1.12   GENERAL PROVISIONS FOR STANDARD CHARGE
(Approved 11/98; Revised 8/2012)

I.   Preponderance of Evidence *(long version)* (2/1998; Revised 8/2012)

The party with the burden of proof has the burden of proving his/her/its claim by a preponderance of the evidence. If the party fails to carry that burden, the party is not entitled to your favorable decision on that claim.

To sustain the burden, the evidence supporting the claim must weigh heavier and be more persuasive in your minds than the contrary evidence. It makes no difference if the heavier weight is small in amount. As long as the evidence supporting the claim weighs heavier in your minds, then the burden of proof has been satisfied and the party who has the burden is entitled to your favorable decision on that claim.

However, if you find that the evidence is equal in weight, or if the evidence weighs heavier in your minds against the party who has the burden, then the burden of proof has not been carried and the party with the burden is not entitled to your decision on that claim.

NOTE TO JUDGE

The following bracketed statements are different descriptions of the concept of burden of proof. Use the statement(s) that are applicable.

[When I talk about weighing the evidence, I refer to its capacity to persuade you. I do not mean that you are to count the number of witnesses presented by each side or measure the length of their testimony. The concept of weighing the evidence refers to its quality and not its quantity.]

[In order to decide whether the burden of proof has been carried, you are to sift through the believable evidence and determine the persuasive weight, which you feel, should be assigned to it.]

[The right of each party to have the other party bear the required burden of proof is a substantial one and is not a mere matter of form.]

[Proof need not come wholly from the witnesses produced by the party having the burden of proof, but may be derived from any believable evidence in the case.]

[Proof of "possibility" as distinguished from "probability" is not enough.]