

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

COMMENTS TO PROPOSED JURY INNOVATION AMENDMENTS
NOTE-TAKING BY JURORS

I believe the following excerpted language of the proposed instruction as to "Note-Taking By Jurors" intrudes improperly on the jury deliberative process. I have bolded the language of special concern.

"Whether or not you take notes, you should rely on your memory of the evidence and you should not be unduly influenced by the notes of other jurors. **Notes are not entitled to any greater weight than each juror's memory of the evidence.**" (Proposed Criminal Rule)

"Any notes you take are for your personal use. They are to be used only as an aid to your memory, and **you should not rely on your notes to the exclusion of other recollection.** A jury's verdict should be the result of the collective memories of all of the jurors, and **you should not abandon your recollection solely because of**

what is contained in the written notes of a juror." (Proposed Rule 1.8)

The actual jury deliberation process is a mental process that is complex. It involves resolving facts on a group level and personal level. I think it is a juror's prerogative to abandon a memory in reliance on their own or another's notes, or another juror's memory for that matter. The juror may find the evidence was not that relevant or important. The juror may have a vague memory of a particular bit of evidence, but has confidence in accepting another juror's memory or notes, in light of other evidence of which the juror has a very clear memory. Historically, jurors discuss, debate, and resolve what the facts of the case are, individually and collectively. To infer or be told they cannot abandon any memory or rely on any notes absent a specific memory, defeats the practical use of note-taking. Notes can be wrong, but I think jurors consider that possibility.

Jurors have never been instructed they must have and keep independent memories of all the evidence. I understand the concerns of the proposed instruction, but I believe it goes too far. I struggled with this concept when I drafted my own instruction. For years, I have instructed on note-taking as follows:

"You may wish to take notes. If you take notes, I have some words of caution. A juror's verdict is the verdict of each juror as well as of the jury as a whole. Therefore, you should carefully decide whether or not you should abandon a memory you may have about the evidence solely because of what is contained in a juror's

notes. Also, you may miss what is being said or miss seeing the demeanor of the witness at the moment you are writing down notes. With these matters in mind, it is solely up to you as to when you'd like to take notes, and what weight to give any notes taken."

I have always furnished paper and pencils for notes for every jury trial over my 18 years as a trial judge. My observation is that most jurors take notes to some extent. Just as I do. I have seen many juries ask to have key evidence reread or replayed. I have never discerned a problem with note-taking under the cautionary instruction that I use.

Thank you for the opportunity to submit a written comment.

Respectfully submitted,

Kathleen F. Dekker, Circuit Judge
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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic filing to e-file@flcourts.org, and by U. S. Mail this _____ day of October, 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 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 Avenue, Sanford 32771-1243.

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