

NORTH CAROLINA

COUNTY

STATE OF NORTH CAROLINA,  
Plaintiff,

v.

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO.

**BRIEF ON THE RIGHT TO A FAIR  
AND FULL TRIAL**

ARGUMENT AND STATEMENT OF THE LAW

Every person charged with a crime has an absolute right to a fair trial. A trial is fair when it is conducted before an impartial judge and an unprejudiced jury, in keeping with the substantive and procedural due process requirements of the U.S. Constitution's Fourteenth Amendment. "The principle that every person who stands accused of a crime is entitled to the fundamental liberty of a fair and impartial trial is essential to the concept of due process. State v. Ryder, 196 N.C. App. 56, 61 (2009); State v. Stokes, 621 S.E.2d 311, 318 (2005).

A defendant's right to a fair trial has also been linked to the Sixth Amendment to the U.S. Constitution. "A heavy obligation rests on trial judges to effectuate the fair-trial guarantee of Sixth Amendment. U.S. v. Columbia Broadcasting System, Inc., 497 F.2d 102, 104 (1974).

A judge's role in safeguarding a defendant's right to a fair trial is an active, not a passive one. "No judge should remain aloof while the prosecution ignores important evidence or while the defense fails to explore testimony essential to issues at trial or fails to raise defenses which may exonerate the defendant; judge is not a passive bystander in the arena of justice or a spectator at a sporting event; rather he or she has the most pressing affirmative responsibility to see that justice is done in every case." U.S. v. McCord, 509 F.2d 334, 348 (1974).

In a fair trial, an impartial judge in an atmosphere of judicial calm sets forth the law and the unprejudiced jury finds the facts and applies the law to the facts. State v. Allen, 166 N.C. 265 (1914). In some cases, however, a judge may act in the dual capacity of judge and jury. For example, in superior civil court, when parties waive a jury, the trial judge acts in the dual capacity of judge and jury. Terry's Floor Fashions, Inc. v. Crown General Contractors, Inc. 645 S.E.2d 810 (2007); Mann Contractors, Inc. v. Flair with Goldsmith Consultants-II, Inc. 135 N.C.App. 772, 522 (1999).

There are no jury trials in North Carolina criminal district courts. N.C.G.S §7A-196(B). In a district criminal trial, a judge functions as both the impartial judge and the unprejudiced jury because constitutional rights apply in North Carolina district court.

Canon 3 of the North Carolina Code of Judicial Conduct provides: "A judge should perform the duties of his office impartially and diligently. . . . (4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law. . . ."

North Carolina Criminal Jury Pattern Instruction 100.25 contains a judge's precautionary instructions to jurors before trial. The judge is to instruct the jury after it is impaneled, ". . . Following opening statements, evidence will be offered. . . All of the competent evidence in the case will be presented while you are present in the courtroom. . . Your duty is to decide the facts from the evidence. You, and you alone, are the judges of the facts."

As explained by the North Carolina Pattern Jury Instructions, a juror must not form an opinion about the guilt or innocence of the defendant until all of the evidence and all of the arguments are heard. 100.25 reads in part: While you sit as a juror in this case, you are not to form an opinion about the guilt or innocence of the defendant, nor are you to express to anyone any opinion about the case until I tell you to begin your deliberations.

#### N.C.P.I. Crim. 101.5. FUNCTION OF THE JURY

Members of the jury: All of the evidence has been presented. It is now your duty to decide from this evidence what the facts are. You must then apply the law which I am about to give you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you think it is, or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied.

N.C.P.I. Crim. 101.35, provides for the judge in his concluding instructions to direct the jury, "You should consider all the evidence, the arguments, contentions and positions urged by the attorney(s), and any other contention that arises from the evidence."

#### CONCLUSION

Allowing a defendant a fair trial in which he can present all his evidence, arguments, contentions and positions urged by his attorney before any decision is made on the issue of guilt or innocence is required by the 6<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution. A defendant's fair trial right, referenced in the North Carolina Code of Judicial Conduct and the North Carolina jury pattern instructions, is absolute. In effectuating a defendant's constitutional rights, a North Carolina district court judge in a criminal case must take an active role and listen to all evidence, arguments, contentions and positions urged by defendant and his attorney.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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## North Carolina Pattern Jury Instructions

### NC Pattern Jury Instructions for Criminal Cases

#### Part 1. General

#### General Cautionary Instructions

*Includes 2011 changes*

#### **N.C.P.I. Crim. 100.25. PRECAUTIONARY INSTRUCTIONS TO JURORS. (TO BE GIVEN AFTER JURY IS IMPANELED.)**

Ladies and Gentlemen, you have been selected and impaneled to serve as jurors in the case of the State of North Carolina versus *(name of defendant)*.

At this time I want to explain to you the manner in which we will proceed as we attempt together to find the truth in this case. First, the attorneys will have an opportunity to make opening statements. The purpose of an opening statement is narrow and limited. It is an outline of what the attorney believes the competent and admissible evidence will be. An opening statement is not evidence and must not be considered by you as evidence. *(The evidence will come in the form of the testimony of the witnesses, admissions of the parties, stipulations of counsel, or any physical exhibits that may be offered by the parties.)*

(The court sets a time limit of \_\_\_ minutes to each side for opening statements.)

Following opening statements, evidence will be offered. Witnesses will be placed under oath and questioned by the attorneys. It may be that documents and other tangible exhibits will be offered and received as evidence. If any exhibit is given to you to examine, you should examine it carefully, individually, and without comment.

It is the right of the attorneys to object when testimony or other evidence is offered that the attorney believes is not admissible. When the court sustains an objection to a question, the jurors must disregard the question and the answer, if one has been given, and draw no inference from the question or answer or speculate as to what the witness would have said if permitted to answer. When the court overrules an objection to any evidence, you must not give such evidence any more weight than if the objection had not been made.

If the court grants a motion to strike all or part of the answer of a witness to a question, you must disregard and not consider the evidence that has been stricken.

During the course of the trial, it may be that questions of law will arise that need to be considered by the court out of the presence of the jury. When this happens, I may ask you to go to the jury room for a few minutes. You should not worry or speculate about what takes place in the courtroom during your absence—we will merely be considering questions of law that have to be heard out of the presence of the jury. All of the competent evidence in the case will be presented while you are present in the courtroom.

When the evidence is completed, the attorneys will make their final statements or arguments. The final arguments of the attorneys are not evidence, but are given to assist you in evaluating the evidence.

Your duty is to decide the facts from the evidence. You, and you alone, are the judges of the facts.

It is important that you be fair and attentive during the trial. You will see and hear the evidence and decide the facts. You will then apply the law that I will give you to those facts. To be an effective juror, you must not be influenced to any degree by personal feelings, sympathy for, or prejudice against any of the parties involved in the case.

The fact that a criminal charge has been filed against the defendant is not evidence. The defendant is innocent of any crime unless and until the state proves the defendant's guilt beyond a reasonable doubt.

Finally, before you retire to consider your verdict, you must obey the following rules:

First, you must not talk about the case amongst yourselves. The only place this case may be discussed is in the jury room and then only after you begin your deliberations.

Second, you must not talk about this case with anyone else (including members of your families) or allow anyone else to talk with you or say anything in your presence about this case. If anyone communicates or attempts to communicate with you or in your presence about this case, you must notify the bailiff of that fact immediately.

In this age of instant electronic communication and research, I want to emphasize that in addition to not speaking face-to-face with anyone about the case, you should not engage in any form of electronic communication about the trial, including but not limited to: Twitter, blogging, Facebook, text messaging, instant messaging, and any other such means of electronic communication.

Third, you must keep all cell phones turned off when you are in the courtroom or the jury room.

Fourth, while you sit as a juror in this case, you are not to form an opinion about the guilt or innocence of the defendant, nor are you to express to anyone any opinion about the case until I tell you to begin your deliberations.

Fifth, you must not talk or communicate in any way with any of the parties, attorneys, or witnesses involved in the case. This rule applies inside as well as outside the courtroom, and it prohibits any type of conversation, whether about the evidence in this case or about the weather, or just to pass the time of day.

Sixth, you must not read or listen to any news media coverage of this case or trial, including television, newspaper, radio, or Internet accounts. Newspaper, radio, television, and Internet accounts may be inaccurate, or they may contain references to matters which are not proper for your consideration. Your verdict must be based solely on the evidence presented during this trial and no other source.

Seventh, you must not visit the scene or place that is the subject matter of this trial or make any independent inquiry or investigation about this matter. You may not conduct any research, including Internet research, to look for any information regarding the case.

Each of you must obey each of these rules to the letter. Unless you do so, there is no way the parties can be assured of absolute fairness and impartiality. It is your duty, while the trial is in progress, or while it is in recess, or while you are in the jury room, to see that you remain a fair and impartial trier of the facts. If you violate these rules, you violate an order of the court and this is contempt of court and could subject you to punishment as provided by law.

We are now ready for the opening statements of counsel.

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## North Carolina Pattern Jury Instructions

### NC Pattern Jury Instructions for Criminal Cases

#### Part 1. General

##### General Cautionary Instructions

*Includes 2011 changes*

#### **N.C.P.I. Crim. 101.35. CONCLUDING INSTRUCTIONS--JURY CONSIDER ALL EVIDENCE, JUDGE NOT EXPRESS OPINION, UNANIMOUS VERDICT, SELECTION OF FOREPERSON**

Members of the jury, you have heard the evidence and the arguments of counsel. If your recollection of the evidence differs from that of the attorneys, you are to rely solely upon your recollection. Your duty is to remember the evidence whether called to your attention or not.

You should consider all the evidence, the arguments, contentions and positions urged by the attorney(s), and any other contention that arises from the evidence.

The law requires the presiding judge to be impartial. You should not infer from anything I have done or said that the evidence is to be believed or disbelieved, that a fact has been proved or what your findings ought to be. It is your duty to find the facts and to render a verdict reflecting the truth. All twelve of you must agree to your verdict. You cannot reach a verdict by majority vote.

When you have agreed upon a unanimous verdict(s) (as to each charge) your foreperson should so indicate on the verdict form(s).

**NOTE WELL: EXCUSE THE ALTERNATE JUROR.**

After reaching the jury room your first order of business is to select your foreperson. You may begin your deliberations when the bailiff delivers the verdict form(s) to you. Your foreperson should lead the deliberations. When you have unanimously agreed upon a verdict (as to each charge) and are ready to announce [it] [them] your foreperson should record your verdict(s), sign and date the verdict form(s), and notify the bailiff by knocking on the jury room door (or otherwise summoning the bailiff). You will be returned to the courtroom and your verdict will be announced.

Thank you. You may retire and select your foreperson.

**NOTE WELL:** *After the jury retires and before sending the verdict form(s) to the jury the judge **must** address the attorneys as follows:*

Before the jury begins deliberation the Court will consider requests for corrections and additions to the instructions and to other matters you deem appropriate.<sup>1</sup>

Are there any objections or specific requests for corrections or additions to the instructions?

**NOTE WELL:** *Consider all specific requests and if appropriate recall the jury and correct or add to the charge. If request(s) for corrections or additions are rejected, attorneys must be allowed to make specific objections on the record.*

*After all specific requests have been submitted and rejected and the proper notation(s) recorded, hand the verdict form(s) to the bailiff and instruct the bailiff to deliver [it] [them] to the jury without*

comment.

*If necessary to return the jury to the courtroom for corrections or additions to the charge the judge should address the jury as follows:*

Members of the jury, my attention has been properly directed to instructions necessary to [correct] [supplement] my previous instructions.

I charge you that . . . .

You may retire now and begin your deliberation when you receive the written verdict form(s).

*NOTE WELL: Repeat to the lawyers the question regarding objections, corrections or additions. If there are further instructions upon specific requests, follow the same procedure as before; if not, instruct the bailiff to deliver the verdict form(s) to the jury.*

*NOTE WELL: If the jury requests additional instructions after retiring to deliberate, the trial judge should obtain the jury requests in writing, confer with the attorneys, and further instruct the jury if necessary.*

*S v. Privette, 317 N.C. 148 (1986) holds that it is within the trial court's discretion to determine whether instructions in addition to those requested should be given at the same time.*

*NOTE WELL: It is suggested that requests from the jury should be reduced to writing, marked as court exhibits, and made part of the record. In a capital case, the failure to share the jury's questions with the defendant denies the defendant the right to be present at every stage of the proceeding although the State may be able to prove the error was harmless beyond a reasonable doubt. State v. Smith, 654 S.E.2d 730 (N.C. Ct. App. 2008).*

#### **Footnotes**

[1] While G.S. 15A-1231 does not expressly require the judge to address the attorneys after the charge and before the jury begins deliberations, when applying Appellate Rule 10(b)(2) pertaining to defendant's assignment of error as to jury instructions, the North Carolina Court of Appeals has not allowed the defendant to assign error to the jury charge if given an opportunity by the trial judge to object before deliberations. *State v. Godwin*, 59 N.C. App. 662, 297 S.E.2d 623 (1982).

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**N.C.P.I. Crim. 101.05. FUNCTION OF THE JURY**

Members of the jury: All of the evidence has been presented. It is now your duty to decide from this evidence what the facts are. You must then apply the law which I am about to give you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you think it is, or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied.

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