

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: STANDARD JURY INSTRUCTIONS  
IN CRIMINAL CASES REPORT NO. 2010-01  
AND STANDARD JURY INSTRUCTIONS IN  
CIVIL CASES REPORT NO. 2010-01**

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**CASE NO. SC10-51**

**RESPONSE TO THE COMMENTS OF MS. BETTY STIFLER, MR.  
MICHAEL UFFERMAN, ESQUIRE, THE HONORABLE PETER D.  
WEBSTER, AND MS. SYLVIA H. WALBOLT, ESQUIRE**

Comes now the Supreme Court Committee on Standard Jury Instructions in Criminal Cases, by and through the Honorable Lisa T. Munyon, Circuit Court Judge, Chair of the committee, and files this response to the comments received by Ms. Betty Stifler, Mr. Michael Ufferman, Esquire, the Honorable Peter D. Webster, and Ms. Sylvia H. Walbolt, Esquire.

The Supreme Court Committee on Standard Jury Instructions in Civil Cases, and this committee, filed a joint report with the Court on January 14, 2010, proposing new and amended jury instructions regarding the use of electronic devices by jurors. The Court issued a publication notice on January 28, 2010, and published the proposed instructions in *The Florida Bar News*. Comments were to be received by March 17, 2010. The committees were given until April 7, 2010, to file a response. A comment was filed with the Court on February 5, 2010, by Ms. Betty Stifler, Clerk of the Circuit Court, Citrus County. Comments were filed on March 11, 2010, by the Honorable Peter D. Webster, Judge, First District Court of Appeal, and Ms. Sylvia H. Walbolt, Esquire. Comments were filed by Mr. Michael Ufferman, Esquire, Chair, Florida Association of Criminal Defense Lawyers, on March 17, 2010. Although it is not clear if the Court prefers a joint response be filed, rather than individual responses, the two committees have opted to file separate responses to the comments received.

The criminal jury instructions committee met in Tampa, Florida, on March 19, 2010, to discuss the comments received. The committee was not aware of the comments filed by Mr. Ufferman. A copy of the comments was not received by committee staff until after the committee meeting, although they were delivered to the Office of the State Courts Administrator on March 18, 2010. However, the comments received from the Florida Association of Defense Lawyers (FACDL) do

not suggest any additions, deletions, or modifications to the existing proposals. In fact, FACDL agrees with the proposed instructions submitted by the criminal jury instructions committee. Therefore, it is not necessary for the committee to reconvene and discuss the submission by the association.

The committee does not feel that the comment from Ms. Betty Strifler has any impact on the original submission to the Court by the committees. Ms. Strifler has suggested that any approved instruction be made part of a video that is shown to jurors, rather than have the actual words read to the venire. It appears that Ms. Stifler's comment is directed to the Qualifications Instruction. The committee had no opinion on whether the Qualifications Instruction could be delivered to jurors through mechanical means, such as by a video shown to the venire prior to a trial being commenced. None of the committee members felt there was any problem with incorporating the preliminary instruction into a video for viewing by the prospective jurors.

The committee spent almost an hour discussing the comments filed by Judge Peter D. Webster, and Sylvia H. Walbolt. Mr. R. Blaise Trettis, one of the three committee members who initially worked with the civil jury instructions committee, gave the committee an overview of the comments from Judge Webster and Ms. Walbolt. Judge Webster and Ms. Walbolt opine that it is important to tell the jurors what purpose is served by the prohibition of independent research and investigation by jurors during a trial. They have suggested that their proposed language be placed at the end of the Qualifications Instruction. The proposal is set forth below.

*Unlike questions that you may be allowed to ask in court, which will be answered in court in the presence of the judge and the parties, if you investigate, research or make inquiries on your own outside of the courtroom, the trial judge has no way to assure they are proper and relevant to the case. The parties likewise have no opportunity to dispute the accuracy of what you find or to provide rebuttal evidence to it. That is contrary to our judicial system, which assures every party the right to ask questions about and rebut the evidence being considered against it and to present argument with respect to that evidence. Secret, out-of-court inquiries and investigations unfairly and improperly prevent the parties from having that opportunity our judicial system promises.*

Mr. Trettis did not see a particular downside to giving the instruction, if the committee thought that the existing proposal submitted by the committees was too overbearing. However, he felt that if the proposed instruction were to be given, it

should not be part of the Qualifications Instruction, but instead be placed somewhere in the other proposals. Mr. Trettis noted that the proposal sounded like something a judge should read to a jury, rather than one that was given by a clerk when the prospective jurors were assembled. Mr. Trettis suggested that part of the first sentence be deleted.

The committee began to dissect the proposal. Mr. Frank Migliore stated that the wording of the proposal was vague. Mr. Ray de la Cabada felt that the proposal did not clarify anything and was not needed at all. He felt the proposal delved into theories about what the jury could and could not do. Judge Jacqueline Scola believed that it was better to keep the instruction simple. Mr. Geoffrey Fleck was concerned that the proposal delved into burden shifting where the proposal discussed the right of the parties to ask questions and offer rebuttal evidence.

Mr. Trettis then offered the following rewrite of the proposal:

*~~Unlike questions that you may be allowed to ask in court, which will be answered in court in the presence of the judge and the parties, If you investigate, research or make inquiries on your own outside of the courtroom, the trial judge has no way to assure they are proper and relevant to the case. The parties likewise have no opportunity to dispute the accuracy of what you find or to provide rebuttal evidence to it. That is contrary to our judicial system, which assures every party the right to ask questions about and rebut the evidence being considered against it and to present argument with respect to that evidence. Secret, out-of-court inquiries and investigations unfairly and improperly prevent the parties from having that opportunity our judicial system promises.~~*

No motion was made to adopt this suggested change. Mr. de la Cabada stated that the best approach was to just have the judge tell the jury what they can and cannot do. The undersigned thought the jurors might be more likely to follow the court's instructions if they knew why the court was instructing them on this issue. Ms. Ruth Ann Hepler noted that she had served on a jury, and unless the instructions are simple and to the point, the jurors will have a difficult time following them. Mr. Bart Schneider said that if the jurors could not figure out why they are being told not to use electronic devices, or surf the Internet, there was no hope for the judicial system. Judge Joseph Bulone commented that proposed criminal jury instruction 2.1 covers everything that the proposal submitted by Judge Webster and Ms. Walbolt addresses.

Mr. Schneider moved that the committee not adopt the submitted proposal. The motion was seconded. The vote to not make any changes to the proposals submitted to the Court by the committees was 14 to 1. Judge Thomas dissented, noting that there were a few sentences that could be used.

Respectfully submitted this 5<sup>th</sup> day of April, 2010.

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The Honorable Lisa T. Munyon  
Ninth Judicial Circuit  
Chair, Supreme Court Committee on  
Standard Jury Instructions in Criminal Cases  
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## **CERTIFICATE OF SERVICE**

I hereby certify a true and correct copy of the foregoing Response has been furnished to:

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The Honorable Peter D. Webster  
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by U.S. mail delivery this 5<sup>th</sup> day of April, 2010.

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### **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).

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