

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS**

**U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

**RENT-A-CENTER EAST, INC.,**

Defendant.

No. 16-CV-2222

Magistrate Judge Eric I. Long

**JOINT PROPOSED JURY INSTRUCTIONS**

Plaintiff U.S. Equal Employment Opportunity Commission (EEOC) and Defendant Rent-A-Center East, Inc. (RAC) file their Joint Proposed Jury Instructions.

Instructions printed [in brackets] are proposed to be used only if applicable.

Respectfully submitted,

s/ Justin Mulaire

U.S. Equal Employment  
Opportunity Commission  
33 Whitehall St., Fl. 5  
New York, NY 10004  
212-336-3744

Miles Shultz

U.S. Equal Employment  
Opportunity Commission  
500 W. Madison St., Ste. 2000  
Chicago, IL 60661  
312-869-8053

/s/J. Bradley Spalding

J. Bradley Spalding, Texas Bar No. 00786253  
LITTLER MENDELSON, P.C.  
1301 McKinney Street, Suite 1900  
Houston, Texas 77010  
713.652.4731

Michael A. Wilder Illinois Bar # 6291053

Lavanga V. Wijekoon Illinois Bar # 6301183  
Littler Mendelson, P.C.  
A Professional Corporation  
321 North Clark Street, Suite 1000  
Chicago, IL 60654  
312.372.5520

Stephanie J. Quincy

Arizona Bar No. 014009  
Quarles & Brady LLP

Renaissance One  
Two North Central Avenue  
Phoenix, AZ 85004  
602.229.5200

Andrew Trusevich  
Texas Bar No. 00785119  
RENT-A-CENTER, INC.  
5501 Headquarters Drive  
Plano, Texas 75024  
972.801.1465

**JOINT PROPOSED JURY INSTRUCTION NO. 1**

**GENERAL INSTRUCTIONS**

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy or prejudice to influence you. You should not be influenced by any person's race, color, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.<sup>1</sup>

[During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.]<sup>2</sup>

---

<sup>1</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.01

<sup>2</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.02

In this case, Rent-A-Center is a corporation. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.<sup>3</sup>

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.<sup>4</sup>

During the trial, certain testimony was presented to you by the reading of depositions and video. You should give this testimony the same consideration you would give it had the witness appeared and testified here in court.<sup>5</sup>

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

---

<sup>3</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.03

<sup>4</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.04

<sup>5</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.05

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.<sup>6</sup>

[Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.]<sup>7</sup>

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.<sup>8</sup>

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

---

<sup>6</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.06

<sup>7</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.07

<sup>8</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.08

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.<sup>9</sup>

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.<sup>10</sup>

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

---

<sup>9</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.11

<sup>10</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.12

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.<sup>11</sup>

You may consider statements given by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath that is inconsistent with his testimony here in court, you may consider the earlier statement only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.<sup>12</sup>

---

<sup>11</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.13

<sup>12</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.14

It is proper for a lawyer to meet with any witness in preparation for trial.<sup>13</sup>

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.<sup>14</sup>

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.<sup>15</sup>

[Certain demonstrative exhibits have been shown to you. Those are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.]<sup>16</sup>

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.<sup>17</sup>

---

<sup>13</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.16

<sup>14</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.17

<sup>15</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.18

<sup>16</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.24

<sup>17</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.27

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A verdict form has been prepared for you. Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in, date, and sign the form.<sup>18</sup>

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.<sup>19</sup>

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

---

<sup>18</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.32 (as modified)

<sup>19</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.33

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.<sup>20</sup>

s

GIVEN: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

DENIED: \_\_\_\_\_

WITHDRAWN: \_\_\_\_\_

---

UNITED STATES DISTRICT COURT

---

<sup>20</sup> Federal Civil Jury Instructions of the Seventh Circuit 1.34

**JOINT PROPOSED JURY INSTRUCTION NO. 2**

**STIPULATIONS OF FACT**

[The parties have stipulated, or agreed, that [stipulated fact]. You must now treat this fact as having been proved for the purpose of this case.]<sup>21</sup>

GIVEN: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

DENIED: \_\_\_\_\_

WITHDRAWN: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT

---

<sup>21</sup> Federal Civil Jury Instructions of the Seventh Circuit 2.05

**JOINT PROPOSED JURY INSTRUCTION NO. 3**

**JUDICIAL NOTICE**

[I have decided to accept as proved the fact that the EEOC's investigative file and notes are governmental records, and accordingly are admissible evidence. You may now treat this fact as having been proved for the purpose of this case.]<sup>22</sup>

GIVEN: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

DENIED: \_\_\_\_\_

WITHDRAWN: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT

---

<sup>22</sup> Federal Civil Jury Instructions of the Seventh Circuit 2.06

**JOINT PROPOSED JURY INSTRUCTION NO. 4**

**TRANSCRIPT OF VIDEO  
DEPOSITION**

[You are about to watch a recording of a video deposition that has been received in evidence. This recording is proper evidence and you may consider it, just as any other evidence.

You may be given a transcript to use as a guide to help you follow as you watch to the recording. The transcript is not evidence of what was actually said or who said it. It is up to you to decide whether the transcript correctly reflects what was said and who said it. If you notice any difference between what you heard on the recording and what you read in the transcript, you must rely on what you heard, not what you read. And if after careful listening, you cannot hear or understand certain parts of the recording, you must ignore the transcript as far as those parts are concerned.]<sup>23</sup>

GIVEN: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

DENIED: \_\_\_\_\_

WITHDRAWN: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT

---

<sup>23</sup> Federal Civil Jury Instructions of the Seventh Circuit 2.07 (as modified)

**JOINT PROPOSED JURY INSTRUCTION NO. 5**

**DEPOSITION AS SUBSTANTIVE  
EVIDENCE**

[A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

The deposition of [Witness], which was taken on [date], is about to be presented to you. Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify.]<sup>24</sup>

GIVEN: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

DENIED: \_\_\_\_\_

WITHDRAWN: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT

\_\_\_\_\_  
<sup>24</sup> Federal Civil Jury Instructions of the Seventh Circuit 2.08

**JOINT PROPOSED JURY INSTRUCTION NO. 6**

**USE OF INTERROGATORIES (TO BE USED ONLY WHEN INTERROGATORIES  
ARE READ WITHOUT ADMISSION INTO EVIDENCE)**

[Evidence will now be presented to you in the form of written answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath before this trial in response to written questions.

You must give the answers the same consideration as if the answers were made from the witness stand.]<sup>25</sup>

GIVEN: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

DENIED: \_\_\_\_\_

WITHDRAWN: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT

\_\_\_\_\_  
<sup>25</sup> Federal Civil Jury Instructions of the Seventh Circuit 2.09

**JOINT PROPOSED JURY INSTRUCTION NO. 7**

**GENERAL EMPLOYMENT DISCRIMINATION INSTRUCTIONS**

The EEOC must prove by a preponderance of the evidence that Ms. Kerr's transgender status was a motivating factor in Rent-A-Center's decision to terminate her. A motivating factor is something that contributed to Rent-A-Center's decision.

If you find that the EEOC has proved that Ms. Kerr's transgender status contributed to Rent-A-Center's decision to terminate her, you must then decide whether Rent-A-Center proved by a preponderance of the evidence that it would have terminated her even if Ms. Kerr was not transgender. If so, you must enter a verdict in favor of the EEOC but you may not award the EEOC damages.<sup>26</sup>

GIVEN: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

DENIED: \_\_\_\_\_

WITHDRAWN: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT

<sup>26</sup> Federal Civil Jury Instructions of the Seventh Circuit 3.01 cmt. c.; *Gehring v. Case Corp.*, 43 F.3d 340, 344 (7th Cir. 1994)

**JOINT PROPOSED JURY INSTRUCTION NO. 8**

**PUNITIVE DAMAGES**

If you find for the EEOC, you may, but are not required to, assess punitive damages against Rent-A-Center. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to Rent-A-Center and others not to engage in similar conduct in the future.

The EEOC must prove by a preponderance of the evidence that punitive damages should be assessed against Rent-A-Center. You may assess punitive damages only if you find the conduct of Rent-A-Center's managers was in reckless disregard of Ms. Kerr's rights. An action is in reckless disregard of Ms. Kerr's rights if taken with knowledge that it may violate the law.

The EEOC must prove by a preponderance of the evidence that Rent-A-Center's managerial employees acted within the scope of their employment and in reckless disregard of Ms. Kerr's right not to be discriminated against. You should not, however, award the EEOC punitive damages if Rent-A-Center proves that it made a good faith effort to implement an anti-discrimination policy.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either/any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Rent-A-Center's conduct;
  
- the impact of Rent-A-Center's conduct on Ms. Kerr;
  
- the relationship between Ms. Kerr and Rent-A-Center;
  
- the likelihood that Rent-A-Center would repeat the conduct if an award of punitive damages is not made;
  
- the relationship of any award of punitive damages to the amount of actual harm Ms. Kerr suffered.<sup>27</sup>

GIVEN: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

DENIED: \_\_\_\_\_

WITHDRAWN: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT

---

<sup>27</sup> Federal Civil Jury Instructions of the Seventh Circuit 3.13.