

100.40 DEPOSITION TESTIMONY.¹

NOTE WELL: This instruction should be used during the trial when evidence is to be presented by means of a deposition, either stenographic or video.

Testimony is now to be presented to you by means of a deposition. I want to explain this procedure to you.

Under certain circumstances, a party to a lawsuit may present testimony through the use of a deposition instead of bringing the witness physically to court.

A deposition is the sworn testimony of a witness given before the trial. Attorneys for the parties have the opportunity to be present and ask the witness questions.

[In this case, the deposition was transcribed. The question(s) propounded to the witness will be read by (*name reader(s) of questions*) and the answer(s) of the witness (*name witness*) will be read by (*name reader(s) of answers*). In addition, (*name of other questioner(s)*) will read the question(s) asked by other lawyers who were present at the time the deposition was taken.)]²

[In this case, in addition to having the stenographic transcript of the deposition, counsel also made a videotape of the witness at the time the questions were asked and answered. You will now see this videotape deposition on the television set(s) in front of you.]³

[(During the videotape presentation you may hear objections stated by the attorneys. Do not concern yourself with the objections. You may consider all the questions and answers that you hear as being proper for your consideration as evidence.)]

This testimony is entitled to the same consideration and is to be judged as to credibility and weighed, and otherwise considered by you, insofar as possible, in the same way as if the witness were present and gave from the witness stand the same answers as were given by the witness when the deposition was taken. No more or no less weight should be given to any piece of evidence based solely upon the format in which it is presented to you, either by a live witness, a videotape of a witness, or the reading of a stenographic transcript of the deposition of a particular witness.⁴

1. N.C. Gen. Stat. § 1A-1, Rules 30 & Rule 31. There are no North Carolina cases, statutes, or rules on how a stenographic deposition is to be presented. The usual procedure, permitted in most courts, allows one person to read the questions and another to read the answers.

2. Use this paragraph when a stenographic transcript of the deposition is to be read to the jury.

3. Use this paragraph when a videotape of the deposition is to be shown to the jury. N.C. Gen. Stat. § 1A-1, Rule 30(b)(4).

4. The presiding judge may desire to modify and shorten this instruction if any additional depositions are offered. For instance, depending on the circumstances and the requests of counsel, the presiding judge could simply say: "Testimony is again to be presented to you by means of a deposition. You will recall that I have already explained to you what a deposition is, how it may be used and how you are to consider and weigh such sworn testimony and I shall not repeat that. . . . (You will want to use the third paragraph above if the deposition is by stenographic transcript or the fourth paragraph above if it is a video deposition). . . ."