

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUDICIAL ADMINISTRATION –
RULE 2.451 (USE OF ELECTRONIC DEVICES)

CASE NO. SC12-764

COMMENT OPPOSING ADOPTION OF PROPOSED RULE

The Court should not adopt the committee's proposed rule because the rule mandates the unwarranted seizure of personal property of citizens by the government. The seizure of personal property mandated by the proposed rule will constitute an unreasonable seizure of property in violation of the Fourth Amendment to the United States Constitution and Florida Constitution Article 1, section 12. The Court should consider the magnitude and seriousness of the seizure of property that the proposal will mandate. Citizens compelled to serve on a jury will have their expensive electronic devices seized without warning or opportunity to avoid the seizure. The proposal does not require the judge to warn the jurors that the court will order their electronic devices to be confiscated. The resulting surprise seizure will undoubtedly result in confrontation between the judge and jurors who will not comply with the court's order without an objection or who will outright refuse to surrender their expensive devices which hold all of the personal information of their lives. There will also likely be instances in which bailiffs cannot resist their temptation to peruse the devices they have confiscated for photographs and other information contained in the devices.

The court should reject the proposed rule in its entirety, but if the court is going to adopt any part of the rule, then the court should amend the proposed rule by requiring the judge to at least warn the jury that at a certain time in the trial the court is required by the rules of the Florida Supreme Court to order the confiscation of their electronic devices. The rule should

instruct the judge to give this warning at a point in time that will allow the jurors to not bring their electronic devices to the courthouse to be confiscated.

The proposed rule is completely unnecessary because the standard jury instructions in civil and criminal cases already adequately admonish jurors about using their electronic devices for any reason related to the case. Undersigned submits that the court should give jurors the benefit of doubt and trust that jurors will follow the trial court's instruction on the prohibited uses of electronic devices during their service as jurors. In the publicized, rare, instances in which a juror has disregarded the current standard instruction on electronic devices, the violation has occurred at all parts of the trial, not just during jury deliberation. The committee's proposal for the mandatory confiscation of a citizen's property only during jury deliberation is curious because a juror who is going to violate the court's instructions has plenty of opportunity to do so before jury deliberations. It seems that the committee's proposal is founded on the faulty premise that jurors who have followed the trial judge's instructions on electronic devices during a trial that might last days or even weeks will all of a sudden be incapable of following the court's instructions once jury deliberations start.

The Court should consider the shock and sometimes anger that the average juror will experience upon being surprised by the announcement of the trial judge that their electronic devices will be seized. Verbal confrontations and refusal to obey the court's order will undoubtedly occur. This anger at the court and ensuing confrontation is completely unnecessary and should be avoided by the Court's rejection of the committee's proposal.

Finally, the sentence in (b)(4) of the proposal contradicts (b)(1). Sentence (b)(4) authorizes the trial judge to allow jurors keep their electronic devices during jury deliberations because jury deliberations are part of the "trial proceedings." Undersigned submits that it cannot be reasonably argued that jury deliberations are not a part of the trial proceedings. Paragraph

(b)(1), however, mandates that the trial judge “must” remove electronic devices from jurors before jury deliberations begin. The proposed rule, as written, is useless because the sentence in (b)(4) can reasonably be read to make the confiscation of electronic devices during jury deliberations at the discretion of the presiding judge.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing comment has been sent by U.S. mail delivery to Alexandra E. Rieman, Broward County Courthouse, 201 SE 6th St., Suite 880, Ft. Lauderdale, FL 33301 and Jodi Jennings, 651 E. Jefferson St., Tallahassee, FL 32399-2300 this ____ day of September, 2012.

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