

NOTE TAKING BY THE JURY

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I. Note Taking Allowed. G.S. 15A-1228 provides that unless the judge directs otherwise, jurors may take notes.

II. Notes May Be Used During Deliberations. The statute also provides that unless the judge directs otherwise, jurors may take their notes into the jury room during deliberations. G.S. 15A-1228.

III. Discretionary Decision. Whether to allow the jury to take notes and use them in the jury room during deliberations is a discretionary decision for the trial judge. *State v. Crawford*, 163 N.C. App. 122, 127 (2004) (trial court did not abuse its discretion by allowing note taking even though both parties later indicated that they preferred the jurors not take notes).

The judge can prohibit note taking or the use of notes in the jury room either on his or her own motion or on a motion by a party. G.S. 15A-1228; *State v. Warren*, 348 N.C. 80, 113 (1998) (no error where the trial court prohibited note taking on its own motion).

In exercising its discretion, the court should consider all relevant factors. Arguments asserted in favor of allowing note taking are that notes can be a valuable method of refreshing memory and may help focus jurors' attention during the proceeding. N.C.P.I.—Crim. 100.30 n.1 (citing *United States v. Maclean*, 578 F.2d 64, 66 (3rd Cir. 1978)). Arguments against note taking are that (1) the best note-taker may dominate jury deliberations; (2) jurors, not having an overview of the case, may include in their notes interesting sidelights and ignore important but boring facts; (3) dishonest jurors might falsify notes; (4) note taking draws the juror's attention away from the witness's demeanor; and (5) the notes may receive undue attention during deliberations. WAYNE R. LAFAYE, et al, 6 CRIMINAL PROCEDURE 514 (3rd ed. 2007); see also N.C.P.I.—Crim. 100.30 n.1; Official Commentary to G.S. 15A-1228 (recounting arguments against and in favor of note taking). One leading commentator has opined that these problems can be addressed with appropriate jury instructions. LAFAYE, *supra*, at 514; see Section IV, providing a jury instruction on point.

As with all discretionary decisions, it is best to expressly state that you are exercising your discretion when ruling on note taking. See Section IV, below, for specific language.

IV. Instructing the Jury.

- A. Pattern Jury Instruction.** The North Carolina Pattern Jury Instructions provide an instruction on note taking. It is reproduced below.

N.C.P.I.—Crim. 100.30 Making Notes By Jurors. G.S 15A-1228.

[In my discretion, members of the jury, you will not be allowed to take notes in this case.]

[In this case, you will be allowed to take notes.

When you begin your deliberations, you may use your notes to help refresh your memory as to what was said in court. I caution you, however, not to give your notes or the notes of any of the other jurors undue significance. While taking notes, a juror may fail to hear important portions of testimony.

Any notes taken by you are not to be considered evidence in this case. Your notes are not an official transcript of the trial. For that reason, you must remember that in your jury deliberations notes are not entitled to any greater weight than the individual recollections of other jurors.

If you take notes, you may disclose them only to your fellow jurors during your deliberations. You are not to show them to anyone else. While I will permit you to take notes, I instruct you to listen intently at all times to the testimony.]

- B. Other Instructions.** Some judges also instruct the jury:

- that they are not required to take notes but may do so if they choose;
- on the importance of observing the demeanor of the witnesses;
- where notes should be left (on their seats during trial; in the jury room during deliberations);
- that court personnel will ensure that no one examines the jurors' notes;
- that their notes will be kept under lock and key when not in use by the jurors; and
- not to take notes on copies of exhibits because the exhibits may not be allowed into the jury room.

Additionally, some judges amend N.C.P.I.—Crim. 101.35 (Concluding Instructions) to remind the jurors that they may take their notes into the jury room but that none of them should give their notes or the notes of another juror undue significance.

V. Practical Tips.

- A. Timing of Decision.** Some judges make the decision about note taking at a pre-trial conference or at the start of the trial. See, e.g., *State v. Crawford*, 163 N.C. App.122, 127 (2004) (judge instructed the jury that they could take notes at the beginning of the trial). Others wait until the jury raises the issue.
- B. Supplies.** If note taking is to occur, the court should supply the jurors with writing pads and instruments. If the pads are not new, court personnel should ensure

that all pages are blank. If you are not in your home district, the consult the bailiff or the clerk regarding the necessary supplies.

- C. Securing Notes During Recesses.** It is recommended that you coordinate with the bailiff about securing notes during lunch and overnight recesses. *See, e.g., State v. McMillian*, 149 N.C. App. 490 (2002) (unpublished) (defendant asserted on appeal that the trial judge erred by allowing jurors to take their notes home during overnight recesses; the appellate court did not rule on the merits of the issue).
- D. Note Taking During Recesses.** At least one case has held that the trial court did not err by allowing a juror to use notes that he produced during a one-day recess during jury deliberations. *State v. Harris*, 145 N.C. App. 570, 578 (2001). However, it is best to confine juror note taking to the courtroom to avoid having jurors bring extraneous information into the jury room, consult with outsiders, or conduct outside investigations.
- E. After Verdict.** After the case is completed, most judges tell the jurors that they may tear their notes out of their notebooks and take their notes with them or leave them in the jury room to be destroyed by court personnel. Be sure to instruct the bailiff to destroy anything that is left behind.