

NORTH CAROLINA PATTERN JURY INSTRUCTIONS

INTRODUCTION

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I. PREFACE

Instructions give guidance to the jury, thereby serving a most important function in the trial process. The Pattern Jury Instructions Committee has attempted in writing these charges to use language that can be readily understood by the jury and at the same time conform to the technicalities of the law. These instructions are intended to provide a useful starting point for lawyers and judges in developing jury instructions for a specific case.

The pattern jury instructions are divided into three large groups: criminal, civil and motor vehicle negligence. The civil instructions cover the diverse subject areas of contracts, professional liability, miscellaneous torts, family matters, land actions, deeds, wills and trusts, and insurance. The criminal instructions cover various substantive offenses, including most felonies and misdemeanors, as well as various defenses. The motor vehicle

instructions cover various forms of negligence in the operation of a motor vehicle.

Preparation of North Carolina Pattern Jury Instructions for trial judges and members of the North Carolina State Bar is an ongoing project which encompasses two basic functions. One function is to prepare new instructions for which there is a demonstrated need based on new statutes, case decisions or court rules, or requests from members of the Bench and Bar. The other is to revise existing instructions due to changes in law or policy. While an excellent resource, these instructions do not eliminate the need to individually tailor each charge to the given factual situation and to comply with Rule 51(a) of the North Carolina Rules of Civil Procedure.

The project is carried on by a committee of trial judges chaired by the Honorable Robert H. Hobgood, Senior Resident Judge of the 9th Judicial District. The committee is divided into two subcommittees: one for criminal law and one for civil law matters. Judge Hobgood chairs the Civil Law Subcommittee, while the Criminal Law Subcommittee is chaired by the Honorable Richard L. Doughton, Special Superior Court Judge.

Members and chairpersons are appointed by the President of the Conference of Superior Court Judges of North Carolina. Expenses incident to the Committee's operations are financed by appropriations by the North Carolina legislature.

The two subcommittees are each assisted by a reporter. The reporters in turn are supported by student research assistants from the state's law schools.

The Committee acknowledges with particular gratitude the assistance and support of Professor James C. Drennan and the School of Government staff. The S.O.G. staff performs the vital functions of printing, storing and distributing these instructions to the North Carolina trial judges.

It also handles the administrative chores of scheduling, coordinating and fiscal accounting for the Committee. The North Carolina Bar Association performs the function of selling the printed instructions. CX Corporation and Steve Winsett have created electronic versions for the Bench and Bar.

The members and staff of the present Committee wish to express their deepest appreciation to all the former members, advisors and staff who have assisted in the continuing effort to maintain and improve these instructions. We hope it is and will continue to be a valuable service to the Bench, the Bar and the People of North Carolina.

#### 2013-2014 PATTERN JURY INSTRUCTIONS COMMITTEE

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## II. HISTORY

Years ago, judges had to fashion jury instructions for each new case. Jury instructions that were effective or whose use was affirmed on appeal were used again in later cases. Over time, individual judges developed

their own notebooks of instructions, and judges often shared instructions among themselves. In essence, a judge's instructions became a "pattern" for that judge and other judges in later cases. However, these individual judges' sets of instructions were less than comprehensive, and there was no system for distributing them among all the judges.

Apparently, Illinois was the first state to have a pattern jury instruction committee, when the Illinois Supreme Court appointed the Supreme Court Committee on Jury Instructions in 1955. Other states soon began to examine the possibility of compiling sets of pattern jury instructions. In 1961, the North Carolina Conference of Superior Court Judges embarked on this process, when Judge J. Will Pless (later Justice of the Supreme Court) appointed a committee composed of Judges Francis O. Clarkson, Chairman, Hugh B. Campbell (later on the North Carolina Court of Appeals), and Henry A. McKinnon, Jr., to solicit the state's trial judges for copies of their charges. The committee solicited other judges for copies of their charges and then compiled them in a loose-leaf binder. These instructions consisted primarily of definitions and excerpts from North Carolina Supreme Court decisions. The first set of North Carolina Pattern Jury Instructions was published by the Institute of Government in 1963.

The North Carolina judges were spurred to further action when Judge Robert L. McBride, an Ohio judge, made a presentation to the judges in 1964. Judge McBride authored several books on instructing juries and was largely responsible for the production and publication of the Ohio Jury Instructions. Inspired by Judge McBride's presentation, the Judges Conference of 1965 instructed the committee to proceed with the drafting and publication of pattern instructions that would be understandable to the jury and that would be used by North Carolina judges in instructing the jury. This committee was composed of Judges Henry A. McKinnon, Jr., Hugh B. Campbell, E. Maurice Braswell and Howard H. Hubbard.

The project was promptly endorsed by the North Carolina Bar Association, with Mr. Norwood W. Robinson, chairman of its committee, appointed to work with the judges' committee. It also was endorsed by and received grants from the American Bar Association, the Z. Smith Reynolds Foundation, and the Federal Law Enforcement Assistance Administration. The Institute of Government also participated in the project, assisting with staffing, coordinating the project, and providing the use of its facilities.

Over the next eight years, the committee worked on drafting a new set of pattern jury instructions. In the spring of 1973, the first volume of instructions, which dealt with criminal law, was made available to the Bench and Bar. The second volume, which dealt with motor vehicle negligence, was published in the fall of 1974. Finally, in the summer of 1975, the third volume of civil instructions was made available. In every year since 1973, the committee has drafted new instructions and has revised existing instructions as warranted by statutory and case law developments, as well as suggestions from other judges and attorneys.

In its early years, the committee was fortunate to have as its advisor Henry Brandis, Jr., former Dean of the University of North Carolina School of Law. Over the years, the committee has also benefited from the service of several reporters who assisted with the crafting of the jury instructions. This staff has included: Professor James E. Sizemore of the Wake Forest School of Law; Professor Walter Navin (deceased); Professor Arnold Loewy, Professor Kenneth S. Broun, and Professor Walker Blakey of UNC Law School; Gordon Brown, Attorney; Professor Don Beci of the Campbell University School of Law; the Honorable Joe John, retired Court of Appeals and Superior Court Judge; the Honorable Gordon Battle, retired Superior Court Judge, and the Honorable John (Jack) Lewis, retired Court of Appeals and Superior Court Judge. Currently, the reporters are Mary M. Dillon,

Attorney, and Alan Woodlief, Associate Dean and Professor at Elon University School of Law.

The committee is grateful to the School of Government, which has assisted in staffing and coordinating the project, as well as providing the use of its facilities. It is especially grateful to Professor James Drennan, Mr. L. Poindexter Watts, Mr. Michael Crowell and Mrs. Joan Brannon who have devoted a substantial amount of time to the project as coordinators for the committee.

### III. USER'S GUIDE

To fully realize the benefits of the pattern jury instructions, the instructions should be carefully selected and amended as dictated by the evidence and applicable law. The following are pointers on using the instructions and tailoring them to a particular case.

#### Organization of Instructions, Table of Contents, Index

As noted in the Preface, the pattern jury instructions are divided into three large groups: criminal, civil, and motor vehicle negligence. Some of the major parts of the pattern jury instructions are the table of contents and the index. The table of contents serves as the outline of the book, showing the grouping of individual instructions within chapters and parts. For each instruction, the date of publication for the instruction is provided. For the criminal instructions, the table of contents indicates the statutory source for the instruction and the structured sentencing offense classification for each substantive offense. The system also contains a descriptive-word index. In this index, instructions are grouped under words describing their subject matter.

Instructions numbers are assigned with the intent that instructions dealing with similar subject matters will be grouped together, where

practicable. In all chapters, gaps are left for chapter and instruction numbers to be assigned in the future.

### Structure of Individual Instructions

Most instructions can be broken into several basic parts. In the upper left-hand corner each instruction has the following information that is not read to the jury: the instruction number; the title of the instruction; where applicable, a statutory reference; and the month and year of the most recent edition of the instruction. For criminal instructions, the level of offense (felony, misdemeanor, or infraction) is provided. The introductory paragraph, the body of the instruction, and the mandate are all read by the judge to the jury. The body of the instruction sets out the elements of the applicable crime, tort, or other matter that must be found by the jury. The mandate restates the matter that must be found by the jury, informing the jury of the burden of proof and its duty to reach a finding on the questions presented to it.

### Note Wells and Endnotes

Instructions often contain “note wells” and endnotes. “Note wells” are not read to the jury; rather, they are intended as cautionary instructions or suggestions for the judge. Often, note wells explain possible edits that might be necessary, or they alert the judge to potential pitfalls to avoid. Endnotes are usually not read to the jury, but may be used by the judge to craft additional instructions if the judge or parties believe they are necessary, or if the jury requests additional instructions. Endnotes often provide citations to relevant statutes and appellate cases, as well as definitions and explanations of the elements or terms used. In some cases, they may contain instructions to the judge much like the “note wells.”

### Need for Adaptation in Individual Cases

The pattern jury instructions are intended to state the law applicable in typical fact situations. In some instances the facts may call into play alternative rules of law or special rules, exceptions, or defenses that make the pattern instruction partially or totally inapplicable. The forms contain additional or substitute language at certain places in an attempt to suggest adjustment for frequently encountered factual variations. It would be impossible, however, to suggest all possible variations and changes to the instructions. Hence, all pattern instructions should be carefully read and adaptations made, if necessary, before any instruction is given to the jury.

One modification that may be consistently necessary is one with regard to the number and gender of persons treated in the instructions. More recently-drafted instructions use gender neutral terms, but earlier instructions often used male pronouns with the idea that the female pronoun would be substituted where appropriate. The third person singular form is often utilized and can also be adjusted as necessary.

### Use of Brackets, Parentheses, and Type Styles

For purposes of clarity and consistency, the committee has used the following rules in editing its instructions:

(1) The words to be spoken by the judge to the jury are in regular type. For example: "The motor vehicle law provides that a special speed limitation . . . ."

(2) Directions as to information that the judge must insert or add to the instruction are set out in parentheses and are italicized. For example: ". . . the maximum safe speed was (*state maximum speed limit*) . . . ."

(3) Alternative words or phrases are indicated in brackets. The judge must choose the bracketed terms that are appropriate under the facts of the particular case. For example, in the phrase "the defendant

[used] [displayed] a firearm,” the judge should choose which of the two bracketed terms is appropriate given the evidence presented. It is possible that the evidence could support the use of both terms.

(4) Optional language is contained in parentheses. The optional parenthetical phrases should be given only when warranted by the evidence. For example, in the phrase “the State must prove that the defendant acted intentionally (and without justification or excuse),” the judge should only use the parenthetical phrase when there is some evidence that the defendant’s actions were justified or might be excused.

#### IV. CONCLUSION

The Committee welcomes all suggestions and observations for the improvement of the instructions. Please send messages to the following addresses:

For civil instructions:

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