

**THE NEWLY  
REORGANIZED JURY  
INSTRUCTIONS  
AND OTHER HOT  
JURY INSTRUCTION  
TOPICS**

Trial Lawyers Summit  
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# FAILURE OF JUROR TO DISCLOSE INFORMATION DURING VOIR DIRE

## ○ De La Rosa test:

- information is relevant and material to jury service in the case
- juror concealed the information during questioning
- failure to disclose the information was not attributable to the complaining party's lack of diligence

*De La Rosa v. Zequeira*,  
659 So. 2d 239, 241 (Fla. 1995)



# DELIBERATIONS MISCONDUCT

## MOTION FOR NEW TRIAL STEPS:

- ◉ Conduct Proper Jury Interview
- ◉ Determine whether misconduct occurred
- ◉ Determine if misconduct inherent or external to jury deliberations
- ◉ Determine outside influence that merits a new trial
- ◉ Judge's order should show analysis and reasoning for new trial



# AVOIDING IMPROPER JUROR COMMUNICATION AND RESEARCH

- Instruct Jurors clearly, early and often
  - New proposed instructions before the Supreme Court call for detailed instruction starting when jurors come to the courthouse, prior to voir dire, during preliminary instructions, and during interim and final instructions.
  - Discuss informally during voir dire
  - Remind jurors before breaks or ask if they followed instructions after breaks or both

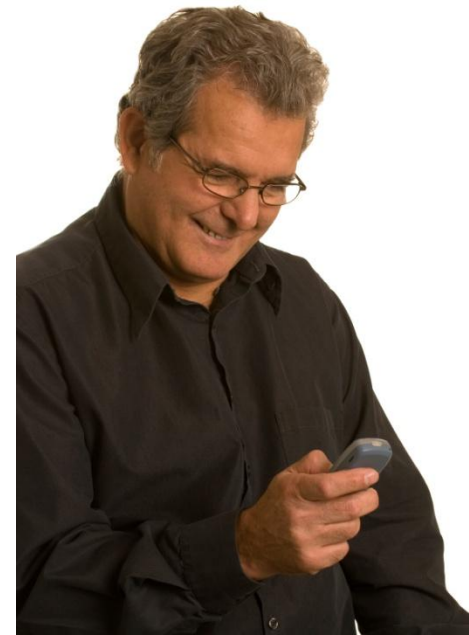


# CONTENT OF INSTRUCTIONS

- New proposed instructions are comprehensive
- Some advocate telling jurors WHY they can't go on the internet
- Specific case may merit more detailed or specific instruction on what is prohibited
- Make sure they understand they should not be generating communications or blogging, tweeting, texting, etc.
- Lawyers can reinforce message as needed

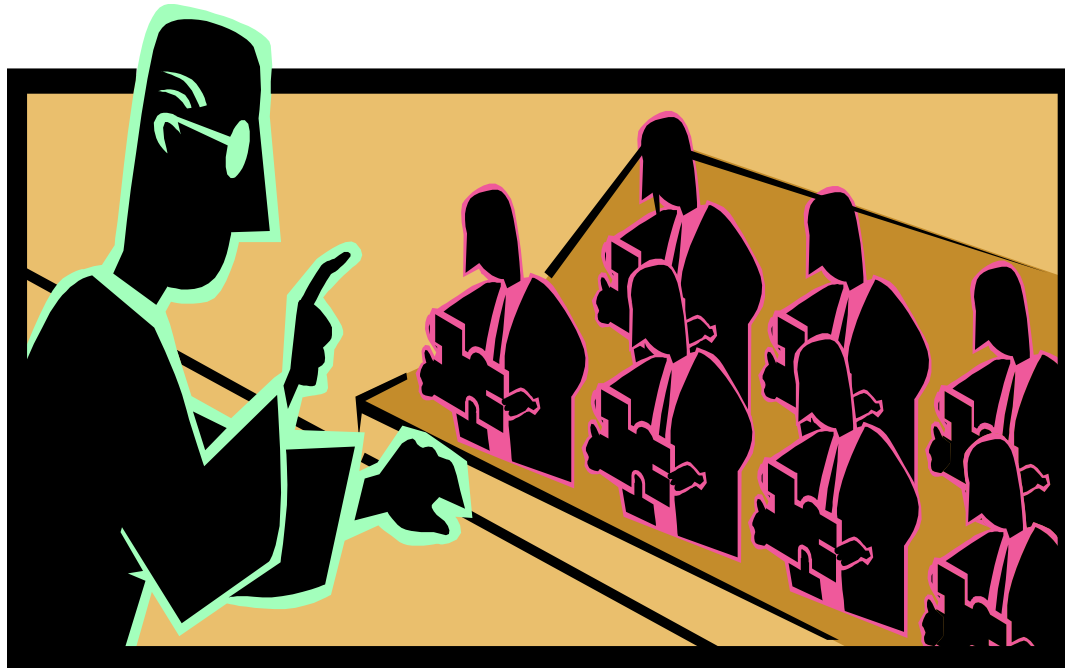
# COLLECT THEIR PHONES?

- Collecting phones during deliberations puts temptation out of reach
  - Caveat: Some jurors are tethered to their communication device as a lifeline
  - Provide method for emergency contact
- Collect phones during trial day?
  - Judge's discretion.



# THE BEST REMEDY FOR MISCONDUCT:

- Head it off before it happens through good, clear instruction



# NEWLY REORGANIZED JURY INSTRUCTIONS

- First comprehensive reorganization of civil jury instructions since 1967 when civil standard instructions were first adopted.



# 2010 REORGANIZATION OF FLORIDA STANDARD JURY INSTRUCTIONS (CIVIL)

- Making standard instructions plainer, more understandable, better organized, and easier to use...

# WHAT IS A STANDARD JURY INSTRUCTION?

- Who makes them?
- What is the process?
- Who approves them?

# JURY INSTRUCTIONS

- Rules of Procedure:
  - Form 1.985, Florida Rules of Civil Procedure
  - Rule 1.470(b)



# NEWS FLASH...



- Entirely New Format for Jury Instruction Book, Mar. 4, 2010

- Standard Jury Instructions on the Supreme Court's website

*[http://www.floridasupremecourt.org/civ\\_jury\\_instructions/index.shtml](http://www.floridasupremecourt.org/civ_jury_instructions/index.shtml)*

# REORGANIZATION OF FSJI

- First comprehensive reorganization since 1967
- New format, numbering, and sequence to make it easier to find and assemble instructions
- Plain English changes were made for consistency and clarity
- Obsolete instructions were eliminated
- Comments and Notes on Use combined as “Notes on Use”

# REORGANIZATION OF FSJI

- Model Charges and Special Verdicts moved to Appendices
- New section on Oaths added
- Substantive changes to instructions before the Court at the time of reorganization are all included, except Products Liability
  - Negligence changes
  - Greater Weight of Evidence

# SUBSTANTIVE PROPOSALS ACTED UPON ALONG WITH REORGANIZATION

SC 09-284, et al, INCLUDED THE FOLLOWING:

- ◉ Negligence
- ◉ Greater Weight of Evidence: UNCHANGED
- ◉ Believability of Witnesses
- ◉ Closing Instructions
- ◉ Jury Deadlocked (Allen Charge)
- ◉ Burden of Proof on Defense Issues
- ◉ Med Mal Insurer's Bad Faith
- ◉ Probable Cause-Malicious Pros., False Imprisonment
- ◉ Intentional tort exception to exclusive remedy of workers' compensation
- ◉ Professional Negligence (Medical Malpractice)
- ◉ Punitive Damages

# CURRENT STATUS

- Reorganized Instructions are on the Supreme Court Website
- Prior Versions are Available on the Website
- Website Contains a Conversion Chart to Link Old Instructions to Reorganized and Revised Instructions, if Applicable
- Reorganized Instructions are Consistent with Basic Approach, Theory, and Style of Original FSJI Instructions



# IMPORTANT LANGUAGE

The Supreme Court noted:

“Under the amended instructions, in the exercise of its discretion, the trial court may choose to instruct the jury at the beginning of the case as to substantive matters, prior to the introduction of evidence. To that end, we authorize introductory instructions under section 200 and initial instructions for each substantive section. We reiterate that the decision as to the timing of instructing the jury rests solely with the trial judge.”

## AS WITH ALL STANDARD INSTRUCTION OPINIONS:

“In authorizing the publication and use of the standard civil jury instructions, we [the Supreme Court] express no opinion on their correctness and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions nor contesting the legal correctness of the instructions.”

## CONCLUSION

Lawyers and judges will need to learn and adapt to a new format and some new instructions, but the purpose of the changes is to make the instructions plainer, more understandable and easier to find and use.