

1.15 NOTE-TAKING BY JURORS¹ (Approved 11/98)

A. Preliminary Instruction Before Trial

(We have provided each of you with a pad and pencil.) During the course of this trial you will be permitted to take notes if you feel this would help you. I emphasize that you are permitted, not required, to take notes. What you do or do not write down is a strictly personal matter with each individual juror. Your notes are confidential. No one else will have a right to see your notes at any time. We will collect your notes at the end of each court day and return them to you for the next court day. At the end of the trial, we will destroy your notes.

During your deliberations, the notes of a juror will not be evidence. Notes may be used to refresh your recollection, not to replace it. Your understanding and recollection of the evidence will be more significant than a note. Notes are memory aids and are not evidence or the official record. Jurors who took few or

¹Before opening statements, the attorneys or any party may request that the jury be permitted to take notes during the trial or any portion thereof including opening and closing statements. *R.* 1:8-8(b). The trial judge has discretion to determine in the first instance if the case lends itself to the practice and to exercise control and direction over the manner in which the jurors exercise the right. *Wigler v. Newark*, 125 *N.J. Super.* 179 (App. Div. 1973), *certif. den.* 64 *N.J.* 490 (1974).

For further information see also: Report of Supreme Court Committee on Civil Case Management and Procedures (the "Schreiber Report"), *N.J.L.J.* March 28, 1985, which suggests this note-taking procedure. The Civil Practice Committee in its 1986 Annual Report concurred in the recommendations of the Schreiber Report regarding the use of these instructions in appropriate cases at the discretion of the trial judge; the Committee, however, recommended against incorporation of these procedures in the Rules of Court. The Supreme Court adopted these recommendations at its February 1, 1988 Administrative Conference.

no notes should not permit their independent recollection of the evidence to be influenced solely by the fact that other jurors have taken notes. Their notes may be wrong and your recollection right.

It is important that each of you pay attention to all of the testimony. When a witness is on the stand, do not allow yourself to be distracted by your own note-taking or that of a fellow juror. You need to see the witness to evaluate that witness's believability.

B. Juror's Notes - Post Trial

You are to resolve the factual disputes in this case based upon the exhibits which you will have in the jury room with you and your recollection of the testimony of witnesses as bearing on those issues.

You have been permitted to make notes during the course of this trial. But as I told you before we started, these notes are not evidence. You may use the notes during your deliberations to help you to recall what the testimony was. However, do not overemphasize the significance of a written note made by yourself or by a fellow juror. If a note does help to refresh your recollection, it has then been useful, but it is your recollection not the note which is important. If your memory differs, you have an absolute right to rely solely on your own recollection.