

October 30, 2005

Hon. Barbara J. Pariente, Chief Justice
Hon. Charles T. Wells
Hon. Harry Lee Anstead
Hon. R. Fred Lewis
Hon. Peggy A Quince
Hon. Raoul G. Cantero, III
Hon. Kenneth G. Bell

Re: Public Comment: Fla. R.Civ.P., Fla.R. Crim.P., Jury Instructs; Jury Innovations

Honorable Justices of the Florida Supreme Court:

The proposed jury innovation amendments were published in *The Florida Bar News*, October 1, 2005. I stand strongly opposed to certain provisions and would like to explain my objections. The first section of my comments relates to the proposed Civil Procedure Rules revisions:

Rule 1.470: Exceptions unnecessary

a) No changes proposed.

b) **As to proposed text (regarding mandatory charging of Jury prior to Closing argument):** This should not be mandatory; it should be discretionary with the Trial Judge. There will be trials where this procedure makes good sense and others where it will not. Whether the case at hand is one where this procedure is helpful to the jury or not, is a matter

within the sound discretion of the trial Court. The rule's purpose can be very well implemented merely by allowing it to be discretionary with the trial Court.

There is no compelling reason to have the proposed Civil rule to be mandatory, but the proposed Criminal Rule (3.390) to discretionary. Both should be discretionary.

My next objection is to the proposed Juror voir dire questionnaire for Civil cases.

Form 1.984: Juror Voir Dire Questionnaire for Civil Cases

I strenuously object. Where to begin? This proposed amendment supplants a traditional 'questionnaire' for comprehensive, invasive *Juror Interrogatories*. In fact, if you count the sub-parts of these 30 questions, they exceed the number of allowable interrogatories to *parties* in Civil cases. Specifically, here are my objections:

1. I object because many of the questions are improper and do not relate to qualifications for jury service.
2. I object because jurors may be intimidated by the sheer length of it (and even more so, the length of the required *responses*) and the nature of the questions.
3. I object because it is a "Juror Exam." Some jurors are very educated and articulate. They will "pass" this exam. Others are less sophisticated but still could be well-qualified to serve, but they won't 'pass' this exam.
4. It *creates* challenges "for cause" where such challenges might otherwise not even exist. For example, if a less sophisticated juror fails to answer all the questions properly, that creates an avenue of challenges under the banner of "*for cause*" because he or she 'failed to answer the questionnaire truthfully.' Used in this way, the "Jury Exam" becomes nothing more than a *back-door way to get additional Peremptory Strikes*.

5. By placing these in the form of a “questionnaire,” it removes these questions from the trial Court’s ability to control jury selection. There may be cases in which some of the proposed questions would be proper territory for questions during voir dire. But not in a questionnaire. That’s what voir dire questioning is all about. Voir Dire questions can be tailored to fit the particular issue being tried.
6. It is inappropriate to subject prospective jurors such interrogatories. Jurors are called upon to perform a public service, generally at a significant inconvenience, and sometimes at great sacrifice. Some of these questions may be proper for certain cases but not others. Trial Judges must decide which is which. First, for the orderly and proper selection of a fair jury, and secondly, to avoid needless waste of jurors’ time and to avoid potential harassment of jurors.

Specific examples: (Questions will be referred to by the same number as proposed)

#2: Residence address is certainly appropriate. If a particular neighborhood, subdivision or part of a county is relevant in a particular case, ask if voir dire. Don’t make Jurors write more than is minimally necessary.

#7. **Every adult employment?!** “List All other types of employment you have had in your adult life.” Why not compel the jurors to attach a complete resume? This is not only ‘unduly’ burdensome, but *extraordinarily* so. How many pages will be provided to the jurors to complete these interrogatories? What is the relevance to a ‘fair and impartial jury?’”

#10. **Others living with you; if so, explain relationship of each:** Voir dire question, perhaps; not suitable for questionnaire. Why is it necessary to compel written explanation from every prospective juror?

#11. **Identify the employer(s) of each of the ‘others’ living with you:** Maybe it would be allowable as Voir dire question in some types of cases; but certainly not suitable for questionnaire. This is yet another juror interrogatory.

#12. **Children not living with you and their ages:** Perhaps it might qualify as a Voir dire question, but not suitable for questionnaire. How much writing do we expect jurors to do?

#13. **Employment of children not residing in home:** Maybe, in certain cases, it *might* be allowable as Voir dire question; but certainly not suitable for questionnaire. Invasive.

#14. **Employment with a law firm or Court system:** Voir dire question, only. Of questionable value, except in a narrow type of case. All the more reason *not* to make *all* potential jurors answer this.

#15. **Law suit plaintiff--self or those "close to you" "describe"** This question is another oppressive *interrogatory*. The existing question (currently #10) simply states: *Have you or any member of your immediate family been a party to a lawsuit?* That question says it well. The proposed *interrogatory* will require the juror to possibly research and *list* every prior suit. This issue, *when relevant*, can be explored in voir dire. How much writing do we expect jurors to do?

#16. **Law suit defendant--self or those "close to you" "explain"** Another written exam question or *juror interrogatory*. How much writing do we expect jurors to do? Again, the current questionnaire deals very well with this by this simple question: *Have you or any member of your immediate family been a party to a lawsuit?* They answer "yes or no." Then the lawyers inquire in voir dire.

#17. **Ever CONSULTED a lawyer? Anyone "close" to you ever CONSULTED a lawyer?** Insufferable invasion of privacy.. Asking *prospective* jurors whether they---and here's the best part---*or anyone "close" to you* has ever *consulted* a lawyer? Of what possible relevance is this to a fair selecting a fair jury? This isn't a jury selection 'aid,' it is a *juror screening device*. The question currently used in jury questionnaires is appropriate. It reads: *Have you or any family member every made a claim for personal injuries.* Besides, how much writing do we expect jurors to do?

#18. **Ever been a witness in Court?** Voir dire question, but even so, one of questionable value; not suitable for questionnaire.

#19. **Ever served on a jury? If so, please answer these FIVE (5) SUBPARTS**
Another *interrogatory*. How much writing do we expect jurors to do? This is just too much! The current question is adequate. The current question reads: *Have you served as a juror, before?* If the answer is “yes.” (note: requires nothing more than a check mark or one word answer from juror) then Counsel can explore in voir dire.

#22. **legal training--“describe”:** Voir dire question, only. Of questionable value, except in a narrow type of case. All the more reason *not* to make *all* potential jurors answer this. How much writing do we expect jurors to do?

#23 **medical training-“describe”** Voir dire question, only. Of questionable value, except in a narrow type of case. All the more reason *not* to make *all* potential jurors answer this. How much writing do we expect jurors to do?

#24 **technical/scientific training-“describe”:** Voir dire question, only. Of questionable value, except in a narrow type of case. All the more reason *not* to make *all* potential jurors answer this. How much writing do we expect jurors to do?

#26. **military training-“describe”:** Ok to ask this, but a simple “yes/no” or check mark is adequate. Otherwise, it becomes yet another *interrogatory*. Current questionnaire deals with this issue just fine. How much writing do we expect jurors to do?

#28. **Time constraints?** That’s what the initial mail out Sumons from the Clerk’s Office addresses. Those with such requests make those at that time, in writing. Those with statutory excusals can use that form to notify the Court of an applicable statutory excuse. *Second opportunity* to do so is when the venire is initially qualified prior to jury selection. Why in the world would we provide for this *a third time?* There is no good purpose (and plenty of room for mischief) by including this. How much writing do we expect jurors to do?

#29. **Transportation issues:** This has no legitimate purpose in a questionnaire. First, a legitimate transportation issue can be addressed by a written response to the Court from the Clerk's Office mail out Jury Summons. Second opportunity is during qualification of Venire. Putting this in a questionnaire could be used as a subtle tool to determine lower social economic or disadvantaged persons, without having to ask a direct (and improper) question. Putting it into a questionnaire *removes* such an improper question from the Judge's control.

#30. **Assistance in completing form:** Voir dire question, if relevant.

In summary:

1. The proposed questionnaire is unduly burdensome to prospective jurors by asking, questions of every juror that may have no applicability in a specific case.
2. Further, they *require* written answers to questions that a trial Court might not even allow to be asked, had they been asked during voir dire.
3. They also lay the foundation for artificial or induced "cause" challenges, thus creating extra *de facto* peremptory challenges.
4. Finally, they unduly burden the prospective jurors with interrogatories exceeding the number of those allowed even unto *the litigants* themselves.

My next comment: Proposed Rule of Criminal Procedure 3.400.

Rule 3.400: Materials to the Jury room

This proposed rule change is unnecessary. It doesn't add anything to the rule of law currently in practice. It also makes it mandatory to provide written jury instructions. I agree that it is generally helpful to provide the jury with copies of instructions, and, in all but the most simple of my trials, I do so. However, I don't think a mandatory rule is necessary, nor is it a good idea. If a Judge failed to do so in a simple case where there was no unusual circumstances nor complicated instruction issues, why create an argument for 'reversible error'? For example: Possession of Cocaine; single count. It is not necessary to mandate this procedure.

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Finally, as to allowing Jurors to ask questions in Criminal cases, I side with those strongly opposed to this practice.

Thank you for your consideration of my comments.

Sincerely,

David A. Glant
Circuit Judge

cc: Distribution pursuant to Rule.