

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

RHODDA THOMPSON,

)

)

Plaintiff,

)

)

v.

)

No. 96 C 4319

)

ALTHEIMER & GRAY,

)

Mag. Judge Morton Denlow

Defendant.

)

JURY INSTRUCTIONS

INTRODUCTION TO THE FINAL CHARGE

Members of the Jury:

Now that you have heard all of the evidence to be received in this trial and each of the arguments of counsel it becomes my duty to give you the Court's final instructions as to the law that is applicable to this case and which will guide you in your decisions.

All of the instructions of law given to you by the Court -- those given to you at the beginning of the trial, those given to you during the trial, if any, and these final instructions-must guide and govern your deliberations.

It is your duty as jurors to follow the law as stated in all of the instructions of the Court and to apply these rules of law to the facts as you find them from the evidence received during the trial.

Counsel have quite properly referred to some of the applicable rules of law in their closing arguments to you. If, however, any difference appears to you between the law as stated by counsel and that as stated by the Court in these instructions, you, of course, are to be governed by the instructions given to you by the Court.

You are not to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict upon any other view or opinion of the law than that given in these instructions of the Court just as it would be a violation of your sworn duty, as the judges of the facts, to base your verdict upon anything but the

evidence received in the case.

You were chosen as juror for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations brought by the plaintiff, and the denial of these allegations by the defendant.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but rather yours.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice or public opinion. All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. Regardless of whether a party is a business, such as a law firm here, or an individual such as Rhodda Thompson, it is entitled to the same fair trial at your hands.

When a lawfirm is a party, of course, it may act only through natural persons as its agents or employees; and, in general, any partner, agent or employee of a lawfirm may bind the lawfirm by his or her acts and declarations made while acting within the scope of authority delegated to him or her by the lawfirm, or within the scope of his or her duties as an employee of the lawfirm.

As stated earlier, it is your duty to determine the facts, and in so doing, you must consider only the evidence I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses, sworn testimony read to you from depositions, the exhibits admitted in the record, and stipulated or admitted facts. A stipulation is a statement of fact agreed to between the parties, and you must regard stipulated facts as true.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of your own experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case. However, you are also not to allow your own personal employment experience to substitute for a review of all of the evidence presented to you in this case.

When the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received as evidence, regardless of who may have produced them; and all facts which may have been judicially noticed.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by the evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony, given the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while on the stand. Consider the witness' ability to observe the matters as to which the witness has testified, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by

other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; an innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in evidence in the case.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence -- such as the testimony of an eyewitness. The other is indirect or circumstantial evidence -- the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

The burden is on the plaintiff in a civil action such as this to prove every essential element of her claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence means to prove that the claim is more likely so than not so. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a "preponderance of the evidence", the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof should fail to establish that any essential element of the plaintiff's claim is more likely true than not true, then the plaintiff has failed to carry her burden of proof by a preponderance of the evidence and you must return a verdict for the defendant.

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression "if you find", or "if you decide", I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

THE NATURE OF THE CLAIM

This is an action brought under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”). Title VII makes it unlawful for an employer to intentionally discriminate against a qualified prospective employee on account of that person’s race. In this case, the Plaintiff Rhodda Thompson claims that Defendant, Alzheimer & Gray, intentionally discriminated against her because of her race by not hiring her for the Assistant Legal Recruitment Coordinator position. The Defendant denies this claim. The Defendant has stated that it hired another person whom it believed was more qualified for that job. It is your responsibility to decide whether the Plaintiff has proven her claim against the Defendant by a preponderance of the evidence, as that term is defined in these instructions.

THE STATUTE DEFINING THE CLAIM

Title VII states in relevant part:

It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or promote . . . any individual, or otherwise to discriminate against any individual with respect to compensation. . . terms, conditions, privileges or opportunities of employment, because of such individual’s race

THE ESSENTIAL ELEMENTS OF THE PLAINTIFF'S CLAIM

In order for Plaintiff Rhodda Thompson to establish her claim of intentional discrimination against Defendant Altheimer & Gray, she has the burden of proving by a preponderance of the evidence the following essential elements:

- (1) She is African-American;
- (2) She applied for and was qualified for the position sought;
- (3) She was rejected;
- (4) The person given the position was not more qualified than her; and
- (5) As a direct result of the Defendant's intentional discrimination, she sustained damages.

To ultimately prevail on her claim, Ms. Thompson must prove by a preponderance of the evidence that Altheimer & Gray would have offered her the Assistant Legal Recruitment Coordinator position if she were not African-American and everything else had remained the same. Ms. Thompson's personal beliefs or feelings that she was discriminated against because of her race do not, in and of themselves, form a basis for finding that she was discriminated against.

DEFENSES

Altheimer & Gray has presented several legitimate, non-discriminatory reasons for its decision not to offer Ms. Thompson the Assistant Legal Recruitment Coordinator position. A legitimate, non-discriminatory reason is any reason or explanation unrelated to Ms.

Thompson's race. You may not substitute your personal judgment for Altheimer & Gray's business judgment.

If you find that Altheimer & Gray has stated a legitimate, non-discriminatory reason for its decision, then you must find for the Defendant, unless Ms. Thompson proves by a preponderance of the evidence that Altheimer & Gray's stated reason was not the true reason for the decision, but is only a pretext or an excuse for discriminating against Ms. Thompson because she is African-American.

Ms. Thompson can attempt to prove pretext directly by persuading you by a preponderance of the evidence that her race was more likely than not the reason for the decision not to promote Ms. Thompson to the Assistant Legal Recruitment Coordinator job.

She can also attempt to prove that Altheimer & Gray's stated reason for not offering her the Assistant Legal Recruitment Coordinator job is a pretext by persuading you that it is just not believable. However, even if you decide that Altheimer & Gray did not truly rely on the stated reason for not promoting Ms. Thompson, you should only decide in Plaintiff's favor if she has proven by a preponderance of the evidence that Altheimer & Gray would have given her the Assistant Legal Recruitment Coordinator position if she were not African-American and everything else had remained the same.

The ultimate burden of persuading the jury that Altheimer & Gray intentionally discriminated against Ms. Thompson because of her race remains at all times with the Plaintiff.

DAMAGES

If you find that Altheimer & Gray did not discriminate against Ms. Thompson on the basis of her race, you need not consider the question of damages.

If you have found that Altheimer & Gray did discriminate against Ms. Thompson because of her race, then you must consider whether to award her damages. The law places a burden upon the Plaintiff to prove such facts as will enable you to arrive at the amount of damages with reasonable certainty and without speculation. While it is not necessary that Ms. Thompson prove the amount of those damages with mathematical precision, she is required to present such evidence as might reasonably be expected to be available under the circumstances.

You should not interpret the fact that I have given instructions about damages as an indication in any way that I believe that Ms. Thompson should, or should not, win this case or should, or should not, receive damages.

LOST WAGES

If you determine that Altheimer & Gray discriminated against Ms. Thompson by failing to promote her to the Assistant Legal Recruitment Coordinator position, then you must determine the amount of damages that the Defendant has caused her.

If you find for Ms. Thompson, she may be entitled to recover backpay. The measure of the backpay is determined by what she would have earned but for the violation – here, the failure to promote her to the Assistant Legal Recruitment Coordinator position. To calculate backpay, you must look to the evidence introduced concerning what Ms. Thompson would

have earned or other monies and value of benefits she would have received had she been placed in the position she sought.

To determine the amount of backpay, you must make several calculations:

(1) First, determine the amount of pay Ms. Thompson would have earned had she been placed in the Assistant Legal Recruitment Coordinator position;

(2) Then, determine the value of the employee benefits she would have received had she been placed in the position;

(3) Then, subtract the amount Ms. Thompson actually earned without being placed in the Assistant Legal Recruitment Coordinator position.

COMPENSATORY DAMAGES

If you determine that Alzheimer & Gray discriminated against Ms. Thompson because of her race, she may be entitled to damages in an amount which will reasonably compensate her for the loss and injury suffered as a result of Defendant's conduct. You are not required to give an award of compensatory damages.

You may award her reasonable compensation for the following:

(1) Pain, suffering, and physical or emotional distress;

(2) Embarrassment and humiliation;

(3) Loss of enjoyment of life; that is, Ms. Thompson's loss of the ability to enjoy certain aspects of her life as a result of Alzheimer & Gray's conduct.

In determining the amount of the award, if any, it will often be impossible for you to arrive at a precise award. These damages are intangible, and it is difficult to arrive at a

precise evaluation of actual damage for emotional harm from race discrimination. No opinion of any witness is required as to the amount of such reasonable compensation. Nonetheless, it is necessary to arrive at a reasonable award that is supported by the evidence.

NOMINAL DAMAGES

If you find that Alzheimer & Gray discriminated against Ms. Thompson, but you find that she either has no damages or that her damages have no monetary value, then you must return a verdict for Ms. Thompson in the nominal amount of One Dollar (\$1.00).

PUNITIVE DAMAGES

In addition to the damages mentioned in the previous instructions, the law permits the jury under certain circumstances to award an injured person punitive damages in order to punish the Defendant for extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct. You are not required to give an award of punitive damages.

Rather, punitive damages are only appropriate if you find that Alzheimer & Gray acted with “malice or reckless indifference” to Ms. Thompson’s rights under Title VII. “Malice or reckless indifference” depends on whether the Defendant discriminated in the face of a perceived risk that its actions violated the law.

Punitive damages must bear a reasonable relationship to Ms. Thompson’s actual injury. In determining a reasonable relationship to that actual injury, you must consider all relevant factors. These include:

- (1) the impact or severity of the Defendant's conduct,
- (2) the amount of time the Defendant conducted itself in this manner,
- (3) the amount of compensatory damages,
- (4) the effect of the damages award on the Defendant's financial condition, and
- (5) any punishment the Defendant may receive from other sources.

VERDICT - UNANIMOUS - DUTY TO DELIBERATE

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

EFFECT OF INSTRUCTION AS TO DAMAGES

The fact that I have instructed you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.

Upon retiring to the jury room, you will select one of your number to act as foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

Verdict forms have been prepared for your convenience.

If you find in favor of Plaintiff Rhodda Thompson and against Defendant Altheimer & Gray you should calculate damages using jury verdict form Number 1, which reads as follows:

“We the jury find in favor of Plaintiff Rhodda Thompson and against Defendant Altheimer & Gray for race discrimination in violation of Title VII of the Civil Rights Act, as amended. Having found in favor of Plaintiff Rhodda Thompson and against Defendant Altheimer & Gray, we assess:

(1) lost wages and benefits damages in the following amount: \$_____;

(2) compensatory damages in the following amount:

\$_____;

(3) nominal damages in the following amount:

\$_____.”

If you find that Alzheimer & Gray engaged in race discrimination in violation of Title VII, and you further find that punitive damages are appropriate, you may award punitive damages in addition to compensatory damages, using jury verdict form Number 2 which reads as follows:

“We the jury find, as to punitive damages for the Plaintiff Rhodda Thompson and against Defendant Alzheimer & Gray in the following amount \$_____.”

If you find that Alzheimer & Gray engaged in race discrimination in violation of Title VII, but that punitive damages are not appropriate, you should place a zero in jury verdict form Number 2.

If you find in favor of the Defendant Alzheimer & Gray and against Plaintiff Rhodda Thompson, you should use the jury verdict form Number 3 which reads as follows:

“We the jury find that the Plaintiff Rhodda Thompson has not proven that the Defendant Alzheimer & Gray engaged in race discrimination in violation of Title VII of the Civil Rights Act, as amended, and therefore, we find for the Defendant Alzheimer & Gray and against the Plaintiff Rhodda Thompson.”

You will take the verdict forms to the jury room and, when you have reached unanimous agreement as to your verdict, you will all sign and date the form which sets forth the verdict upon which you unanimously agree; and then return with your verdict to the courtroom.

VERDICT FORMS -- JURY'S RESPONSIBILITY

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

COMMUNICATIONS BETWEEN COURT AND JURY DURING
DELIBERATIONS

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken by the bailiff that [s]he too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind that you are never to reveal to any person -- not even to the Court -- how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

JURY VERDICT FORM 1

We, the jury, find in favor of Plaintiff Rhodda Thompson and against Defendant Altheimer & Gray for race discrimination in violation of Title VII of the Civil Rights Act, as amended. Having found in favor of Plaintiff Rhodda Thompson and against Defendant Altheimer & Gray, we assess:

(1) lost wages and benefits damages in the following amount:

\$_____;

(2) compensatory damages in the following amount:

\$_____;

(3) nominal damages in the following amount:

\$_____.”

Date

Foreperson

JURY VERDICT FORM 2

We, the jury, find as to punitive damages, for the Plaintiff Rhodda Thompson and
against Defendant Altheimer & Gray in the following amount: \$_____.

Date

Foreperson

JURY VERDICT FORM 3

We, the jury, find that the Plaintiff Rhodda Thompson has not proven that the Defendant Altheimer & Gray engaged in race discrimination in violation of Title VII of the Civil Rights Act, as amended, and therefore, we find for the Defendant Altheimer & Gray and against the Plaintiff Rhodda Thompson.

Date

Foreperson

