

101.43 DEPOSITION EVIDENCE.<sup>1</sup>

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.]<sup>2</sup>

(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.<sup>3</sup>)

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1. N.C. Gen. Stat. § 1A-1, Rules 30 and 31.

2. N.C. Gen. Stat. § 1A-1, Rule 32(a). The "fairness doctrine" would appear to apply to depositions. See Rule 32(a)(5) and N.C. Rule of Evidence 106.

3. Use this paragraph where the deposition was used for impeachment purposes. N.C. Gen. Stat. § 1A-1, Rule 32(a)(1) and (2); 1 California Jury Instructions, No. 31A (Revised); McBride, *The Art of Instructing a Jury*, § 3.37.