

32.8 IDS Performance Guidelines: Practical Considerations

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Several considerations and recommendations with respect to reviewing, requesting, and objecting to jury instructions are contained *infra* in Appendix A, N.C. COMM’N ON INDIGENT DEFENSE SERVS., PERFORMANCE GUIDELINES FOR INDIGENT DEFENSE REPRESENTATION IN NON-CAPITAL CRIMINAL CASES AT THE TRIAL LEVEL (Nov. 2004). The pertinent guideline is reprinted below:

Guideline 7.8 Jury Instructions

- (a) Counsel should be familiar with the law and the individual judge’s practices concerning ruling on proposed instructions, charging the jury, use of pattern charges, and preserving objections to the instructions.
- (b) Pursuant to G.S. 15A-1231, counsel should submit in writing proposed special instructions or modifications of the pattern jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Where possible, counsel should provide case law in support of the proposed instructions. Counsel should try to ensure that all jury instruction discussions are on the record.
- (c) Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.
- (d) If the court does not adopt instructions requested by counsel, or gives instructions over counsel’s objection, counsel should take all steps necessary to preserve the record for appeal, including filing a copy of proposed instructions pursuant to G.S. 15A-1231.
- (e) During delivery of the charge, counsel should be alert to any deviations from the judge’s planned instructions, object to deviations unfavorable to the client, and, if necessary, request additional or curative instructions.
- (f) If there are grounds for objecting to any jury instructions, counsel should object before the verdict form is submitted to the jury and the jury is allowed to begin deliberations.
- (g) If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should ask the judge to state the proposed charge to counsel before it is delivered to the jury.

Counsel should also try to ensure that any supplemental instructions are given to the entire jury in open court pursuant to G.S. 15A-1234(d).