

2.00

INSTRUCTIONS DURING TRIAL

2.01 Evaluation of Deposition or Prior Testimony

The testimony of [(name) (several witnesses)] [is now going to be] [will be] [was] presented by [video tape] [and] [the reading of his/her testimony]. You should give this testimony the same consideration you would give it had the witness personally appeared in court.

Notes on Use

If only one evidence deposition or videotape is going to be used during trial, the court may want to give this instruction immediately before the presentation of this testimony and to identify this witness. When the testimony of more than one witness is to be presented in this manner, the court may elect to provide a more generic description of these witnesses in order to avoid repetition and the need to submit several similar written instructions to the jury. In such case, this instruction can be given before trial or before the first such witness is presented. When reading this instruction during trial, the court should use the parenthetical phrase “is now going to be.” The written instruction submitted to the jury before deliberations should use the term “was.”

Comment

This instruction replaces former IPI 2.11.

Informing the jury that evidence depositions are to receive no greater or lesser consideration than live testimony has been approved. *Olcese v. Mobile Fruit & Trading Co.*, 211 Ill. 539, 545; 71 N.E. 1084, 1087 (1904); *Powell v. Myers Sherman Co.*, 309 Ill.App. 12, 22; 32 N.E.2d 663, 668 (2d Dist.1941); *Pozdro v. Dynowski*, 83 Ill.App.2d 79, 88; 226 N.E.2d 377, 381 (1st Dist.1967); *Brubaker v. Gould*, 34 Ill.App.2d 421, 443; 180 N.E.2d 873, 882-883 (1st Dist.1962).

Under certain circumstances, the former testimony of a witness who is now unavailable may be admitted. *George v. Moorhead*, 399 Ill. 497, 500; 78 N.E.2d 216, 218 (1948).