

TAKING A CIVIL VERDICT

Adapted from NORTH CAROLINA TRIAL JUDGES' BENCH BOOK, SUPERIOR COURT, VOL. 2 (Judicial Authority, Civil Trial and Procedure), Chap. 23 (3d ed.) (Institute of Government 1999) (out of print) (adapted November 2012)

A. Procedure

1. *Note about presence of parties:* The right to be present at any part of the trial of a civil case, including the return of the verdict, is waived by voluntary absence at a time when it is known that proceedings are being conducted. Rule 13, General Rules of Practice for the Superior and District Courts. *Also see Barger Bros. v. Alley*, 167 N.C. 362 (1914).
2. When informed that the jury has reached a verdict, direct the bailiff to bring jurors into the courtroom and seat them in jury box. If another trial is in progress, have the jurors stand in front of the jury box. If return of the verdict might be prejudicial to a party whose trial is in progress, the jury in the current trial should be taken from courtroom while the verdict is received.
3. Request the foreperson of the jury to stand and state his or her name for the record.
4. Ask the foreperson if the jury has reached a unanimous verdict (unless the parties have stipulated pursuant to Rule 48, N.C. Rules of Civil Procedure, to a non-unanimous verdict) and tell the foreperson to answer "yes" or "no."
5. If the answer is "yes," direct the bailiff to take the verdict form from the foreperson and hand it to you.
6. Examine the form to determine whether it conforms with the law and jury instructions.
7. The verdict should be received if it substantially answers all issues and the jury's intention is unequivocally clear. If the verdict is remiss on either count, the judge should direct the jury to return to jury room and may give appropriate instructions. *Southeastern Fire Ins. Co. v. Walton*, 256 N.C. 345 (1962); *Edwards v. Motor Co.*, 235 N.C. 269 (1952).
8. Hand the verdict form to the clerk and direct the clerk to take the verdict.

B. Dialogue for Taking a Verdict

Judge: *"Would the person selected as your foreperson please stand?"*

Judge: *"[Mr./Ms. Foreperson], for the record, would you please state your name."*

Foreperson: " ____ [states name] ____."

Judge: "[Mr./Ms. Foreperson], please answer this question 'Yes' or 'No.' Has the jury reached a unanimous verdict. . . ?" [when multiple verdicts, add: ". . . as to each case]?"

Foreperson: " ____ [Yes / No] ____ "

If the foreperson answers "No," address the bailiff: "Mr. Bailiff, you may return the jury to the jury room to continue deliberations."

If the foreperson answers "Yes," ask, "Have you signed and dated the verdict sheet?" If the answer is "yes," proceed to take the verdict.

Judge: "[Mr./Ms. Foreperson], please hand the verdict form to the bailiff who will bring it to me."

(Examine the verdict form. If the verdict is to be received, hand the verdict form to the clerk.)

Judge: "[Mr./Ms.] Clerk, you may take the verdict of the jury."

Judge (addressing plaintiff's counsel): "Is there anything further with this jury for the plaintiff?"

Plaintiff's Counsel: " ____ [Yes / No, etc.] ____ "

Judge (addressing defendant's counsel): "Is there anything further with this jury for the defendant?"

Defendant's Counsel: " ____ [Yes / No, etc.] ____ "

If a poll is not requested by counsel, the jury may be discharged.

Judge: "Members of the jury, this concludes your work (in this case) and you are now discharged as jurors (in this case)."

Your work has been concluded in this case.

As a juror you are now permitted to discuss the evidence and all aspects of [this case][the case(s) in which you were involved], including your verdict and your deliberations with other persons, but you are not required to do so.

It is in the public interest that there be the utmost freedom of debate in the jury room and that each juror be permitted to express his or her views without fear of incurring public scorn or the anger of any of the parties. In any event, you should be careful what you say. You should make no statement or answer any question unless you are sure that your statement or answer is complete and correct. It is only fair that you should make no statement that you would not be willing to make, under oath, in the presence of the court, your fellow jurors, the witnesses, the parties, and their counsel.

In any event, you are directed not to discuss any aspect of this case including your verdict and your deliberations with anyone until you have completed your work for the entire week and I have discharged you at the end of the week. At that time, each of you must determine for yourself whether or not you will discuss these matters. [Delete this paragraph if the jurors will be discharged for the week.]

— From N.C.P.I. – Civil 150.60, Discharging the Jury.

C. Receiving the Verdict

1. It is the judge's duty, before accepting the verdict, to scrutinize its form and substance to prevent insufficient or inconsistent findings from becoming a record of the court. *Southeastern Fire Ins. Co. v. Walton*, 256 N.C. 345 (1962); *Southern Nat'l Bank v. Pocock*, 29 N.C. App. 52 (1976).
2. Inconsistency:
 - (a) When a special finding of facts is inconsistent with the general verdict, the special finding controls and the judge is to enter judgment accordingly. Rule 49(d), N.C. Rules of Civil Procedure.
 - (b) When the jury's findings are indefinite or inconsistent, the judge may give additional instructions and direct jurors to retire again to bring in a proper verdict, but may not tell them what verdict to return. *Edwards v. Motor Co.*, 235 N.C. 269 (1952).
 - (c) The judge may vacate the answer to a particular issue when doing so does not affect the import of the answers to other issues. *Southern Nat'l Bank v. Pocock*, 29 N.C. App. 52 (1976).

D. Judicial Comment on the Verdict [Rule 51(c), N.C. Rules of Civil Procedure]

1. "The judge shall make no comment on any verdict in open court in the presence or hearing of any member of the jury panel . . ." Rule 51(c).
 - (a) The criterion for determining whether the judge's comments deprived a litigant of the right to a fair trial is the probable effect on the jury. *Worrell v. Hennis Credit Union*, 12 N.C. App. 275 (1971). Thus, a judge's remarks after the verdict was returned that he "agree[d] particular[ly]" with the verdict respecting a negligence issue and "felt it was very close to being a matter of law . . ." were not appropriate under a strict reading of Rule 51 but did not constitute reversible error. *Haymore v. Thew Shovel Co.*, 116 N.C. App. 40 (1994).
 - (b) Remarks in the presence of the jury are not always prejudicial error. The remarks have to be considered in light of the circumstances under which they are made. It is incumbent on the appellant to show that the trial

court's expression of an opinion was prejudicial. *Colonial Pipeline Co. v. Weaver*, 310 N.C. 93 (1984).

- (c) A remark to the jury on the need to shorten the length of the trial was not a statement of opinion and, even if improper, was not prejudicial. *Ward v. McDonald*, 100 N.C. App. 359 (1990).
 - (d) A judge's remarks on the opening of court for the second and third days of trial that jurors should "sit back, relax and stay tuned for the next portion of the trial" may have been informal and jocular, but did not constitute reversible error. *Lenins v. K-Mart Corp*, 98 N.C. App. 590 (1990).
2. Should the judge make any comment on the verdict or "praise or criticize any jury on account of its verdict, whether such praise, criticism or comment be made inadvertently or intentionally, such praise, criticism or comment by the judge shall for any party to any other action remaining to be tried constitute valid grounds as a matter of right for a continuance of any action to a time when all members of the jury panel are no longer serving." Rule 51(c).
 3. These provisions do not apply to the hearing of motions for a new trial or for judgment notwithstanding the verdict.

E. Polling the Jury

1. The parties have a right to have the jury polled, but polling is not essential to the validity of the proceedings. In *re Suggs Will*, 194 N.C. 638 (1927); *Smith v. Paul*, 133 N.C. 66 (1903).
2. Either the judge or the clerk may poll the jury.

Dialogue for polling [assumes unanimous verdict required]:

Judge: *"Members of the jury, you will now be asked individually about your verdict(s). The clerk will call your name and you should stand when your name is called. I will then ask each of you substantially the following questions as to the/each verdict you have returned: 'In Case No. ____, your foreperson has returned a verdict for __ (plaintiff)(defendant)__. Was this your verdict?' You will answer that question either yes or no. You will then be asked: 'Do you still agree?' And you will answer that question either yes or no. Then you may be seated.*

If you do not understand the questions you are asked, you should ask me to repeat the questions. You should listen to the questions as I ask them and you should be sure you understand them before you answer. As I said, all the questions may be answered 'yes' or 'no.'

[Mr./Ms.] Clerk, call the names of the jurors. Call the name of the foreperson first."

Clerk: " _____[calls name of foreperson]_____ "

Judge: "[Mr./Ms.] Foreperson, you have returned as the unanimous verdict of the jury in Case No. _____ for ___(plaintiff)(defendant)__. Was this your verdict?"

Foreperson: " ___ Yes / No ___."

Judge: "Is this still your verdict?"

Foreperson: " ___ Yes / No ___."

Judge directs similar questions to foreperson as to each verdict returned.

Judge: "You may be seated."

Clerk: " _____[name of juror]_____ "

Judge: "In Case No. _____, your foreperson has returned a verdict for ___(plaintiff)(defendant)__. Was this your verdict?"

Juror: " ___ Yes / No ___."

Judge: "Is it still your verdict?"

Juror: " ___ Yes / No ___."

Juror is asked similar questions about each verdict returned.

Judge: "You may be seated."

If a juror answers a question "No" or otherwise qualifies the juror's verdict, the jury must be instructed as to the requirements of a unanimous verdict and must retire to the jury room and deliberate further on its verdict.

If all jurors answer each question "Yes," the judge should make the following statement for the record as to each verdict returned:

Judge: "Let the record show that, after the verdict was returned in open court, the jury was polled; that each juror was asked if he or she had returned in Case No. _____ a verdict for ___(plaintiff)(defendant)__ and if it was still his or her verdict; that each juror answered each question 'yes'; and the court concludes that the verdict in Case No. _____ for ___(plaintiff)(defendant)__ is a unanimous verdict. The verdict is accepted by the court and ordered to be recorded by the clerk."

The judge should make a similar statement for the record for each verdict returned.