

1 **13-903. Burden of proof and greater weight of evidence, meaning of.**

2 When I say that the burden is on a party to prove a proposition by the greater weight of the
3 evidence, I mean that the proposition is more likely than not true.

4 Evenly balanced evidence is not sufficient.

5 If you are persuaded, considering all the evidence in the case, that a proposition on which
6 one party has the burden of proof is more probably true than not true, then this proposition has
7 been proved by the greater weight of the evidence.

8 USE NOTES

9 This instruction should be given in every F.E.L.A. case.

10 **Committee commentary.** — The burden of proof requirement in F.E.L.A. cases is no different
11 from that established under New Mexico law. *See* Devitt & Blackmar, Federal Jury Practice and
12 Instructions, § 89.12.

13 *Campbell v. Campbell*, 1957-NMSC-001, ¶ 24, 62 N.M. 330, 310 P.2d 266[–(1957)]:

14 [“][p]reponderance of the evidence simply means the greater weight of the evidence[“]”];

15 *Lumpkins v. McPhee*, 1955-NMSC-052, ¶ 35, 59 N.M. 442, 286 P.2d 299[–(1955)]: [“]“... the

16 evidence[“]”... if it tips the scales in favor of the party on whom rests the burden of proof, even

17 though it *barely* tips them. [~~He is~~][They are] then said to have established [~~his~~][their] case by a

18 preponderance of the evidence[“]”.

19 *See also* Federal Jury Practice and Instructions, § 84.11 and Virginia Jury Instructions, § 40.06.

20 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]