

N.C.P.I.—Crim. 101.35

CONCLUDING INSTRUCTIONS—JURY CONSIDER ALL EVIDENCE, JUDGE NOT EXPRESS OPINION, UNANIMOUS VERDICT, SELECTION OF FOREPERSON.
GENERAL CRIMINAL VOLUME
REPLACEMENT APRIL 2024

101.35 CONCLUDING INSTRUCTIONS—JURY CONSIDER ALL EVIDENCE, JUDGE NOT EXPRESS OPINION, UNANIMOUS VERDICT, SELECTION OF FOREPERSON.

Members of the jury, you have heard the evidence and the arguments of counsel. If your recollection of the evidence differs from that of the attorneys, you are to rely solely upon your recollection. Your duty is to remember the evidence whether called to your attention or not.

You should consider all the evidence, the arguments, contentions and positions urged by the attorney(s), and any other contention that arises from the evidence.

The law requires the presiding judge to be impartial. You should not infer from anything I have done or said that the evidence is to be believed or disbelieved, that a fact has been proved or what your findings ought to be. It is your duty to find the facts and to render a verdict reflecting the truth. All twelve of you must agree to your verdict. You cannot reach a verdict by majority vote.

When you have agreed upon a unanimous verdict(s) (as to each charge) your foreperson should so indicate on the verdict form(s).

NOTE WELL: At this point, the court may choose to excuse the alternate juror(s). However, the alternate juror(s) may be retained for potential substitution after the jury has begun deliberations, pursuant to N.C. Gen. § 15A-1215(a). Effective October 1, 2021, for jurors and alternate jurors selected on or after that date, S.L. 2021-94 Amended N.C. GEN. STAT. § 15A-1215(a) to permit an alternate juror to replace a regular juror after deliberations have begun. If an alternate juror is substituted after deliberations have begun, then the jury should be instructed to begin deliberations anew pursuant to N.C.P.I.—CRIM. 100.40.

NOTE WELL: The North Carolina Court of Appeals in State v. Chambers, 292 N.C. App. 459, 898 S.E.2d 86 (2024),

ruled that substituting an alternate juror for one of the original twelve after deliberations have begun violates the Constitution and is reversible error. This holding has been stayed and a petition for discretionary review granted by the Supreme Court of North Carolina. 901 S.E.2d 774 (2024).

NOTE WELL: If alternate jurors are retained, the trial court should remind the jurors that they are not to discuss the case among themselves or with anyone else while sequestered, and that all other instructions governing their conduct remain in effect until they are released.

After reaching the jury room your first order of business is to select your foreperson. You may begin your deliberations when the bailiff delivers the verdict form(s) to you. Your foreperson should lead the deliberations. When you have unanimously agreed upon a verdict (as to each charge) and are ready to announce [it] [them] your foreperson should record your verdict(s), sign and date the verdict form(s), and notify the bailiff by knocking on the jury room door (or otherwise summoning the bailiff). You will be returned to the courtroom and your verdict will be announced.

Thank you. You may retire and select your foreperson.

NOTE WELL: After the jury retires and before sending the verdict form(s) to the jury the judge must address the attorneys as follows:

Before the jury begins deliberation the Court will consider requests for corrections and additions to the instructions and to other matters you deem appropriate.¹

Are there any objections or specific requests for corrections or additions to the instructions?

NOTE WELL: Consider all specific requests and if appropriate recall the jury and correct or add to the charge. If request(s) for

corrections or additions are rejected, attorneys must be allowed to make specific objections on the record.

After all specific requests have been submitted and rejected and the proper notation(s) recorded, hand the verdict form(s) to the bailiff and instruct the bailiff to deliver [it] [them] to the jury without comment.

If necessary to return the jury to the courtroom for corrections or additions to the charge the judge should address the jury as follows:

Members of the jury, my attention has been properly directed to instructions necessary to [correct] [supplement] my previous instructions.

I charge you that...

You may retire now and begin your deliberation when you receive the written verdict form(s).

NOTE WELL: Repeat to the lawyers the question regarding objections, corrections or additions. If there are further instructions upon specific requests, follow the same procedure as before; if not, instruct the bailiff to deliver the verdict form(s) to the jury.

NOTE WELL: If the jury requests additional instructions after retiring to deliberate, the trial judge should obtain the jury requests in writing, confer with the attorneys, and further instruct the jury if necessary.

S. v. Privette, 317 N.C. 148 (1986) holds that it is within the trial court's discretion to determine whether instructions in addition to those requested should be given at the same time.

NOTE WELL: It is suggested that requests from the jury should be reduced to writing, marked as court exhibits, and made part of the record. In a capital case, the failure to share the jury's questions with the defendant denies the defendant the right to be present at every stage of the proceeding although the State may be able to prove the error was harmless beyond a reasonable doubt. State v. Smith, 654 S.E.2d 730 (N.C. Ct. App. 2008).

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1. While N.C. Gen. Stat. § 15A-1231 does not expressly require the judge to address the attorneys after the charge and before the jury begins deliberations, when applying Appellate Rule 10(b)(2) pertaining to defendant’s assignment of error as to jury instructions, the North Carolina Court of Appeals has not allowed the defendant to assign error to the jury charge if given an opportunity by the trial judge to object before deliberations. *State v. Godwin*, 59 N.C. App. 662, 297 S.E.2d 623 (1982).