

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN
AND FOR PINELLAS COUNTY FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM, *et al.*,

Defendants.

_____ /

**PUBLISHER DEFENDANTS' OBJECTIONS
TO PLAINTIFF'S PROPOSED JURY INSTRUCTIONS**

Trial: July 6, 2015

Presiding Judge:

Pamela A.M. Campbell

Circuit Judge

BOLLEA'S PROPOSED INSTRUCTION # 1

DESCRIPTION OF THE CASE

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction Nos. 1 and 4.

BOLLEA'S PROPOSED INSTRUCTION # 2

QUALIFICATIONS INSTRUCTION

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 3

INTRODUCTION OF PARTICIPANTS AND THEIR ROLES

The Publisher Defendants do not object to this instruction, subject to the minor alterations below.

Who are the people here and what do they do?

Judge/Court: I am the Judge. You may hear people occasionally refer to me as "The Court." That is the formal name for my role. My job is to maintain order and decide how to apply the rules of the law to the trial. I will also explain various rules to you that you will need to know in order to do your job as the jury. It is my job to remain neutral on the issues of this lawsuit.

Parties: A party who files a lawsuit is called the Plaintiff. A party that is sued is called the Defendant.

Attorneys: The attorneys have the job of representing their clients. That means they speak for their client here at the trial. They have taken oaths as attorneys to do their best and to follow the rules for their profession.

Plaintiff's Counsel: The attorney on this side of the courtroom, Charles Harder, ~~Jennifer McGrath, Kenneth Turkel, and Shane Vogt,~~ represents Plaintiff Terry Bollea, known professionally as Hulk Hogan, who filed the lawsuit here at the courthouse. ~~Their~~ His job is

to present his client's side of things to you. ~~He~~They and ~~their~~his client will be referred to most of the time as "the plaintiff." Mr. Harder, will you please introduce who is sitting at the table with you?

Defendant's Counsel: The attorneys on this side of the courtroom, ~~Seth Berlin,~~ Michael Sullivan, ~~Alia Smith,~~ Paul Safier, ~~Michael Berry,~~ Gregg Thomas, and Rachel Fugate represents Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio, the ones who have been sued. ~~Their~~His job is to present ~~their~~his clients' side of things to you. ~~They~~He and ~~his~~their clients will usually be referred to here as "the defendants." Mr. Sullivan, will you please introduce who is sitting at the table with you?

Court Clerk: This person sitting in front of me, (name), is the court clerk. [He] [She] is here to assist me with some of the mechanics of the trial process, including the numbering and collection of the exhibits that are introduced in the course of the trial.

Court Reporter: The person sitting at the stenographic machine, (name), is the court reporter. [His] [Her] job is to keep an accurate legal record of everything we say and do during this trial.

Bailiff: The person over there, (name), is the bailiff. [His] [Her] job is to maintain order and security in the courtroom. The bailiff is also my representative to the jury. Anything you need or any problems that come up for you during the course of the trial should be brought to [him] [her]. However, the bailiff cannot answer any of your questions about the case. Only I can do that.

Jury: Last, but not least, is the jury, which we will begin to select in a few moments from among all of you. The jury's job will be to decide what the facts are and what the facts mean. Jurors should be as neutral as possible at this point and have no fixed opinion about the lawsuit.

In order to have a fair and lawful trial, there are rules that all jurors must follow. A basic rule is that jurors must decide the case only on the evidence presented in the courtroom. You must not communicate with anyone, including friends and family members, about this case, the people and places involved, or your jury service. You must not disclose your thoughts about this case or ask for advice on how to decide this case.

I want to stress that this rule means you must not use electronic devices or computers to communicate about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send

or accept any messages to or from anyone about this case or your jury service.

You must not do any research or look up words, names, or anything else that may have anything to do with this case. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else.

Many of you may have cell phones, tablets, laptops or other electronic devices with you here in the courtroom.

[The Publisher Defendants prefer Alternative A.]

Alternative A:—[All cell phones, computers, tablets or other types of electronic devices must be turned off while you are in the courtroom. Turned off means that the phone or other electronic device is actually off and not in a silent or vibrating mode. You may use these devices during recesses, but even then you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or of your fellow jurors. After each recess, please double check to make sure your

cell phone or electronic device is turned off. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. You cannot have in the jury room any cell phones, computers, or other electronic devices. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.]

Alternative B: ~~[You cannot have any cell phones, tablets, laptops, or other electronic devices in the courtroom. You may use these devices during recesses, but even then you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or your fellow jurors. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.]~~

What are the reasons for these rules? These rules are imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom. If you investigate,

research, or make inquiries on your own outside of the courtroom, the trial judge has no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. That is contrary to our judicial system, which assures every party the right to ask questions about and challenge the evidence being considered against it and to present argument with respect to that evidence. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.

Any juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. A mistrial is a tremendous expense and inconvenience to the parties, the court, and the taxpayers. If you violate these rules, you may be held in contempt of court, and face sanctions, such as serving time in jail, paying a fine or both.

All of your communications with courtroom personnel, or me, will be part of the record of these proceedings. That means those communications shall either be made in open court with the court reporter present or, if they are in writing, the writing will be filed with the court clerk. I have instructed the courtroom personnel

that any communications you have with them outside of my presence must be reported to me, and I will tell the parties [and their attorneys] about any communication from you that I believe may be of interest to the parties [and their attorneys].

However, you may communicate directly with courtroom personnel about matters concerning your comfort and safety, such as [juror parking] [location of break areas] [how and when to assemble for duty] [dress] [what personal items can be brought into the courthouse or jury room] [list any other types of routine ex parte communications permitted].

If you become aware of any violation of these instructions or any other instruction I give in this case, you must tell me by giving a note to the bailiff.

BOLLEA'S PROPOSED INSTRUCTION # 4

EXPLANATION OF THE VOIR DIRE PROCESS

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 5

OATH OF JUROR & INTRODUCTION

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 6

OVERVIEW OF CLAIMS AND DEFENSES

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction No. 5.

BOLLEA’S PROPOSED INSTRUCTION # 7

GREATER WEIGHT OF THE EVIDENCE

The Publisher Defendants do not object to this instruction, provided that the Court also instructs the jury, at the outset, about the “clear and convincing evidence” standard as set forth in the Publisher Defendants’ Proposed Jury Instruction No. 15.

BOLLEA'S PROPOSED INSTRUCTION # 8

OVERVIEW OF PRIVACY CLAIMS

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction No. 6.

BOLLEA'S PROPOSED INSTRUCTION # 9

**OVERVIEW OF INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS CLAIM**

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction No. 7.

BOLLEA'S PROPOSED INSTRUCTION # 10

**OVERVIEW OF CLAIM UNDER
FLORIDA SECURITY OF COMMUNICATIONS ACT**

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction No. 8.

BOLLEA'S PROPOSED INSTRUCTION # 11

OVERVIEW OF DEFENSES

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction Nos. 6, 7, and 8.

BOLLEA'S PROPOSED INSTRUCTION # 12

EXPLANATION OF THE TRIAL PROCEDURE

The Publisher Defendants do not object to this instruction, subject to the minor alterations below.

Now that you have heard an overview of the claims and defenses, I want to let you know what you can expect as the trial proceeds.

Opening Statements: In a few moments, the attorneys will each have a chance to make what are called opening statements. In an opening statement, an attorney is allowed to give you his or her views about what the evidence will be in the trial and what you are likely to see and hear in the testimony.

Evidentiary Phase: After the attorneys' opening statements the plaintiffs will bring their witnesses and evidence to you.

Evidence: Evidence is the information that the law allows you to see or hear in deciding this case. Evidence includes the testimony of the witnesses, documents, and anything else that I instruct you to consider.

Witnesses: A witness is a person who takes an oath to tell the truth and then answers attorneys' questions for the jury. The answering of attorneys' questions by witnesses is called "giving

testimony.” Testimony means statements that are made when someone has sworn an oath to tell the truth.

The plaintiff’s lawyer will normally ask a witness the questions first. That is called direct examination. Then the defense lawyer may ask the same witness additional questions about whatever the witness has testified to. That is called cross-examination. Certain documents or other evidence may also be shown to you during direct or cross-examination. After the plaintiff’s witnesses have testified, the defendant will have the opportunity to put witnesses on the stand and go through the same process. Then the plaintiff’s lawyer gets to do cross-examination. The process is designed to be fair to both sides.

It is important that you remember that testimony comes from witnesses. The attorneys do not give testimony and they are not themselves witnesses.

Objections: Sometimes the attorneys will disagree about the rules for trial procedure when a question is asked of a witness. When that happens, one of the lawyers may make what is called an “objection.” The rules for a trial can be complicated, and there are many reasons for attorneys to object. You should simply wait for me to decide how to proceed. If I say that an objection is “sustained,” that means the witness may not answer the question. If I say that

the objection is “overruled,” that means the witness may answer the question.

When there is an objection and I make a decision, you must not assume from that decision that I have any particular opinion other than that the rules for conducting a trial are being correctly followed. If I say a question may not be asked or answered, you must not try to guess what the answer would have been. That is against the rules, too.

Side Bar Conferences: Sometimes I will need to speak to the attorneys about legal elements of the case that are not appropriate for the jury to hear. The attorneys and I will try to have as few of these conferences as possible while you are giving us your valuable time in the courtroom. But, if we do have to have such a conference during testimony, we will try to hold the conference at the side of my desk so that we do not have to take a break and ask you to leave the courtroom.

Recesses: Breaks in an ongoing trial are usually called “recesses.” During a recess you still have your duties as a juror and must follow the rules, even while having coffee, at lunch, or at home.

Instructions Before Closing Arguments: After all the evidence has been presented to you, I will instruct you in the law that you

must follow. It is important that you remember these instructions to assist you in evaluating the final attorney presentations, which come next, and, later, during your deliberations, to help you correctly sort through the evidence to reach your decision.

Closing Arguments: The attorneys will then have the opportunity to make their final presentations to you, which are called closing arguments.

Final Instructions: After you have heard the closing arguments, I will instruct you further in the law as well as explain to you the procedures you must follow to decide the case.

Deliberations: After you hear the final jury instructions, you will go to the jury room and discuss and decide the questions I have put on your verdict form. [You will have a copy of the jury instructions to use during your discussions.] The discussions you have and the decisions you make are usually called “jury deliberations.” Your deliberations are absolutely private and neither I nor anyone else will be with you in the jury room.

Verdict: When you have finished answering the questions, you will give the verdict form to the bailiff, and we will all return to the courtroom where your verdict will be read. When that is completed, you will be released from your assignment as a juror.

What are the rules?

Finally, before we begin the trial, I want to give you just a brief explanation of rules you must follow as the case proceeds.

Keeping an Open Mind: You must pay close attention to the testimony and other evidence as it comes into the trial. However, you must avoid forming any final opinion or telling anyone else your views on the case until you begin your deliberations. This rule requires you to keep an open mind until you have heard all of the evidence and is designed to prevent you from influencing how your fellow jurors think until they have heard all of the evidence and had an opportunity to form their own opinions. The time and place for coming to your final opinions and speaking about them with your fellow jurors is during deliberations in the jury room, after all of the evidence has been presented, closing arguments have been made, and I have instructed you on the law. It is important that you hear all of the facts and that you hear the law and how to apply it before you start deciding anything.

Consider Only the Evidence: It is the things you hear and see in this courtroom that matter in this trial. The law tells us that a juror can consider only the testimony and other evidence that all the other jurors have also heard and seen in the presence of the judge and the lawyers. Doing anything else is wrong and is against the law. That means that you must not do any work or investigation

of your own about the case. You must not obtain on your own any information about the case or about anyone involved in the case, from any source whatsoever. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else. You must not visit places mentioned in the trial or use the internet to look at maps or pictures to see any place discussed during trial.

Do not provide any information about this case to anyone, including friends or family members. Do not let anyone, including the closest family members, make comments to you or ask questions about the trial. Jurors must not have discussions of any sort with friends or family members about the case or the people and places involved. So, do not let even the closest family members make comments to you or ask questions about the trial. In this age of electronic communication, I want to stress again that just as you must not talk about this case face-to-face, you must not talk about this case by using an electronic device. You must not use phones, tablets, computers or other electronic devices to communicate. Do not send or accept any messages related to this case or your jury

service. Do not discuss this case or ask for advice by any means at all, including posting information on an Internet website, chat room or blog.

No Mid-Trial Discussions: When we are in a recess, do not discuss anything about the trial or the case with each other or with anyone else. If attorneys approach you, don't speak with them. The law says they are to avoid contact with you. If an attorney will not look at you or speak to you, do not be offended or form a conclusion about that behavior. The attorney is not supposed to interact with jurors outside of the courtroom and is only following the rules. The attorney is not being impolite. If an attorney or anyone else does try to speak with you or says something about the case in your presence, please inform the bailiff immediately.

Only the Jury Decides: Only you get to deliberate and answer the verdict questions at the end of the trial. I will not intrude into your deliberations at all. I am required to be neutral. You should not assume that I prefer one decision over another. You should not try to guess what my opinion is about any part of the case. It would be wrong for you to conclude that anything I say or do means that I am for one side or another in the trial. Discussing and deciding the facts is your job alone.

Use of Cell Phones and Electronic Devices in the Courtroom and Jury Room:

[The Publisher Defendants prefer Alternative A.]

~~Alternative A:~~—[All cell phones or other types of electronic devices must be turned off while you are in the courtroom. Turned off means that the phone or other electronic device is actually off and not in a silent or vibrating mode. You may use these devices during recesses, but even then you may not use your phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or your fellow jurors. After each recess, please double check to make sure your device is turned off. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. You cannot have in the jury room any cell phones, computers, or other electronic devices. If there are breaks in the deliberations, I may allow you to communicate with your family or friends, but do not communicate about the case or your deliberations. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. The court's phone number will be provided to you.]

Alternative B: ~~[You cannot have any cell phones, computers, or other electronic devices in the courtroom. You may use these devices during recesses, but even then you may not use your phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or your fellow jurors. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. If there are breaks in the deliberations, I may allow you to communicate with your family or friends, but do not communicate about the case or your deliberations. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. The court's phone number will be provided to you.]~~

BOLLEA'S PROPOSED INSTRUCTION # 13

NOTE-TAKING BY JURORS

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 14

JUROR QUESTIONS

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 15

PRESERVATION OF SECRECY

The Publisher Defendants object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 16

**DEPOSITION TESTIMONY, INTERROGATORIES, STIPULATED
TESTIMONY, STIPULATIONS, AND ADMISSIONS**

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 17

**INSTRUCTION WHEN FIRST ITEM OF DOCUMENTARY,
PHOTOGRAPHIC, OR PHYSICAL EVIDENCE IS ADMITTED**

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 18

**INSTRUCTION WHEN EVIDENCE IS
FIRST PUBLISHED TO JURORS**

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 19

INSTRUCTION REGARDING VISUAL OR DEMONSTRATIVE AIDS

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 20

EVIDENCE ADMITTED FOR A LIMITED PURPOSE

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 21

INSTRUCTION BEFORE RECESS

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 22

INTRODUCTION TO FINAL INSTRUCTIONS

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 23

BURDEN OF PROOF

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction No. 10.

BOLLEA'S PROPOSED INSTRUCTION # 24

GREATER WEIGHT OF THE EVIDENCE

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 25

INVASION OF PRIVACY BY INTRUSION

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction Nos. 16, 17, and 18.

BOLLEA'S PROPOSED INSTRUCTION # 26

PUBLICATION OF PRIVATE FACTS

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction Nos. 11, 12, 13, 14, and 15.

BOLLEA'S PROPOSED INSTRUCTION # 27

INVASION OF PRIVACY BASED ON RIGHT OF PUBLICITY

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction Nos. 19, 20, 21, and 22.

BOLLEA'S PROPOSED INSTRUCTION # 28

**ISSUES ON INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction Nos. 23, 24, 25, 26, 27, and 28.

BOLLEA'S PROPOSED INSTRUCTION # 29

VIOLATION OF FLORIDA SECURITY OF COMMUNICATIONS ACT

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction Nos. 29, 30, 31, 32, 33, 34, and 35.

BOLLEA'S PROPOSED INSTRUCTION # 30

BURDEN OF PROOF

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction Nos. 15, 17, 18, 21, 22, 27, 28, 34, and 35.

BOLLEA'S PROPOSED INSTRUCTION # 31

LEGITIMATE PUBLIC CONCERN

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction Nos. 14, 15, 17, 21, 27, and 34.

BOLLEA'S PROPOSED INSTRUCTION # 32

DAMAGES: INTRODUCTION

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction No. 36.

BOLLEA'S PROPOSED INSTRUCTION # 33

DAMAGES

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction No. 37.

BOLLEA'S PROPOSED INSTRUCTION # 34

LIABILITY OF MULTIPLE TORTFEASORS

The Publisher Defendants do not object to this instruction if they are the only defendants at trial. They do object to this instruction if Heather Cole remains a defendant in the case.

BOLLEA'S PROPOSED INSTRUCTION # 35

PUNITIVE DAMAGES — BIFURCATED PROCEDURE

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction No. 40.

BOLLEA'S PROPOSED INSTRUCTION # 36

PUNITIVE DAMAGES — NON-BIFURCATED PROCEDURE

The Publisher Defendants object to this instruction and instead propose Publisher Defendants' Proposed Jury Instruction No. 41.

BOLLEA'S PROPOSED INSTRUCTION # 37

WEIGHING THE EVIDENCE

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 38

BELIEVABILITY OF WITNESSES

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 39

CONCLUDING INSTRUCTION (BEFORE FINAL ARGUMENT)

The Publisher Defendants do not object to this instruction.

BOLLEA'S PROPOSED INSTRUCTION # 40

CLOSING INSTRUCTIONS

The Publisher Defendants do not object to this instruction.