

IN THE SUPREME COURT OF FLORIDA

**IN RE:
STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES-
REPORT 2010-04**

CASE NO. SC10-

To the Chief Justice and Justices of the Supreme Court of Florida:
This report regarding a proposed amendment to the Florida Standard Jury Instructions in Criminal Cases on the Supreme Court's website at http://www.floridasupremecourt.org/jury_instructions.shtml is filed pursuant to Article V, section 2(a), Florida Constitution. The committee proposes the following amended criminal jury instruction.

Proposal: 7.3 FELONY MURDER – FIRST DEGREE

The proposed amended instruction can be found in legislative format at Appendix A. Words to be removed are shown with strike-through marks; words to be added are underlined. The proposal was published in *The Florida Bar News* on July 15, 2010, and no comments were received.

Explanation of Proposal

In *Coicou v. State*, 35 FLW S194 (April 1, 2010), the Court receded from *Linehan v. State*, 476 So. 2d 1262 (Fla. 1985) and decided that second-degree murder was not a necessarily lesser-included offense of First Degree Felony Murder. The Court also directed the Committee on Standard Jury Instructions in Criminal Cases to consider a revision to the standard jury instructions.

The committee proposes that the crime of Second Degree (depraved mind) Murder be moved from the Category One box in Instruction 7.3 to the Category Two box. This change is consistent with *Coicou* because second degree murder may be a lesser-included offense of first degree felony murder depending on the charging document and the facts of a case. The Committee did not make any other change to Instruction 7.3 other than to update the Comment section to show an amendment in 2010. The committee conducted an electronic vote on the proposal. The vote to approve this proposal was unanimous.

Respectfully submitted this _____ day of August, 2010.

The Honorable Lisa T. Munyon
Ninth Judicial Circuit
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
425 North Orange Avenue, Room 1130
Orlando, Florida 32801
Florida Bar Number 513083

CERTIFICATE OF FONT SIZE

I hereby certify that this report has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

THE HONORABLE LISA T. MUNYON
Chair, Committee on Standard Jury
Instructions in Criminal Cases
Florida Bar Number 513083