**5.1**

**Civil Rights – 42 U.S.C. § 1983 Claims – First Amendment Retaliation**

In this case, [name of plaintiff] claims that [name of defendant], while acting under color of law, [describe defendant’s alleged retaliation] in retaliation for [describe plaintiff’s alleged protected speech or conduct] in violation of the First Amendment.

A person’s right to [describe plaintiff’s alleged protected speech or conduct] is protected by the Constitution.

To succeed on this claim, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: That [name of plaintiff] [describe plaintiff’s alleged protected speech or conduct];

Second: That [name of defendant] [describe defendant’s alleged retaliation];

Third: That [name of plaintiff]’s [describe alleged protected speech or conduct] was a motivating factor in [name of defendant]’s decision to [describe alleged retaliation];

Fourth: That [name of defendant]’s [describe alleged retaliation] would likely deter a similarly situated reasonable person from engaging in similar [describe plaintiff’s alleged protected speech or conduct]; and

Fifth: That [name of defendant] acted under color of law. [The parties have agreed that [name of defendant] acted under color of law, so you should accept that as a proven fact.]

[For the fifth element, you must decide whether [name of defendant] acted under color of law. A government official acts “under color” of law when [he/she] acts within the limits of lawful authority. [He/She] also acts under color of law when [he/she] claims to be performing an official duty but [his/her] acts are outside the limits of lawful authority and abusive in manner, or [he/she] acts in a way that misuses [his/her] power and is able to do so only because [he/she] is an official.]

If you find [name of plaintiff] has proved each of the facts [he/she] must prove, then you must consider [name of defendant]’s contention that [he/she] would have [describe defendant’s alleged retaliation] anyway. To succeed on this contention, [name of defendant] must prove by a preponderance of the evidence that [he/she] would have done the same thing if [name of plaintiff] had not [describe plaintiff’s alleged protected speech or conduct].

If you find [name of plaintiff] has proved each of the facts [he/she] must prove and if you find that [name of defendant] has not proved [his/her] contention, you must then decide the issue of [name of plaintiff]’s damages.

However, if you find that [name of plaintiff] did not prove each of the facts [he/she] must prove, or if you find that [name of defendant] proved [his/her] contention, then you must find for [name of defendant].

**NOTE**: Model Jury Interrogatory Forms may be found in the appendices after the last civil rights jury instruction (Pattern Instruction 5.13) for use in actions brought under 42 U.S.C. § 1983. Three types of Model Jury Interrogatory Forms are provided: (A) a simplified Interrogatory Form for use in most civil rights actions; (B) an Interrogatory Form for use in actions that do not require application of the Prison Litigation Reform Act, and (C) an Interrogatory Form for use in actions that do require application of the Prison Litigation Reform Act.