

The Work of the Pattern Jury Instruction Committee

“The trial court's instruction was taken from the North Carolina Pattern Jury Instructions, N.C. P.I. Civil 860.10.” This Court has recognized that the preferred method of jury instruction is the use of the approved guidelines of the North Carolina Pattern Jury Instructions Caudill v. Smith, 117 N.C. App. 64, 70, 450 S.E. 2d 8, 13 (1994), disc. Review denied, 339 N.C. 610, 454 S.E. 2d 247 (1955). Moreover, this pattern jury instruction is an accurate summary of the law.”

In re Will of Allen, 148 N.C. App. 526, 559 S.E.2d 556, 2002 N.C. App. LEXIS 33 (2002).

(Note well: parts of this paper are adapted from portions of the Civil Pattern Jury Instructions. The authors include the reporters, including Gordon Brown, the many student assistants, and the civil sub-committee members.)

History of the Pattern Jury Instruction Committee

1. The Conference of Superior Court Judges.

The project of preparing pattern jury instructions by committees of The Conference of Superior Court Judges goes back to 1961. Judge J. Will Pless (later Justice Pless) appointed a committee composed of Judges Francis O. Clarkson (Chair), Hugh B. Campbell, and Henry A. McKinnon, Jr. The committee solicited other judges for copies of their charges, and then compiled them in a loose-leaf binder. These charges, consisting mostly of definitions and excerpts from Supreme Court decisions, were published by the Institute of Government in 1963.

In 1965 the North Carolina Conference of Superior Court Judges instructed the committee to proceed with the writing and publication of pattern jury instructions. The committee's charge was to draft instructions that would actually be used by the judges in instructing the jury, and that would be in language readily understandable to the jury. At

this time, the committee was composed of Judges Henry A. McKinnon, Jr., Hugh B. Campbell, E. Maurice Braswell, and Howard H. Hubbard.

Later the Z. Smith Reynolds Foundation of Winston-Salem made a substantial grant which enabled the committee to secure reporters and clerical help. In 1972 a significant Federal Law Enforcement Assistance Administration grant was also obtained. In 1973 the first edition of North Carolina Pattern Jury Instructions was distributed to the bench, bar and public. In every year since 1973, the committee has drafted new charges and has revised existing instructions as necessitated by case law developments, statutory enactments, and requests from the bench and bar.

The committee's goal since its beginning in 1961 has been to ease the burdens trial judges face in trying to explain the law to juries. The achievement of this goal has saved the people of North Carolina time and money by clarifying trial issues, creating a more efficient judiciary, and preventing reversible error.

2. Leaders through the years.

Over the years a number of Judges have made significant contributions to the committee. Among them are Judge Clarkson, Judge McKinnon, Judge Tom Ross, and Judge Russell Walker.

Deserving of special mention is the Honorable Thomas W. Seay, Jr. He was the longest serving member of the committee (1968 to 1998) and the longest serving chair of the committee (1976 to 1998). He was a driving force on the committee. Judge Seay made immeasurable contributions to the people of this State.

3. Bar Association Support.

In 1968 The North Carolina Bar Foundation provided a grant which augmented contributions to the project made by the North Carolina Judges. The Bar Association also performs the function of selling the printed version to lawyers, and others, and thus providing needed funding for the committee's operations. As a result of an agreement with CX Corporation, the NCBA also provides the electronic version of the instructions to Association members on-line.

4. Institute of Government Support.

The committee receives valuable assistance and cooperation from the staff and faculty of the School of Government of the University of North Carolina. The

School of Government and its personnel perform the vital functions of printing, storing and distributing the printed instructions to the trial judges. The School of Government also handles the administrative chores of scheduling, coordinating and fiscal accounting for the committee.

5. CX Corporation.

In 1996 an electronic version of the Pattern Jury Instructions was produced by Steve Winsett and The Raleigh Computer Corporation (TRCC), now CX Corporation. The computer programming task brought the instructions into the computer age. The result became the foundation for the Bar Association's Casemaker on-line service to members.

Organization of the committee.

1. Subcommittees and chairs.

The committee is divided into two subcommittees: one for criminal law and one for civil law matters. Currently Judge Jack Thompson chairs the criminal subcommittee and Judge Robert H. Hobgood chairs the civil subcommittee. The overall chairman of the committee is also Judge Hobgood. The other current members of the committees are:

Criminal committee:

Hon. Jack A. Thompson, Resident, District 12, Chair

Hon. Richard L. Doughton, Special Superior Court Judge, Sparta

Hon. Quentin Sumner, Sr. Resident, District 7A

Hon. William C. Griffin, Jr., Sr. Resident, District 2

Hon. Jesse B. Caldwell, III, Sr. Resident, District 27A

Civil Committee:

Hon. Robert H. Hobgood, Sr. Resident, District 9, Chair

Hon. Beverly T. Beal, Sr. Resident, District 25A

Hon. Charles H. Henry, Sr. Resident, District 4B

Hon. James C. Spencer, Jr., Resident, District 15A

Hon. Lindsay R. Davis, Jr., Resident, District 18

Hon. Rebecca Knight, District Court Judge, District 28

2. Selection of members.

Upon the retirement or resignation of a committee member, the President of the Conference of Superior Court Judges appoints a member, after receiving a recommendation from the sub-committee on which the retiring member served.

3. District Court judge representation.

In 1998 the civil subcommittee began a review and revision of family law related instructions. Because those instructions are primarily used by the District Court Judges, A DCJ was needed to lend District Court perspective and legal knowledge to the process. The Honorable Rebecca Knight, District Court Judge for District 28 (Buncombe), was asked to serve on the sub-committee. Indeed, Judge Knight has become a valued member of the committee, whose contributions have proved to be necessary, and a necessity. She remains on the committee to represent the District Court.

4. Reporters and student assistants.

Each sub-committee employs a reporter. The reporter recommends a plan of operations, both short- and long-term. Reporters have included law professors, practicing attorney and retired Superior Court judges. Currently the civil sub-committee reporter is the Honorable Joe John, retired judge of the Court of Appeals, and former Superior Court Judge. The current criminal sub-committee reporter is Professor Alan Woodlief, formerly a member of the faculty of the Wiggins School of Law of Campbell University. He will assume the position of Dean of admissions at the Elon University School of Law.

The reporter makes an initial review of existing instructions and evaluates deficiencies and needed reviews in light of statutory changes as well as case law.

Each sub-committee also employs a student assistant. These assistants are law students completing their first year. They are chosen competitively from numerous applicants.

Conducting the Work of the Civil Sub-Committee

1. Getting the work accomplished.

Each sub-committee has its own methods of approaching tasks and projects each year. This paper will discuss the civil sub-committee's methods of conducting work.

The program year begins in August and concludes in May. Each sub-committee typically meets one weekend a month during that time. Meetings are usually at the School of Government in Chapel Hill.

The reporter proposes the program of work for each year. The reporter and the student assistant prepare drafts of revised instructions or new instructions. At each meeting the members proof read the drafts, conduct legal research and discuss, and sometimes debate, the content of the proposed instructions. Further revisions are often made, and each instruction returns for further review and approval at a subsequent meeting. Several members use laptop computers during the meeting to conduct legal research.

Each instruction will typically be reviewed three times, at three consecutive meetings, before approved.

The committee is not only concerned with the substance of the instructions, but also with grammar, syntax, style, footnotes, and the “note well” paragraphs, which are considered very important by judges to give directions and cautions on the use of the instructions.

The Civil Committee adopted a set of rules that might be considered a “style guide.” To reflect the philosophy that writing style should remain constant and consistent perpetually, the committee refers to these fundamental rules as “Chapel Hill Granite.”

There is a continuous survey of new cases by the sub-committee members. Between meetings each month the chairman distributes by e-mail a list of the most recent decisions of the North Carolina appellate courts. Each member is assigned new opinions to read and evaluate for possible effects on pattern jury instructions.

2. Revision of the Contract Instructions.

An example of the operations of the Pattern Jury Instructions Civil Sub-Committee is the comprehensive revision of the contract instructions in the General Civil Volume during the 2001-2002 and 2002-2003 program years. This work was long overdue. Many of the existing instructions dated to the early days of the Committee in

1973. The instructions themselves were piecemeal and often difficult to assemble into comprehensive instructions.

The Civil sub-committee arranged the new contract instructions to follow a logical progression of issues:

First, has a contract been formed?

Second, has the contract has been breached?

Third, what is the remedy?

The result was the 501.00 series that deals with issues of contract formation, the 502.00 series covering issues of breach, the 503.00 (common law), the 504.00 series (Uniform Commercial Code) and the 505.00 (special situations) series. The 504.00 and 505.00 series deal with remedies.

Another editorial decision made by the Committee was to draft general contract instructions broadly enough to be applicable to both common law and Uniform Commercial Code transactions. Where common law and UCC rules conflict, the UCC version is noted by a bold "**UNIFORM COMMERCIAL CODE**" in the text. Except as to remedies, the differences between common law and UCC rules on issues of contract formation and breach are not as great as most people think. Thus, *except where noted to the contrary*, these instructions are generally usable in UCC as well as common law cases.

USE OF INSTRUCTIONS

1. Requesting pattern instructions.

In all trials, civil and criminal, the opportunity to request instructions is provided.

Rule 21 of the General Rules of Practice for the Superior and District Courts provides:

At the close of the evidence (or at such earlier time as the judge may reasonably direct) in every jury trial, civil and criminal, in the superior and district courts, the trial judge shall conduct a conference on instructions with the attorneys of record (or party, if not represented by counsel). Such conference shall be out of the presence of the jury, and

shall be held for the purpose of discussing the proposed instructions to be given to the jury. An opportunity must be given to the attorneys (or party if not represented by counsel) to request any additional instructions or to object to any of those instructions proposed by the judge. Such requests, objections and the rulings of the court thereon shall be placed in the record. If special instructions are desired, they should be submitted in writing to the trial judge at or before the jury instruction conference.

2. Requesting non-pattern instructions.

Rule 51(b) of the Rules of Civil Procedure provides: Requests for special instructions. – Requests for special instructions must be in writing, entitled in the cause, and signed by the counsel or party submitting them. Such requests for special instructions must be submitted to the judge before the judge's charge to the jury is begun. The judge may, in his discretion, consider such requests regardless of the time they are made. Written requests for special instructions shall, after their submission to the judge, be filed with the clerk as a part of the record.

In criminal cases, G.S. 15A-1231 also applies:

(a) At the close of the evidence or at an earlier time directed by the judge, any party may tender written instructions. A party tendering instructions must furnish copies to the other parties at the time he tenders them to the judge.

(b) Before the arguments to the jury, the judge must hold a recorded conference on instructions out of the presence of the jury. At the conference the judge must inform the parties of the offenses, lesser included offenses, and affirmative defenses on which he will charge the jury and must inform them of what, if any, parts of tendered instructions will be given. A party is also entitled to be informed, upon request, whether the judge intends to include other particular instructions in his charge to the jury. The failure of the judge to comply fully with the provisions of this subsection does not constitute grounds for appeal unless his failure, not corrected prior to the end of the trial, materially prejudiced the case of the defendant.

(c) After the arguments are completed, the judge must instruct the jury in accordance with G.S. 15A-1232.

3. Preserving objections.

Rule 21 of the Rules of Practice provides:

At the conclusion of the charge and before the jury begins its deliberations, and out of the hearing, or upon request, out of the presence of the jury, counsel shall be given the opportunity to object on the record to any portion of the charge, or omission therefrom, stating distinctly that to which he objects and the grounds of his objection.

The court may recall the jury after they have retired and give them additional instructions in order: (i) to correct or withdraw an erroneous instruction; or (ii) to inform the jury on a point of law which should have been covered in the original instructions. The provisions of the first two paragraphs of this Rule 21 also apply to the giving of all additional instructions, except that the court in its discretion shall decide whether additional argument will be permitted. See *State v. Bennett*, 308 N.C. 530, 302 S.E. 2d 786 (1983).

Failure to Request Special Instructions in Writing.

State v. Craig ___ N.C. App. ___, 606 S.E. 2d 387 (2005) is a recent case that states that the trial court properly refused to give defendant's requested special instruction on the defense of justification of possession of a firearm by a felon because the request was not in writing.

Conclusion.

The Pattern Jury Instruction Committee of the North Carolina Conference of Superior Court Judges represents a long-term, mutual effort by judges, lawyers and the Institute of Government to provide consistency and quality to explaining the law to trial juries cases in this state.