

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No. SC05-1091

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE, THE FLORIDA RULES OF CRIMINAL PROCEDURE, THE STANDARD JURY INSTRUCTIONS IN CIVIL CASES, AND THE STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES - IMPLEMENTATION OF JURY INNOVATIONS COMMITTEE RECOMMENDATIONS

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COMMENTS OF BILL WAGNER

COMES NOW, Bill Wagner, a member of The Florida Bar in good standing and in response to the notice in the above matter appearing in *The Florida Bar News*, on October 1, 2005, submits the following:

FORM 1.98 JUROR VOIR DIRE QUESTIONNAIRE

It is respectfully suggested that this questionnaire should be more elaborate by advising the prospective jurors regarding several matters:

- a. The confidential nature of the information and the limited ability of persons unrelated to the specific case to access the information;
- b. Any procedures for either destruction or retention of the information once the immediate need for the information has expired;
- c. Perhaps an admonition to tell the truth and be candid in giving answers would be appropriate.

PROPOSED AMENDMENTS TO THE STANDARD JURY INSTRUCTIONS IN  
CIVIL CASE PRELIMINARY INSTRUCTION 1.1(A) PROPOSAL

In the section where the Court identifies the participants, and where plaintiff's counsel is described, I suggest the words "and is the person" should be changed to "who is the person" so as to avoid possible confusion as to whether it is the attorney being referred to or the client being referred to as having filed the lawsuit.

Perhaps somewhere in this long instruction a reference should be made to the juror questionnaire confirming that the lawyers have the questionnaire and may wish to elaborate on the questions and answers. The court may wish to emphasize the confidentiality of the questionnaire, and perhaps invite the jurors who now recall that they have unintentionally made an error on the questionnaire to correct that error rather than feel bound by the answer.

DRAFT INSTRUCTIONS 2.1 AND 2.2

I would suggest consideration of some word other than "believable" in the judge's comments concerning witnesses. The term "believable" implies that a witness must be either telling the truth or lying and that the juror is to determine whether the witness tells the truth or a falsehood. As worded, the instruction is not, in my mind, sufficiently broad to include the concept of situations in which a witness is just "inaccurate" because of a "faulty memory" on some details. *See, Steven Wallace, The Puzzle of Memory: Reflections on the Divergence of Truth*

*and Accuracy*, The Florida Bar Journal, October 2005, at 24. I understand the struggle the Committee must go through in this regard, but I suggest some substitute word or wording might be appropriate. It seems to me that the real test is the extent to which the testimony of the witness is “accurate”. If that word or a substitute word is not appropriate or acceptable, perhaps an additional comment suggesting that witnesses may sometimes believe they are telling the truth, but in fact may be giving at least partially inaccurate testimony.

#### ADDITIONAL INSTRUCTIONS

While serving on the Supreme Court Standard Jury Instructions Committee (Civil), I recall an extensive discussion regarding the extent, if any, that instructions concerning the procedure of deliberation should be given. I agree with the apparent conclusion of the Committee, that such instructions should, for the most part, be avoided. On the other hand, it would perhaps be appropriate for the court to instruct on the role of the jury foreman and perhaps suggest that a foreman should be selected by consensus if possible, but in the absence of consensus, the foreman should be selected by majority secret ballot.

Respectfully submitted,

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Bill Wagner  
601 Bayshore Boulevard, Suite 910  
Tampa, Florida, 33606  
Phone: 813-225-4000  
Fla. Bar Number: 0083998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this \_\_\_\_\_ day of October, 2005 by U.S. mail to: Adrienne Frischberg Promoff, 44 West Flagler Street, Suite 2100, Miami 33130-6807; Aubrey George Rudd, 7901 Southwest 67th Ave., Suite 206, South Miami 33143-4538; George Euripedes Tragos, 600 Cleveland Street, Suite 700, Clearwater 33755-4158; Judge Winifred J. Sharp, Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach 32114-5002; Judge Dedee Costello, P.O. Box 1089, Panama City 32402; Judge Chris. W. Alternbernd , Second District Court of Appeal, 1700 N. Tampa Street, Suite 300, Tampa 33602; and Judge O.H. Eaton, Seminole County Courthouse, 301 North Park Ave., Sanford 32771-1243

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Bill Wagner  
601 Bayshore Blvd, Suite 910  
Tampa, Florida, 33606  
Phone: 813-225-4000  
Fla. Bar Number: 0083998