

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.: SC05-1091

COMMENTS ON PROPOSED AMENDMENTS

Dale Ross, Chief Judge of the Seventeenth Judicial Circuit files these comments on the proposed amendments, and states:

1. The proposed amendment to the Standard Jury Instructions in Criminal Cases "Questions By Jurors" (for which the Committee on SJI-Criminal did not endorse allowing questions by jurors, but offered the following instructions to be used should the court approve the recommendation) reads as follows:

QUESTIONS BY JURORS

During the trial you may have a question that you think should be asked of a witness. You are bound by the same rules of evidence and procedure as the attorneys.

In light of those rules, we will follow this procedure. When the attorneys have finished asking their questions of a witness, I will ask if any of you have questions. If you do, please write the question down, fold it, and give it to the bailiff without showing it to or discussing it with any other jurors. Please do not identify yourself on the question. I will meet with the attorneys to determine if it is an appropriate question. If it is, I will pose the question to the witness, the witness will answer, and the attorneys will then have the opportunity for follow up questions if they wish.

If the question is not permitted by the rules of evidence and procedure, I won't ask it. Please do not draw any inferences or come to any conclusions if one of your questions is not asked. It is merely that the question, or its answer, is inadmissible as a matter of law.

Please do not feel obligated to ask questions. Juror questions are permitted in the event that you missed something or didn't understand something, or if it would be helpful in clarifying something about the testimony; which you have just heard from a witness.

Similar to position taken by the Committee on SJI-Criminal, questions by jurors as contemplated by this proposed amendment should not be allowed. The opportunity for jurors to present questions in writing may be perceived by jurors to allow them to ask questions orally from the jury box, which may result in a mistrial or reversible error. Jurors are a fundamental part of the trial process, hearing, viewing and weighing all the evidence and making a determination of guilt or innocence. Inviting jurors further into the trial process, by allowing written questions may send a message to jurors that they can participate in the process beyond their traditional role as an arbiter of facts. Such an extension of the role of a juror may also invade upon the role and responsibilities of the prosecuting attorney and defense counsel. Similarly, jurors may feel entitled to play attorney and ask questions which they feel the attorneys in the case should have asked. This may result in delay to the proceedings, and adversely impact upon jurors who are frustrated by not having their questions asked. The role and responsibilities of a juror are challenging enough without adding variables which may detract from the prompt, efficient and fair administration of justice in criminal cases.

2. The proposed Draft Instruction 7.3(c), "Jury Deadlock", reads as follows:

JURY DEADLOCK

Members of jury, it is your duty to agree on [a verdict] [verdicts] if you can do so without violating conscientiously held convictions that are based on the evidence. No juror, from mere pride of opinion hastily formed or expressed, should refuse to agree. Yet, no juror, simply for the purpose of terminating the case, should acquiesce in a conclusion that is contrary to his own conscientiously held view of the evidence. In determining the facts, you should rely on your collective memories of the testimony. If you have been unable to resolve your differences as to what a witness said, you may ask that the court reporter read back to you a specific portion of any witness's testimony. Because the typing of the court reporter's notes can take a large amount of time, any request to have testimony read back should be as specific as possible. You should listen to each other's views, talk over your differences of opinion in a spirit of fairness and candor and, if possible, resolve your differences and come to a common conclusion, so that [a verdict] [verdicts] may be reached and this case may be disposed of.

You may retire to the jury room for further deliberations.

While one of the outcomes of this proposed amendment may be a reduction in deadlocked juries, providing for court reporter read back to the jury will result in additional costs, delay, and may not reduce the number of deadlocked juries. Memory of the testimony is not only the words that are used by the witness, but more importantly the impact that the witness had upon the juror. Typing a transcript and reading it back to the jury does not replicate the same conditions which impacted the juror during live testimony. In addition, court reporter read back may be requested frequently to resolve

disputes over jurors' memories of testimony. Costs and delay may escalate, which in turn may adversely impact the court's ability to administer justice in a fair, prompt and efficient manner.

3. The undersigned waives oral argument.
4. For the foregoing reasons, it is respectfully requested that the proposed "Questions By Jurors" amendment and the proposed "Jury Deadlock" amendment be declined.

Respectfully Submitted on November 2,
2005,

DALE ROSS, Chief Judge
Seventeenth Judicial Circuit
201 S.E. 6th Street, Ste. 881
Fort Lauderdale, Florida 33301
(954)-831-7837

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by US Mail on November 2, 2005 to: Adrienne Frischberg Promoff, 44 West Flagler Street, Suite 2100, Miami, FL 33130-6807; Aubrey George Rudd, 7901 Southwest 67th Ave., Suite 206, South Miami, FL 33143-4538; George Euripedes Tragos, 600 Cleveland Street, Suite 700, Clearwater, FL 33755-4158; Judge Winifred J. Sharp, Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, FL 32114-5002; Judge Dedee Costello, P.O. Box 1089, Panama City, FL 32402; Judge Chris W. Alternbernd, Second District Court of Appeal, 1700 N. Tampa Street, Suite 300, Tampa, FL 33602; and Judge O.H. Eaton, Seminole County Courthouse, 301 North Park Ave., Sanford, FL 32771-1243.

DALE ROSS, Chief Judge
Seventeenth Judicial Circuit
201 S.E. 6th Street, Ste. 881
Fort Lauderdale, Florida 33301
(954)-831-7837