

**IN THE SUPREME COURT OF FLORIDA**

**In the matter of Standard Jury  
Instructions (Civil),**

**Committee Report 12-02**

**Proposed Revisions to Instructions  
201.2 (Pro Se and UM instructions),  
700 (Closing Instruction), and  
801.2 (Read-back of testimony).**

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**REPORT (NO. 12-02) OF THE  
COMMITTEE ON STANDARD  
JURY INSTRUCTIONS (CIVIL)**

Joseph Hagedorn Lang, Jr.  
Florida Bar Number 059404  
Subcommittee Chair,  
Supreme Court Filing Subcommittee  
Carlton Fields P.A.  
4221 W. Boy Scout Blvd.  
Tampa, Florida 33607  
(813) 229-4253  
(813) 229-4133 (fax)

Honorable James M. Barton, II  
Florida Bar Number 189239  
Committee Chair,  
Supreme Court Committee on Standard  
Jury Instructions (Civil)  
Hillsborough County Courthouse Annex  
800 East Twiggs, Room 512  
Tampa, Florida 33602  
(813) 272-6994  
(813) 276-2725 (fax)

Rebecca Mercier Vargas  
Florida Bar Number 0150037  
Subcommittee Chair, Errors and  
Omissions Subcommittee  
Kreusler-Walsh, Compiani  
& Vargas, P.A.  
501 S. Flagler Dr., Ste. 503  
West Palm Beach, Florida  
33401  
(561) 659-5455  
(561) 820-8762 (fax)

July 18, 2012

**To the Chief Justice and Justices of  
the Supreme Court of Florida:**

The Committee on Standard Jury Instructions in Civil Cases requests that this Court approve for publication and use the following proposed revisions to Florida Standard Jury Instructions (Civil): Instructions 201.2 (Pro Se and UM instructions), 700 (Closing Instruction), and 801.2 (Read-back of testimony), as set forth in Appendix A. This Report is filed pursuant to article V, section 2(a), of the Florida Constitution.

**I. INTRODUCTION AND PROCEDURAL NOTE**

In March 2010, the Court adopted the Committee's proposal to reorganize the Standard Jury Instructions in Civil Cases and simplify the language used throughout the instructions. *See In re Standard Jury Instructions in Civil Cases Report No. 09-01 (Reorganization of the Civil Jury Instructions)*, 35 So. 3d 666 (Fla. 2010) (Case No. SC09-284). Since that major project was completed, however, the Committee has continued its work on individual jury instructions that it believes need updating in the light of developments in the case law or issues experienced in and reported from courtrooms around the state. This report highlights four such examples, which the Committee has now addressed.

## II. DESCRIPTION OF APPENDICES

The following appendices are attached to this Report:

- Appendix A: Proposed instructions  
Appendix B: September 15, 2011, and March 1, 2012, *Florida Bar News* notices.  
Appendix C: Comments received by the Committee in response to the publications.  
Appendix D: Relevant excerpts from the Committee's minutes.  
Appendix E: Committee materials relevant to this proposal.

## III. THE PROPOSED REVISIONS

As part of its continuing review of the Standard Jury Instructions for Civil Cases, the Committee proposes this series of revisions. The proposed revisions to these instructions are set forth in Appendix A to this report.

First, Committee member Jerald Bagley brought an issue regarding *pro se* litigants to the Committee's attention. He related to the Committee that he has presided over several cases involving *pro se* parties and has noticed that, when he introduced *pro se* parties to the jury, the standard introductory language in instruction 201.2 assumes that parties have counsel. The Committee has worked on and now proposes additional language for instruction 201.2 to address this common circumstance.

Second, and also involving instruction 201.2, the Committee worked extensively on a revision to comply with *Lamz v. Geico General Insurance Co.*, 803 So. 2d 593 (Fla. 2001), which requires proper identification of an

uninsured/underinsured motorist carrier when it is a party at trial. That work is now completed and the Committee proposes additional language for instruction 201.2 to address this also-common circumstance.

Third, the Committee received a letter from Judge Edward Fine that criticizes the following statement in the Section 700 Closing Instructions:

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

Judge Fine believed that statement increases the burden of proof, because the jury decides only what has been proven by a greater weight of the evidence, not what the facts “are.” After examining this issue in subcommittee and then in the full Committee, the Committee concluded that Judge Fine’s letter highlighted a potential problem. The Committee also thought the other language in that paragraph, about a juror disregarding instructions, was also problematic and not the original intent of the Committee. The Committee decided that the entire paragraph should be deleted and proposes that deletion in this report.

Finally, the Committee proposes revisions to the Notes on Use for Instruction 801.2, which revisions are precipitated by *Johnson v. State*, 53 So. 3d 1003 (Fla. 2010). In *Johnson*, this Court held that it is *per se* reversible error to tell the jury that testimony cannot be read back.

#### IV. DISSENTING VIEWS FROM THE COMMITTEE

There are no dissenting views from the Committee. The Committee believes that the proposed revisions to Florida Standard Jury Instructions (Civil) Instructions 201.2 (Pro Se and UM instructions), 700 (Closing Instruction), and 801.2 (Read-back of testimony) will improve the standard jury instructions. The Committee unanimously recommends their publication.

#### V. COMMENTS RECEIVED AND ACTION TAKEN IN RESPONSE

The proposed revisions set forth in this report were published for comments on September 15, 2011, or March 1, 2012. The publication notices are found in Appendix B to this report.<sup>1</sup> No comments were received as to the proposed revisions and additions in this report (one comment was received, from attorney Jack Scarola, which made an unrelated suggestion for improving instruction 201.2; the Committee will consider that suggestion apart from these proposed revisions).

#### VI. CONCLUSION

WHEREFORE, for the above reasons, the Committee respectfully requests that the Court approve for publication and use the proposed revisions to Florida Standard Jury Instructions (Civil) Instructions 201.2 (Pro Se and UM instructions),

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<sup>1</sup> Certain other proposals were published for comment in these publication notices, as well. Some of those proposals are still being worked on by the Committee and are not encompassed by this report.

700 (Closing Instruction), and 801.2 (Read-back of testimony), as set forth in

Appendix A.

Respectfully submitted,

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Joseph Hagedorn Lang, Jr.  
Florida Bar Number 059404  
Subcommittee Chair,  
Supreme Court Filing Subcommittee  
Carlton Fields P.A.  
4221 W. Boy Scout Blvd.  
Tampa, Florida 33607  
(813) 229-4253  
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**CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this report complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210 by using Times New Roman 14-point font.

By: \_\_\_\_\_  
Joseph Hagedorn Lang, Jr.