

### **32.5 Additional Instructions after Jury Retires**

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### **32.5 Additional Instructions after Jury Retires**

#### **A. In General**

After the jury has retired for deliberation, the trial judge may recall the jurors in order to give additional instructions to:

- respond to an inquiry of the jury made in open court; or
- correct or withdraw an erroneous instruction; or
- clarify an ambiguous instruction; or
- instruct on a point of law that should have been covered in the original instructions.

G.S. 15A-1234(a). Merely repeating previously given instructions at the jury's request does not constitute "additional instructions" within the meaning of this statute. *See State v. Buchanan*, 108 N.C. App. 338, 341 (1992); *see also State v. Weathers*, 339 N.C. 441 (1994) (agreeing with *Buchanan* court's interpretation of G.S. 15A-1234).

Whether to give additional instructions is a matter within the discretion of the trial judge because he or she "is in the best position to determine whether further additional instruction will aid or confuse the jury in its deliberations, or if further instruction will prevent or cause in itself an undue emphasis being placed on a particular portion of the court's instructions." *State v. Prevette*, 317 N.C. 148, 164 (1986); *see also State v. Bartlett*, 153 N.C. App. 680 (2002). However, it will be deemed prejudicial error for the trial judge to fail to give further instructions answering a jury's question on an important point of law. *See State v. Hockett*, 309 N.C. 794 (1983) (reversing case and remanding for new trial where trial judge refused to answer the jury's questions about the difference between the threat of and use of a deadly weapon).

#### **B. Repetition of Instructions**

Whenever additional instructions are given, the judge may also give or repeat other instructions to avoid giving undue prominence to additional instructions. G.S. 15A-1234(b). The decision whether to repeat other instructions is within the trial judge's discretion. *State v. Prevette*, 317 N.C. 148 (1986). The trial judge is not required to repeat instructions that have been previously given absent an error in the charge. *State v.*

*Hockett*, 309 N.C. 794 (1983). Courts have found needless repetition to be undesirable and have occasionally held it to be erroneous. *See State v. Dawson*, 278 N.C. 351 (1971).

### C. Special Requirements

**Notice requirement.** Before giving additional instructions, the trial judge must inform the parties generally of the instructions he or she intends to give. The parties must be afforded an opportunity to be heard. G.S. 15A-1234(c). If a judge is merely repeating or clarifying an instruction at the jury's request, he or she does not have to give the parties an opportunity to be heard before reinstruction. *State v. Weathers*, 339 N.C. 441 (1994); *State v. Davidson*, 131 N.C. App. 276 (1998).

**Right to additional arguments.** If the additional instructions, by restriction or enlargement, change the permissible verdicts of the jury, the parties *must* be allowed additional jury arguments on request. Otherwise, whether to allow additional arguments by counsel is within the discretion of the trial judge. G.S. 15A-1234(c); *see also State v. Davidson*, 131 N.C. App. 276 (1998).

**Procedural requirements.** Under G.S. 15A-1234(d), all additional instructions must be given in open court and must be made a part of the record. The full jury must be returned to the courtroom when additional instructions are given under G.S. 15A-1234. *See State v. Tucker*, 91 N.C. App. 511 (1988) (finding that trial judge committed reversible error by summoning only the jury foreman to the courtroom and answering the jury's question regarding the law applicable to the case); *cf. State v. Wilson*, 363 N.C. 478 (2009) (finding a violation of defendant's right to a unanimous verdict under N.C. Const. art. I, sec. 24 where the trial judge gave additional instructions to less than the entire jury).

### D. Instructions When Jury Indicates Deadlock

G.S. 15A-1235(c) provides that if the jury indicates a deadlock, the trial judge may give or repeat the instructions about reaching a verdict provided in G.S. 15A-1235(a) and (b). For discussion on further instructions to the jury when it has indicated its failure to reach a verdict, see *infra* § 34.5A, Deliberations and Verdict: Further Instructions.