SIGNIFICANT DEVELOPMENTS AFFECTING JURY INSTRUCTIONS

Note Well: The following legislative and judicial developments affect jury instruction practice and procedure.

PJI Cross Reference	
All Instructions	N.C.G.S. § 1A-1, Rule 51(a) was amended effective July 1, 1985 to read as follows: "In charging the jury in any action governed by these rules, a judge shall not give an opinion as to whether or not a fact is fully or sufficiently proved and shall not be required to state, summarize or recapitulate the evidence, or to explain the application of the law to the evidence. If the judge undertakes to state the contentions of the parties, he shall give equal stress to the contentions of each party." The Civil Subcommittee has considered the impact of this amendment on the current pattern charges. After considering the pros and cons, the Civil Subcommittee has voted unanimously to adopt the following policy: No future pattern charge or replacement will direct the trial judge to state, summarize or recapitulate the evidence. Nor will any future charge or replacement direct the trial judge to explain the application of the law to the evidence. It is the opinion of the Civil Subcommittee that, in view of the recent amendment to Rule 51(a), the mandate should be limited to a summary of the elements of the applicable law. Of course, there may be occasions when the evidence should be stated or the application of the law to the evidence should be explained. These instances are left to the reasoned judgment of the trial judge. In the vast majority of cases, however, the Civil Subcommittee believes that summarizing the evidence or explaining the appliction of the law to the evidence should be avoided because it (a) unduly lengthens the charge, (b) creates a confusing and a difficult to understand mandate, (c) runs the risk of creating prejudice to a party or unintentionally expressing an opinion on the facts and (d), primarily, becuase such is not required by Rule 51(a). The Civil Committee will replace, over time, all the civil charges in conformity with its policy. Care should be taken to modify pre-July, 1985 charges so as to conform them to Rule 51(a) and the Civil Subcommittee policy applicable thereto.

An example is N.C.P.I.--Civil 910.20, Fire insurance--hazard increased by insured. This charge is often used when there is evidence that the insured is attempting to collect for a fire he set himself. If the charge were drafted with the requirement of relating the law to the evidence, it would read something like this:

"So I finally charge you that if the defendant, North State Insurance, has proved by the greater weight of the evidence that the burning of the plaintiff's house at 1132 Yale Place occurred at a time when open buckets of gasoline were left standing in the living room and bedrooms of the house, and that the presence of such containers and gasoline was within the knowledge and control of the plaintiff, Dilbert Smith, then . . . ."

However, with no requirement that the presiding judge relate the law to the evidence, the final mandate would read as follows:

"So I finally charge you that if the defendant has proved that the loss occurred at a time when the risk insured against was materially increased by means within the knowledge and control of the plaintiff, then . . . ."

Again, it is the Civil Subcommittee's position that the latter form should be followed in light of the recent amendment to G.S. § 1A-a, Rule 51(a).

Civil - 100.00 (Motor Vehicle Volume)

This model charge has been amended to conform to the Civil Subcommittee's policy as expressed above.

WILFUL/WANTON STANDARD

102.85 At its January, 1986 meeting, the Civil Subcommittee approved the text of N.C.P.I.--Civil 102.85 (Negligence Issue--Gross Negligence to Defeat Contributory Negligence). As part of the approval process, the Civil Subcommittee had the opportunity to consider whether, in civil cases, the burden of proof for issues involving "wilful/wanton" conduct was "wilful and wanton: or "wilful or wanton". As may be seen in the approved version of 102.85, the Civil Subcommittee felt the weight of authority sided with the "wilful or wanton" standard.

North Carolina precedent has never directly addressed the issue. Early decisions suggest a disjunctive standard. While not using the term "wilful," the Supreme Court did state, "it must have been either a malicious or a wanton act." Brendle v. Spencer, 125 N.C. 474, 476, 34 S.E. 634, 635 (1899). The opinion differentiated between the two terms, defining malicious as "a desire to cause injury" and wanton as "indifference to the consequences." Id.

The majority opinion in Fry v. Utilities Co. used the terms "and" and "or" interchangeably in describing negligent behavior. 183 N.C. 281, 111 S.E. 354 (1922). However, the Concurring opinion of Chief Justice Clark pointed out that the Standard was wilful or wanton negligence. Id., at 297, 299; 111 S.E. at 364.

Even as late as 1967, the Court showed a predisposition to use "or." Pearce v. Barham, 271 N.C. 285, 156 S.E.2d 290 (1967).

The uncertainty over which standard is proper has not been solved by the Court of Appeals. While one decision suggests a "wilful and wanton" standard, Siders v. Gibb, 39 N.C. App. 183, 185, 249 S.E.2d 858, 860 (1978), a more recent decision appears to favor a "wilful or wanton" approach. See King v. Allred, 76 N.C. App. 427, 333 S.E.2d 758 (1985).

Thus, while the issue is not free from doubt, the weight of precedent supports a disjunctive standard, and this standard has been adopted for use in 102.85. Similar changes have been made to N.C.P.I. (Motor Vehicle)--Civil 102.86; N.C.P.I.--Civil (Motor Vehicle) 106.55; and N.C.P.I.--Civil 810.01.