02.11 CLOSING INSTRUCTIONS — EXPERT WITNESSES CALLED BY COURT

When [name of court appointed expert witness] testified, I told you that [he] [she] was appointed by me. It is permissible for you to consider the fact that this witness has not been hired by either party in judging the weight to give that testimony. But you must not assume that because the court appointed this expert [his] [her] opinion is any more valid, honest or complete than the opinions of other experts who testified. The expert testified because I thought another opinion would be helpful to you, not because I thought one expert would be better than another. You, not I, must decide who to believe and how much weight to give to the expert testimony. You should decide on the basis of the testimony you have heard which expert opinions, if any, are persuasive.

# Use Note

The likelihood that the judge will call an expert witness not called by a party is slight. This instruction must be given whenever that has occurred. A modified version should be given when the judge calls a non-expert witness to testify.

# Comment

Evidence Rule 706 authorizes the court to disclose to the jury the fact that a witness has been appointed by the court, but nothing in that rule suggests, or even implies, that the traditional role of the jury, to judge the credibility of witnesses, is to be eroded. The instruction attempts to assure that a court-appointed expert will not unduly influence the jury.