02.13 CLOSING INSTRUCTIONS — DEPOSITIONS GENERALLY

The testimony of [a witness] [some witnesses] was read to you from [a deposition] [depositions].

When a deposition is taken, the witness takes an oath that is identical in purpose to the oath given to the witnesses who testify before you here in the courtroom. All parties are given an opportunity to ask questions of a witness during a deposition [although some parties may have chosen not to ask any questions].

The law does not distinguish between deposition testimony and live testimony. Both are valid forms of testimony. Deposition testimony should be weighed by you as you would any other testimony. However, you may consider that you have not seen and heard the witness testify. It is for you to decide whether this is significant.

# Use Note

This is the standard instruction to be used when deposition evidence is introduced under Alaska R. Civ. P. 32(a). When a videotaped deposition is utilized, Instruction 02.14 should be used instead of this instruction. Sound recordings are covered by Instruction 2.15. If more than one deposition is read to the jury, the plural form of the instruction should be used.

If one party had an opportunity to ask questions during a deposition but chose not to do so, the trial court should include the bracketed clause in the second paragraph.

# Comment

Alaska R. Civ. P. 32(a) permits depositions to be used “as though the witness were then present and testifying” if the deposition satisfies Rule 32 and the Alaska Rules of Evidence. Some Alaska trial courts have instructed juries that depositions are to be given the same effect as testimony presented in court. Such instructions tend to deny the jury the opportunity to consider the absence of demeanor evidence in assessing the weight to be given different pieces of evidence. This instruction tells the jury that it can consider the fact that it has had no opportunity to see and hear the person deposed. Thus, the deposition can be used like testimony, but the jury is told that it may consider the absence of demeanor evidence when weighing the deposition testimony. See Patterson v. Cushman, 394 P.2d 657 (Alaska 1964).