

104.35 CONTENTIONS OF CONTRIBUTORY NEGLIGENCE.

In this case, the defendant contends, and the plaintiff denies, that the plaintiff was negligent in one or more of the following ways:¹

(Read all contentions of contributory negligence supported by the evidence.)

The defendant further contends, and the plaintiff denies, that plaintiff's negligence was a proximate cause of and contributed to the plaintiff's [injury] [damage].

I instruct you that contributory negligence is not to be presumed from the mere fact of [injury] [damage].

(Give law as to each contention of contributory negligence included above.)

1. N.C. Gen. Stat. § 1A-1, Rule 51(a) requires that when a judge reviews the contentions of the parties, he must give equal stress to the contentions of each party. While the above instruction is sufficient in most instances to satisfy this requirement, the "peculiar posture" of a case might require a judge to give a corresponding statement of what the plaintiff contends in defense to the defendant's claim of contributory negligence. This was the situation in *Daniels v. Jones*, 42 N.C. App. 555 257 S.E.2d 120 (1979), where the apparent use of the above charge "under the peculiar posture of this case, . . . did not satisfy the mandate of the statute." *Id.* at 559, 257 S.E.2d at 122.