

32.4 Requests for Instructions

- A. In General
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A. In General

Parties may submit proposed jury instructions at the close of the evidence or at an earlier time if directed by the judge. If submitted, the instructions must be in writing and the requesting party must furnish a copy to opposing counsel. G.S. 15A-1231(a).

Practice note: Although the language of the above statute is not mandatory, the better practice is to always submit a written request for instructions with copies of the instructions attached. File the request for instructions as soon as possible so the trial judge will have time to read them before the charge conference. Special instructions, discussed below, must always be *in writing* and filed *before* the charge conference.

B. Requests for Special Instructions

Form of request. A defendant may request special instructions on subordinate or nonessential features of a case that do not relate to the elements of the offense or to the defendant's criminal responsibility. *See supra* § 32.3C, Subordinate Features of the Case. These requests must be:

- in writing,
- entitled in the cause, and
- signed by counsel submitting them.

G.S. 1-181(a); *see also* N.C. GEN. R. PRAC. SUPER. & DIST. CT. 21 (providing that “[i]f special instructions are desired, they should be submitted in writing to the trial judge at or before the jury instruction conference”). Although G.S. 1-181 is located in Chapter 1 entitled Civil Procedure, N.C. appellate courts have long cited it as controlling in criminal cases. *See, e.g., State v. Broome*, 268 N.C. 298 (1966) (per curiam); *State v. Gettys*, 243 N.C. App. 590 (2015); *State v. Long*, 20 N.C. App. 91 (1973).

If a request for a special instruction does not meet the requirements of G.S. 1-181(a), it is within the discretion of the trial judge whether to give or refuse the instruction. *Broome*, 268 N.C. 298; *State v. Mewborn*, 178 N.C. App. 281 (2006). Additionally, the trial judge's denial of an oral request for special instruction will not be found to be error on appeal. *See State v. Martin*, 322 N.C. 229 (1988) (holding that because defendant did not submit his request for instructions on his good character and reputation in writing, it was not error for the judge to decline to charge on that feature of the case).

N.C. Pattern Jury Instructions on substantial features of the case are generally not considered “special instructions.” However, a request for modifications of pattern instructions is “tantamount to a request for special instructions” so it must comply with the requirements for special instructions. *See State v. McNeill*, 346 N.C. 233 (1997) (no error by trial judge in denying defendant’s oral request to modify the pattern instruction for premeditation and deliberation).

Timing of request. Requests for special instructions must be submitted to the judge before the judge begins to give the jury charge. G.S. 1-181(b); *see also* N.C. GEN. R. PRAC. SUPER. & DIST. CT. 21 (providing that “[i]f special instructions are desired, they should be submitted in writing to the trial judge at or before the jury instruction conference”); *State v. Long*, 20 N.C. App. 91 (1973) (holding that a request for special instruction is not timely if it is tendered after the jury retires to deliberate). However, the judge may, in his or her discretion, consider requests for special instructions regardless of the time they are made. G.S. 1-181(b); *see also State v. Broome*, 268 N.C. 298 (1966) (per curiam); *State v. Gettys*, 243 N.C. App. 590 (2015).

Right to instruction. If a party requests a special instruction that is legally correct in itself and is pertinent to the evidence and the issues in the case, the judge must give the instruction at least in substance. *State v. Lamb*, 321 N.C. 633 (1988); *State v. Craig*, 167 N.C. App. 793 (2005). The judge need not give the instruction in the exact language of the request, but he or she may not change the sense of it or so qualify it as to weaken its force. *State v. Puckett*, 54 N.C. App. 576 (1981).

Practice note: If you would like an instruction defining reasonable doubt, you must specifically request it or the trial judge may not define the concept. *See State v. Miller*, 344 N.C. 658 (1996); *see also* N.C. Pattern Jury Instruction—Crim. 101.10 n.1 (June 2008), *citing State v. Shaw*, 284 N.C. 366, 374 (1973). For a discussion of other instructions that must be specifically requested, such as a defendant’s decision not to testify, *see supra* § 32.3C, Subordinate Features of the Case.
