

101.11 CLEAR, STRONG AND CONVINCING EVIDENCE.¹

The law requires (*name party with burden of proof*) to prove each element of this issue by evidence which is clear, strong and convincing. Usually, the law only requires matters to be proved by the greater weight of the evidence. That is not the situation with this issue. Before (*name party with burden of proof*) is entitled to prevail, he must prove this issue by clear, strong and convincing evidence.

Clear, strong and convincing evidence is evidence which, in its character and weight, establishes what (*name party with burden of proof*) seeks to prove in a clear, strong and convincing fashion. You shall interpret and apply the words "clear," "strong" and "convincing" in accordance with their commonly understood and accepted meanings in everyday speech.²

1. This burden applies to the following types of cases (not intended to be exclusive): reformation of a written instrument for mistake or inadvertence; conversion of an absolute deed into a mortgage; attaching a parol or resulting or constructive trust to a legal estate; establishing a lost deed or will; proving an oral agreement which modifies a written contract; establishing a special or local custom; and proving certain matters before the Judicial Standards Commission or in judicial disbarment proceedings. Brandis and Broun on *North Carolina Evidence* § 42 (6th ed. 2004).

Where this standard applies to less than all of the issues to be submitted it may be necessary to modify other instructions accordingly, see for example N.C.P.I.-Civil 101.10 "Burden of Proof and Greater Weight of the Evidence."

2. A further explanation may result in error. *McCorkle v. Beatty*, 225 N.C. 178, 33 S.E.2d 753 (1945).