

IN THE SUPREME COURT OF FLORIDA

**IN THE MATTER OF STANDARD
JURY INSTRUCTIONS (CIVIL),
(CRIMINAL), (INVOLUNTARY
CIVIL COMMITMENT) AND
(CONTRACT AND BUSINESS):**

**Committee Report 2014-01 (Civil)
Committee Report 2014-04 (Criminal) and
Committee Report 2014-01 (Contract and
Business)**

**JURORS' USE OF ELECTRONIC
DEVICES**

**JOINT REPORT OF THE COMMITTEES ON STANDARD
JURY INSTRUCTIONS (CIVIL REPORT No. 2014-01),
(CRIMINAL REPORT No. 2014-04) and
(CONTRACT and BUSINESS REPORT No. 2014-01):
JURORS' USE OF ELECTRONIC DEVICES**

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

The Committee on Standard Jury Instructions in Civil Cases, the Committee on Standard Jury Instructions in Criminal Cases and the Committee on Standard Jury Instructions in Contract and Business Cases jointly request that this Court approve for publication and use a revised Qualifications Instruction to be given to prospective jurors in all cases. The Civil and Contract and Business Committees request this Court to approve for publication and use new or revised Florida Standard Jury Instructions (Civil) Qualifications Instruction, Preliminary Instructions, Instruction Before Recess and Closing Instructions, as set forth below and in Appendix A (Civil). The Criminal Committee requests that this Court approve three revised instructions for Criminal cases (Appendix B) and three revised instructions for Involuntary Civil Commitment of Sexually Violent Predator (Jimmy Ryce) cases (Appendix C). This Report is filed pursuant to article V, section 2(a), of the Florida Constitution.

I. INTRODUCTION

On July 15, 2013, Clerk of Court Thomas D. Hall wrote a letter to the Florida Supreme Court Committees for Standard Jury Instructions in Civil Cases, Criminal Cases and Contract and Business Cases (Appendix I). Clerk Hall asked all three Committees to consider the decision *In Re: Amendments to the Florida*

Rules of Judicial Administration—Rule 2.451 (Use of Electronic Devices), 118 So. 3d 193 (Fla. 2013) (Case No. SC12-764) (Appendix I & Appendix J, pages 99-107). The opinion adopted Florida Rule of Judicial Administration 2.451(b), governing jurors’ use of electronic devices (Appendix J, pages 99-107).

As amended, rule 2.451(b) provides that electronic devices will be removed from all members of a jury panel before jury deliberations begin. The presiding judge may remove the jurors’ electronic devices at other stages of the trial. The rule also makes clear that during court, jurors cannot use their electronic devices to: (1) take photos or videos; or (2) transmit or access text or data. At all times, jurors are prohibited from using electronic devices to research information about the case or to communicate with others about the case. The rule states that “[a]t the beginning of the trial, the presiding judge should advise the jury panel about the removal of electronic devices.” Fla. R. Jud. Admin. 2.451(b)(5).

In the opinion, the Court directed the Committees “to review their respective bodies of instructions and propose any amendments needed to conform the instructions to the new rule.” *In re: Use of Electronic Devices*, 118 So. 3d at 194 n.3. Initially, the Court asked the Committees to submit a report on the electronic device instructions by January 15, 2014 (Appendix I). At the request of the

Committees, the Court extended this deadline to March 31, 2014.

II. DESCRIPTION OF APPENDICES

The following appendices are attached to this report:

- Appendix A: Proposed revisions to Civil instructions (incorporated by Contract and Business instructions)
- Appendix B: Proposed revisions to Criminal instructions
- Appendix C: Proposed revisions to Involuntary Commitment of Sexually Violent Predators (Jimmy Ryce) instructions
- Appendix D: January 1, 2014, *The Florida Bar News*, Publication Notice for Criminal instructions and Involuntary Commitment of Sexually Violent Predators (Jimmy Ryce) instructions
- Appendix E: February 15, 2014, *The Florida Bar News*, Publication Notice for Civil instructions and Contract and Business instructions
- Appendix F: Relevant excerpts from Civil Committee's minutes
- Appendix G: Relevant excerpt from Criminal Committee's minutes
- Appendix H: Relevant excerpts from Contract and Business Committee's minutes
- Appendix I: Referral letter to Committees
- Appendix J: Materials from the Civil, Criminal and Contract and Business Committees

III. EXISTING INSTRUCTIONS ON ELECTRONIC DEVICES

A. **Current Qualifications Instruction Addressing Electronic Devices**

When jurors assemble for jury duty, all prospective jurors are given an

unnumbered Qualifications Instruction. The same Qualifications Instruction is used for both Civil and Criminal cases, before jurors go to a specific courtroom.

B. Current Civil Instructions Addressing Electronic Devices

Several Civil instructions currently address jurors' use of electronic devices (Appendix J, pages 37-50). The preliminary instructions given before voir dire, instruction 201.2 – Introduction of Participants and Their Roles, explains to potential jurors the rules governing their use of electronic devices. In addition, instruction 201.3 – Explanation of the Voir Dire Process, contains a note on use regarding electronic devices. After voir dire, preliminary instruction 202.2 – Explanation of the Trial Procedure, reinforces the rules regarding jurors' use of electronic devices. Before closing argument, instruction 700 – Closing Instructions, also addresses jurors' use of electronic devices.

C. Current Contract and Business Instructions Addressing Electronic Devices

The Contract and Business instructions incorporate the preliminary and closing instructions used in the Civil Instructions. Thus, the current instructions on electronic devices in Contract and Business cases are the same as in Civil cases.

D. Current Criminal Instructions Addressing Electronic Devices

In the Criminal instructions, instruction 1.1 – Introduction is given before voir dire and explains the rules governing jurors’ use of electronic devices. After the jury is sworn, 2.1 – Preliminary Instructions reinforces these rules on electronic devices. The Criminal closing instruction, 3.13 Submitting Case to Jury, advises jurors that they cannot use their electronic devices to communicate about the case.

E. Current Involuntary Commitment of Sexually Violent Predators (Jimmy Ryce) Instructions Addressing Electronic Devices

In the Involuntary Commitment of Sexually Violent Predators (Jimmy Ryce) instructions, instruction 1.001 – Introduction is given before voir dire and explains the rules governing jurors’ use of electronic devices. After the jury is sworn, instruction 1.01 – Preliminary Instructions reinforces these rules on electronic devices. The Jimmy Ryce closing instruction, 2.08 – Verdict and Submitting Case to Jury, advises jurors that they cannot use their electronic devices to communicate about the case.

IV. PROCEDURAL INFORMATION REGARDING THIS PROPOSAL

On July 29, 2013, the Chair of the Civil Committee wrote a letter to Clerk Hall (Appendix J, page 4). This letter advised that the Civil, Criminal and Contract

and Business Committees had formed a joint subcommittee to consider rule 2.451(b).¹ All three Committees shared the goal of working together to draft uniform language on electronic devices that could be used in each Committee's instructions.

The Joint Subcommittee met several times by phone and circulated drafts by e-mail. The Joint Subcommittee considered instructions on electronic devices given in other jurisdictions,² model instructions proposed by the American College of Trial Lawyers, *Jury Instructions Cautioning Against Use of the Internet and Social Networking* (Sept. 2010), and an article that proposed a set of model jury instructions. See David E. Aaronson & Sydney M. Patterson, *Modernizing Jury Instructions in the Age of Social Media*, 27 *Crim. Just.* 26 (Winter 2013). These materials are included in the attached Appendix J, pages 107-81.

¹ The Joint Subcommittee consisted of Rebecca Mercier Vargas and Joseph Amos from the Civil Committee, Ramon De La Cabada and Thirteenth Circuit Court Judge Lisa Campbell from the Criminal Committee and Manuel Farach, Jane Kreuzler-Walsh and Brian Spector from the Contract and Business Committee. Mr. Amos and Mr. Spector are no longer members of the Committees.

² The Joint Subcommittee considered the Judicial Conference Committee on Court Administration & Case Management, *Proposed Model Jury Instructions The Use of Electronic Technology to Conduct Research on or Communicate About a Case* (June 2012), and standard jury instructions used in the United States Circuit Court of Appeals, Eleventh Circuit (Criminal Pattern Instructions), and state courts in Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Kansas, Maryland, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah and Washington.

Rule 2.451(b) gives trial judges considerable discretion for how and when to remove electronic devices from jurors. To accommodate that discretion, the Joint Subcommittee proposed preliminary instructions that let the trial judge choose from three alternatives: (A) requiring jurors to put their cell phones and electronic devices on silent mode during court proceedings, but removing the electronic devices during deliberations; (B) requiring jurors to turn off electronic devices during court proceedings and removing their cell phones and electronic devices during deliberations; or (C) removing the cell phones and electronic devices during all proceedings and deliberations (Appendix J, pages 9-33). The Joint Subcommittee questioned whether rule 2.451(b) allowed jurors to keep their cell phones turned on during court proceedings (Appendix J, page 11). The Joint Subcommittee included this alternative, however, for consideration by the full Committees. The notes on use recognize that the instructions may need to be modified to fit the practices of a trial judge in a particular courtroom.

The Joint Subcommittee also proposed strengthening the language warning jurors of the consequences for violating the rules on electronic devices. Jurors' misuse of electronic devices continues to be a growing problem throughout the country. Several other jurisdictions have standard instructions that explicitly warn jurors of the possible consequences for violating the rules on electronic devices,

including contempt, fines, and jail.

At a meeting on October 24-25, 2013, the Civil Committee considered the instructions on electronic devices proposed by the Joint Subcommittee. Following a lively and comprehensive discussion, the Civil Committee substantially revised the proposed amendments. The Civil Committee deleted language giving trial judges the option of allowing jurors to keep their cell phones turned on in silent mode. As revised, the instructions approved by the Civil Committee give judges the choice of either allowing jurors to turn their electronic devices off during court proceedings or removing them from the jurors altogether. The Civil Committee also substantially shortened the proposed instruction on recesses, instruction 301.10.

As amended at the meeting, the Civil Committee approved the proposed instructions on electronic devices for publication. Excerpts from the Civil Committee's meeting minutes are attached at Appendix F.

The Criminal Committee met on December 6, 2013. The Criminal Committee drafted proposals for instructions on electronic devices, making them consistent with the Civil Committee.

The Criminal Committee published the proposals for public comment on January 1, 2014, in *The Florida Bar News*. The Criminal Committee's publication notice for Criminal instructions and Involuntary Civil Commitment of Sexually Violent Predators instructions is attached at Appendix D. No comments were received.

At a meeting on December 5-6 2013, the Contract and Business Committee considered the electronic device instructions that had been approved by the Civil Committee. The Contract and Business Committee revised the instructions on electronic devices in several respects (Appendix J, pages 244-65). The Contract and Business Committee was primarily concerned with the length of the instructions on electronic devices. An excerpt from the minutes of this discussion by the Contract and Business Committee is attached at Appendix H.

Following this, representatives from the Contract and Business Committee (Mr. Farach and Ms. Kreuzler-Walsh) worked with a representative from the Civil Committee (Ms. Vargas) to reconcile the instructions (Appendix J, pages 204-26). These representatives drafted a compromise version to meet the concerns of both Committees without changing the substance of the instructions. Both the Civil and the Contract and Business Committee approved this compromise version by e-mail

vote.

The Civil and Contract and Business Committees jointly published the instructions on electronic devices for public comment in *The Florida Bar News*, on February 1, 2014 in the electronic edition and on February 15, 2014, in the print edition. The publication notice is attached as Appendix E.

At a meeting on February 7, 2014, the Criminal Committee considered the instructions on electronic devices published for comment by the Civil Committee and Contract and Business Committee. The Criminal Committee made additional revisions to the instructions for Criminal and Involuntary Civil Commitment of Sexually Violent Predators cases. As revised at the meeting, the Criminal Committee approved the instructions on electronic devices. Due to time constraints, the Criminal Committee did not re-publish these revisions to the instructions regarding jurors' use of electronic devices. The excerpted minutes from this meeting are attached at Appendix G.

V. THE PROPOSED REVISIONS

The Civil, Criminal and Contract and Business Committees propose the following language to instruct jurors on their use of electronic devices in Civil

cases, Contract and Business cases, Criminal cases and Involuntary Commitment of Sexually Violent Predator (Jimmy Ryce) cases. The Committees believe that it is important to reiterate the instructions on electronic devices at multiple points during the court proceeding.

A. Qualifications Instruction in Civil, Criminal, Contract and Business and Involuntary Civil Commitment of Sexually Violent Predators cases

The Committees propose amending the Qualification Instruction to advise jurors that when in the courtroom, the trial judge may instruct them to turn off their electronic devices or may remove them. The Committees also propose amending this instruction to give the jurors a fuller explanation of the reasons for the rules regulating the jurors' use of electronic devices.

B. Civil Instructions (incorporated by Contract and Business Instructions)

Instruction 201.2—Introduction of Participants and Their Roles
Instruction 202.2—Explanation of the Trial Procedure

The Committees propose similar amendments to the preliminary instruction given to jurors before voir dire (instruction 201.2— Introduction of Participants and Their Roles) and after voir dire (instruction 202.2—Explanation of the Trial Procedure). These amendments are intended to explain the rules regarding jurors' use of electronic devices. As amended, these instructions advise jurors that they

are not permitted to use their electronic devices to research information about the case or to communicate about the case. The jurors are also instructed not to take photographs, video recordings, or audio recordings of the proceedings or other jurors.

The amended instructions also advise jurors that they will not be permitted to have their electronic devices during the jury's deliberation. In recognition of the discretion rule 2.451(b) gives trial judges, this amendment provides trial judges with two alternative instructions for removing electronic devices: (A) requiring jurors to turn off their electronic devices in the courtroom and removing the electronic devices during deliberations; or (B) removing the electronic devices during all court proceedings and deliberations. The note on use recognizes that the instruction may be modified to fit the practices of a trial judge in a particular courtroom.

These instructions are also amended to state that jurors who violate the instructions on electronic devices jeopardize the fairness of the proceedings. Violations could cause a mistrial, at large expense to the taxpayers and parties. Jurors are expressly warned that violating the instructions on electronic devices could result in contempt of court or sanctions, such as serving time in jail, paying a

fine, or both.

Instruction 201.3—Explanation of the Voir Dire Process

This amendment deletes a note on use regarding electronic devices. Instruction 201.3 does not address electronic devices. This note on use is extraneous and was included in error.

Instruction 301.10—Instruction Before Recess

Currently, there is no standard instruction to be given before recesses. The Committees propose a new instruction to be given before recesses: 301.10—Instruction Before Recess. This instruction reminds jurors that the instructions given in the courtroom apply even during recesses. These rules include not using electronic devices to communicate with others about the case or to research about the case. After the recess, the jurors should check to make sure that their electronic devices and cell phone are either turned off or removed.

Instruction 700—Closing Instructions

The Civil Committee proposes amending the notes on use to Instruction 700—Closing Instruction to instruct judges to remove cell phones and electronic devices during the jury's deliberations.

C. Criminal Instructions

Instruction 1.1—Introduction

This instruction is given when jurors are in the courtroom, before voir dire. This amendment instructs jurors that their cell phones and electronic devices must be turned completely off while they are in the courtroom. The instruction also explains the reasons why jurors cannot do their own research about the case.

The Criminal Committee thought it was not practical and too harsh to take cell phones and electronic devices from all possible jurors at this point in the proceedings. Thus, unlike the Civil instructions, there is no alternative instruction that gives the trial judge the option of removing electronic devices from jurors before voir dire. Instead, the instruction after the jury is sworn, Instruction 2.1 – Preliminary Instructions, gives trial judges this alternative of removing the phones or directing jurors to keep their phones turned off during courtroom proceedings.

Instruction 2.1—Preliminary Instructions

This preliminary instruction is given after voir dire and after jurors are sworn. The proposed amendment tells jurors not to communicate with anyone about the case. Jurors are instructed not to use their electronic devices to communicate about the case or to research information about the case. Jurors are

also instructed not to use their electronic devices to take photographs, video, or audio recordings of the court proceedings.

The amended instructions also advise jurors that they will not be permitted to have their electronic devices during the jury's deliberation. In recognition of the discretion rule 2.451(b) gives trial judges, this amendment provides trial judges with two alternative instructions for removing electronic devices: (A) requiring jurors to turn off their electronic devices in the courtroom and removing the electronic devices during deliberations; or (B) removing the electronic devices during all court proceedings and deliberations. The note on use recognizes that the instruction may be modified to fit the practices of a trial judge in a particular courtroom.

The jurors are instructed that the rules are intended to ensure that the jurors decide the case without distraction and based only on the evidence presented in the courtroom. Any independent investigation by the jurors jeopardizes the fairness of the proceedings. The jurors are expressly warned that anyone who violates the rules regarding electronic devices may face serious consequences.

The Criminal Committee also added a paragraph to this instruction that is

unrelated to the use of electronic devices. Specifically, in instruction 1.01, which is the counterpart to this instruction in the context of Involuntary Civil Commitment of Sexually Violent Predators (Jimmy Ryce), there is a paragraph covering the topic of bench conferences conducted outside of the hearing of the jurors. The Criminal Committee thought that topic should be added to criminal instruction 2.1 as the concluding paragraph.

Instruction 3.13—Submitting Case to Jury

This closing instruction is amended to instruct jurors that during deliberations, the jurors cannot have cell phones, computers or other electronic devices in the jury room. Jurors are instructed to leave their electronic devices on their seats, where they will be guarded by the deputy or bailiff during deliberations. Obviously, these specific instructions would be given only when the judge has allowed the jurors to keep their electronic devices during the trial.

The Criminal Committee proposed one additional revision to instruction 3.13 that is unrelated to the use of electronic devices. Specifically, the majority of the Criminal Committee voted to delete the two sentences in instruction 3.13 that state: “Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a

whole.”

The majority of the Criminal Committee members (5-4 vote) acknowledged the importance that jurors understand that their verdict must be unanimous. However, the majority was also concerned about unnecessary repetition. Some members related that judges already delete those two lines when instructing the jury. As to the requirement of unanimity, jurors are already instructed in Instruction 3.10: “Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.” Then, in Instruction 3.12, the jurors are similarly told: “This verdict must be unanimous, that is, all of you must agree to the same verdict.” Finally, the majority of members argued that repetition might have been a good idea when the jurors only heard the instructions. But rule 3.390(b) requires that jurors be given a written copy of the instructions and thus a third instruction on the same topic is unnecessarily redundant.

D. Involuntary Civil Commitment of Sexually Violent Predators instructions

Instruction 1.001—Introduction

This instruction is the counterpart to Criminal instruction 1.1. That is, this instruction is given when jurors are in the courtroom, before voir dire. The amendment instructs jurors that their cell phones and electronic devices must be

turned off completely while they are in the courtroom. The instruction also explains the reasons why jurors cannot do their own research regarding the case.

The Criminal Committee thought it was not practical and too harsh to take cell phones and electronic devices away from all possible jurors at this point in the proceedings. Thus, unlike the Civil instructions, there is no alternative instruction that gives the trial judge the option of removing electronic devices from jurors before voir dire. Instead, the instruction after the jury is sworn, Instruction 2.1 – Preliminary Instructions, gives trial judges the alternative of removing the phones or directing jurors to keep their phones turned off during courtroom proceedings.

Instruction 1.01—Preliminary Instruction

The preliminary instruction given after voir dire and after the jury is sworn is amended to instruct jurors that they cannot use their electronic devices to communicate with anyone about the case or to find out information about the case.

In recognition of the discretion rule 2.451(b) gives trial judges, this amendment provides trial judges with two alternative instructions for removing electronic devices: (A) requiring jurors to turn off their electronic devices in the courtroom and removing the electronic devices during deliberations; or (B)

removing the electronic devices during all court proceedings and deliberations. The note on use recognizes that the instruction may be modified to fit the practices of a trial judge in a particular courtroom.

These instructions are also amended to state that jurors who violate the instructions on electronic devices jeopardize the fairness of the proceedings. Violations could cause a mistrial, at large expense to the taxpayers and parties. Jurors are expressly warned that violating the instructions on electronic devices may result in serious consequences.

Instruction 2.08—Verdict and Submitting Case to Jury

This closing instruction is amended to instruct jurors that during deliberations, the jurors cannot have cell phones, computers or other electronic devices in the jury room. Jurors are instructed to leave their electronic devices on their seats, where they will be guarded by the deputy or bailiff during deliberations. Obviously, these specific instructions would be given only when the judge has allowed the jurors to hold onto their electronic devices during the trial.

VI. DISSENTING VIEWS FROM THE COMMITTEES

There are no dissenting views from the Civil, Criminal or Contract and Business Committees regarding the instructions on electronic devices. All three

Committees believe that these instructions will greatly improve the process of jury instruction and unanimously recommend their adoption.

As discussed above, there was a dispute in the Criminal Committee about deleting repetitious sentences from instruction 3.13 regarding unanimous verdicts. This dispute is unrelated to the instructions on jurors' use of electronic devices.

VII. COMMENTS RECEIVED AND ACTION TAKEN IN RESPONSE

The Committees did not receive any comments in response to their publication notices in *The Florida Bar News*.

VIII. CONCLUSION

WHEREFORE, for the above reasons, the Committees respectfully request that the Court approve these instructions for publication and their inclusion in the reorganized book as revisions to the Standard Jury Instructions for Civil Cases, the Standard Jury Instructions in Criminal Cases, the Standard Jury Instruction for Involuntary Commitment of Sexually Violent Predators, and the Standard Jury Instructions for Contract and Business Cases.

Respectfully submitted,

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CERTIFICATE OF FONT

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: /s/ Rebecca Mercier Vargas
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