

100.70 TAKING OF NOTES BY JURORS.¹

NOTE WELL: While the Rules of Civil Procedure have no statutory analogue to N.C. Gen. Stat. § 15A-1228, which permits jurors in a criminal case to make notes and take them into the jury room (except where the judge on his own motion or the motion of a party rules otherwise in his discretion), note-taking in civil cases has been left, as a matter of practice, to the sound discretion of the trial judge.

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

[If Allowed: In my discretion, you will be allowed to take notes in this case.

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 in your deliberations. All of the evidence is important. Do not let note-taking distract you. Listen at all times intently to the testimony.

Any notes taken by you are not to be considered evidence in this case. Your notes are only to assist your memory and are not entitled to any greater weight than the individual recollections of other jurors.]

1. Absent a statute permitting or prohibiting note-taking by jurors, the majority of federal circuits have held that the decision lies in the discretion of the trial judge. That the decision should lie within the trial judge's discretion is supported by the fact that neither arguments for or against this issue are so dispositive and outweighing that note-taking should or should not be allowed as a matter of law. Those arguments favoring note-taking are that it is, "when done properly, . . . a valuable method of refreshing memory. In addition, note-taking may help focus jurors' concentration on the proceedings and help prevent their attention from wandering." *United States v. Maclean*, 578 F.2d 64, 66 (3rd Cir. 1978). Arguments against note-taking contend that too much significance will be placed on all matters "arbitrarily" excluded from the notes by the note-taker. Similarly, the

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few note-takers might dominate jury deliberations and even falsify testimony deliberately. Additionally, by busying themselves with note-taking, some believe that these jurors will miss important testimony. Finally, some simply believe that the "average" juror cannot take notes well and will therefore take notes of inconsequential and irrelevant matters while excluding the substantial issues of the case. *Id.*