

JURY REVIEW OF EVIDENCE IN CIVIL DELIBERATIONS

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I. Introduction. In civil trials, a jury's review of evidence is governed by G.S. 1-181.2, which became effective in 2007. The specific rules depend on the type of evidence and whether jurors wish to view it in open court or the jury room.¹ Most requests will be a matter of the judge's discretion after giving the parties notice and an opportunity to be heard, but the court must at all times "ensure that the evidentiary integrity of the exhibit is preserved." G.S. 1-181.2(d).

II. Open-court Review.

A. Conduct Jury Into Courtroom. When a jury seeks review of "certain testimony or other evidence", the court must order the jurors to be conducted into the courtroom. G.S. 1-181.2(a).

B. Notice and Opportunity to Be Heard. After hearing from the jury, the court must give the parties notice and an opportunity to be heard as to whether to allow review. *Id.*

C. Ruling in Court's Discretion. The court then "in its discretion" may permit portions of testimony to be read to the jury and may allow the jurors to examine "in open court" the requested materials. *Id.*

1. Admitted Materials Only. Only "materials admitted into evidence" are subject to review. *Id.*

¹ Jury room review used to be governed by the "well-settled" rule in *Nunnery v. Baucom*, 135 N.C. App. 556, 559 (1999), that "trial exhibits introduced into evidence may not be present in the jury room during deliberations unless both parties consent." The "consent required" rule was superseded by G.S. 1-181.2. See *Redd v. Wilcohes, LLC*, ___ N.C. App. ___, 745 S.E.2d 10, 11-12 (2013).

2. Exercise of Discretion Required. In several opinions in the criminal context, the appellate courts have held that the trial court failed to exercise its discretion by denying a request to review testimony merely because the transcript was unavailable or difficult to obtain. See *State v. Ashe*, 314 N.C. 28, 33 (1985); *State v. Long*, 196 N.C. App. 22, 25 (2009); *State v. Thompkins*, 83 N.C. App. 42, 45–46 (1986). The court should have the record reflect that the decision to allow or deny the request was made in the court's discretion.

D. Review of Other Evidence. To provide balance and avoid “giv[ing] undue prominence to the evidence requested,” the court in its discretion may also allow review of other evidence “relating to the same factual issue.” G.S. 1-181.2(a).²

III. Jury Room Review.

A. Judge's Discretion. If the jury seeks to review the evidence in the jury room, the court may, in its discretion, after giving parties an opportunity to be heard, allow review of:

- Admitted exhibits which have been passed to the jury;
- Photographs admitted into evidence and shown to the jury and used by any witness in their testimony before the jury; and
- Any illustrative exhibits admitted into evidence and used by any witness in their testimony before the jury.

G.S. 1-181.2(b). For these categories of exhibits, no consent of the parties is required. This covers most types of evidence a jury will want to review.

B. Consent Required. One type of evidence, if the jury requests to view it in the jury room, requires party sign-off: “Depositions may be taken into the jury room...only with consent of the parties.” *Id.*

C. Not Allowed. One category of items is not permitted in the jury room even in the court's discretion: “Summaries of testimony prepared in the courtroom by any party, lists made by any party in the courtroom and such similar documents shall not be sent to the jury room with the jury, even if admitted into evidence and requested by the jury.” *Id.*

D. Parties' Stipulation. The statute states that a court “may” allow “any exhibit” into the jury room if the jury requests it and “all parties stipulate and agree [that it] may be taken into the jury room.” G.S. 1-181.2(c). The court should make the parties' stipulation part of the record. Presumably the term “any exhibit” includes

² In the criminal context, the North Carolina Supreme Court has held that the trial court must also “instruct the jury that it must remember and consider the rest of the evidence.” *State v. Weddington*, 329 N.C. 202, 208 (1991) (citing *State v. Watkins*, 89 N.C. App. 599 (1988)).

even the summaries and lists that are prohibited in G.S. 1-181.2(b), but this point is not entirely clear.

- IV. Example.** In an auto accident trial, the jury asks to view and discuss, in the jury room, a series of photos depicting the accident scene. If the parties consent, the judge may send them to the jury room, but is not required to do so. G.S. 1-181.2(c). If there is no consent (the more likely scenario), the court may send them to the jury room in its discretion after giving the parties an opportunity to be heard. G.S. 1-181.2(b). This assumes the photos were admitted into evidence and shown to the jury during a witness's testimony. Because the exhibits are photos, they need not have been physically "passed" to the jury during the trial, as would be required of other admitted items. *Id.*

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