternate jurors will be determined by lot in a drawing held in open court. Do not be concerned with who may or may not be chosen as an alternate at the end of the case. Each of you must consider yourself a juror throughout the trial and comply with the admonitions I have given you.

Instruction No. 12

The trial will now begin. First, each side may make an opening statement. An opening statement is not evidence, it is an outline of the expected evidence. It is offered to help you understand and follow the evidence that will be presented during trial.

Next, the State will present witnesses and the other attorneys may cross-examine them. Then the other attorneys may present witnesses and the other attorneys may cross-examine. The State may then present further evidence in rebuttal.

After the evidence has been presented, the attorneys will make their closing arguments. I will also instruct you on the law that you are to apply in deciding the case.

You will then go to the jury room to deliberate and decide the case.

The final instructions I give you at the end of the trial may differ from these preliminary instructions based upon the evidence presented at the trial. The preliminary jury instructions will be replaced by the final jury instructions I will give you at the end of the trial. The final instructions will govern your deliberations.

Instruction No. 13

If during the trial you form any impression that I have a feeling one way or the other in this case, you should completely disregard any such impression as you are the sole judges of the evidence and the credibility of the witnesses in this case. My feelings are not relevant.

Instruction No. 14

The subject of this trial is the state's allegation that there is a legal basis to terminate the parental rights of [parent] with regard to her son, [child], who is two years old.

The state alleges that the basis for termination is twofold:

- 1) Neglect, and
- 2) That the child, [child], has been in out of home care for nine months or more during which his mother, [parent], failed to remedy the conditions that caused the child to be in out of home care.

Instruction No. 15

The allegation of “Neglect” is defined as the inability or unwillingness of a parent or a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child’s health or welfare.

Instruction No. 16

The allegation of in out of home care for nine months or more means that:

- 1) The child has been cared for in a court-ordered out of home placement for a cumulative period of nine months or longer; and
- 2) The Child Protective Services has made a diligent effort to provide appropriate reunification services; and
- 3) The parent has substantially neglected or willfully refused to remedy the circumstances which caused the child to be in an out of home placement.

Instruction No. 17

The interests of the child will be represented by attorney Bernice Little. Her representation of the child is separate and independent of the interests of the parent or the state.

Instruction No. 18

[Child]'s biological father is not a participant in these proceedings and is not available to parent this child. You should not speculate as to the reasons for his unavailability, but you may consider his unavailability in determining the best interest of the child.

Instruction No. 19

At the end of the trial, you will be asked to determine whether the state has proven by clear and convincing evidence that at least one of these allegations is true **and** that termination of parental rights is in the best interest of the child.