

ROUTINE LIMITING INSTRUCTIONS IN CIVIL CASES

Senior Resident Superior Court Judge David Lee (May 2010)

I. Limiting Instructions Generally.

A. Request by Party. G.S. 8C-1, Rule of Evidence 105 provides: “When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.”

B. Sua Sponte. The Rule contemplates a limiting instruction “upon request.” You are required, however, “to be faithful to the law and maintain professional competence in it.” Code of Judicial Conduct, Canon 3. Consequently, you may need to instruct the jury in the absence of a request not to consider incompetent or erroneously admitted evidence. When such a need arises, act as soon as possible. Use your discretion in deciding whether to repeat the instruction during your jury charge.

II. Commonly Used Limiting Instructions. Listed below are some commonly used limiting instructions. The pattern jury instructions are reproduced with notes but without footnotes.

A. N.C.P.I.-Civil 101.32: EVIDENCE — LIMITATION AS TO PARTIES, G.S. 8C-1, Rule 105.

NOTE WELL: Use this instruction to limit the use of evidence to a particular party or to particular parties.

(Describe evidence) has been admitted as [against] [to] (name party or parties) only. This means that in considering the case(s) [of] [against] (name party or parties), you may consider this evidence for [the purpose of (describe limited purpose)] [any proper purpose]. However, you must not consider this evidence in the case [of] [against] (name party or parties). As to [him] [them], this evidence must play no part in your deliberation.

B. N.C.P.I.-Civil 101.33: EVIDENCE — LIMITATION AS TO PURPOSE, G.S. 8C-1, Rule 105.

NOTE WELL: Use this instruction to limit the use of particular evidence to a specific purpose. Do not use this charge if there is a more specific pattern instruction available; e.g., N.C.P.I.-Civil 101.35 (prior inconsistent statement), N.C.P.I.-Civil 101.36 (impeachment by prior conviction), N.C.P.I.-Civil 101.37 (character of a witness).

Evidence has been received (describe nature of evidence). (You must not consider this evidence (describe forbidden use of evidence).) If you [believe this evidence] [find that this evidence (describe what must be found for evidence to be relevant)], then you may consider this evidence for the purpose(s) of (describe permissible purpose). Except as it bears upon (describe permissible purpose), [this

evidence] [(describe evidence)] may not be used by you in your determination of any fact in this case.

C. N.C.P.I.-Civil 101.36: IMPEACHMENT OF A PARTY OR WITNESS BY PROOF OF CRIME, G.S. 8C-1, Rule 609.

Evidence has been received tending to show that [the plaintiff (*name plaintiff*)] [the defendant (*name defendant*)] [the witness (*name witness*)] has been convicted of [a] [several] criminal charges. You may consider this evidence for one purpose only. If, considering the nature of the crime(s), you believe that this bears on truthfulness, then you may consider it, together with all other facts and circumstances bearing upon the witness' truthfulness, in deciding whether you will believe or disbelieve the testimony of such witness at this trial. Except as it may bear on this decision, this evidence may not be considered by you in your determination of any fact in this case.

D. N.C.P.I.-Civil 101.40: ILLUSTRATIVE AND SUBSTANTIVE EVIDENCE

NOTE WELL: Use this instruction only if an exhibit was introduced for illustrative purposes. If all exhibits were received as substantive evidence, then no instruction is necessary.

(Specify illustrative exhibit) was received in evidence in this case for the purpose of illustrating and explaining the testimony of the witness (*name witness*). This [photograph] [map] [model] [chart] is not substantive or direct evidence, that is, it has not been received into evidence to prove any fact in this case. You may consider this [photograph] [map] [model] [chart] only for the purpose of illustrating and explaining the testimony of the witness, to the extent, if any, that you find that it does so illustrate and explain the testimony of the witness. You may not consider it for any other purpose in connection with the trial of this case.

NOTE WELL: If a photograph, videotape, motion picture, or other photographic representation was introduced as substantive evidence, use the following language to distinguish such exhibit from the exhibit admitted for illustrative purposes.

Now (specify substantive exhibit) was received in evidence as substantive evidence. This means that your consideration of this [photograph] [videotape] [motion picture] [photographic representation] is not limited to purposes of illustration but may be considered by you as evidence of what you determine it tends to show or represent.

E. N.C.P.I.-Civil 101.41: STIPULATIONS

Plaintiff (*name plaintiff*) and defendant (*name defendant*) have agreed or stipulated that certain facts shall be accepted by you as true without further proof. The agreed facts in this case are as follows:

(Here read stipulated facts)

Since the parties have so agreed, you are to take these facts as true for the purpose of this case.

F. N.C.P.I.-Civil 101.43: DEPOSITION EVIDENCE

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. You are to consider the credibility and weight of this testimony, insofar as possible, in the same way as if the witness had been present and testified from the witness stand. (At an earlier time, the deposition of a [party] [witness] was taken under oath. If, in the deposition, such [party] [witness] made contradictory statements or any statements in conflict with *his* testimony here in court, you may consider such conflicts and any explanations therefor in determining *his* credibility, the same as if the testimony in the deposition had been given at the trial.)

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