**5.7**

**Civil Rights – 42 U.S.C. § 1983 Claims – Arrestee, Pretrial Detainee, or Convicted Prisoner Alleging Failure to Intervene**

In this case, [name of plaintiff] claims that [name of defendant], while acting under color of law, failed to intervene when [name of officer] used excessive force against [name of plaintiff] in violation of the United States Constitution.

An officer who fails or refuses to intervene when a constitutional violation such as excessive force takes place in his presence may be held liable for his failure to intervene.

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 officer] used excessive force on [name of plaintiff];

Second: That [name of defendant] [saw [name of officer] use excessive force] [knew [name of officer] was going to use excessive force];

Third: That [name of defendant] had a realistic opportunity to prevent harm from occurring;

Fourth: That [name of defendant] failed to take reasonable steps to prevent harm from occurring;

Fifth: That [name of defendant]’s failure to act caused [name of plaintiff]’s injuries and the injuries were a reasonably foreseeable consequence of [name of defendant]’s failure to act; and

Sixth: 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 sixth element, you must decide whether [name of defendant] acted under color of law. A government official acts “under color” of law when acting 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, you must then decide the issue of [name of plaintiff]’s damages. If you find that [name of plaintiff] has not proved each of these facts, 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.