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## **APPENDIX H**

**SUPREME COURT COMMITTEE ON STANDARD JURY INSTRUCTIONS  
FOR BUSINESS AND CONTRACT CASES**

**Excerpt of Minutes for 12/5/13 and 12/6/13 Meeting**

**Review of Instruction Incorporating Rule 2.451**

- Chairman noted that the Florida Supreme Court passed Rule 2.451 to remedy the problem that jurors are searching the internet, tweeting and posting on Facebook. The Florida Supreme Court, on an emergency basis, adopted Rule 2.451 regarding restrictions on the use of social media and instructed the SJI Committees to draft an instruction to implement the Rule. This Committee formed a subcommittee to draft the requested instruction. The draft being reviewed by the Committee is SJI Civil's current draft.
- The first section to discuss is the Qualifications Instruction:
  - The Committee's charge on this portion of the instruction includes that (1) the proposed instruction accurately reflect the rule and (2) that the instruction should be as concise as possible.
  - The Committee discussed the paragraph beginning with "Why is this restriction imposed..." Some members felt that this was important to clearly and in plain English explain the reason for the restriction.
  - One member noted that the reason is encapsulated perfectly in the following sentence: "A basic rule is that jurors must decide the case only on the evidence presented in the courtroom."
  - One member noted that a long explanation can be confusing and may be patronizing. Further, the prohibition on external communications should be more pronounced.
  - The Committee then discussed the context in which the qualifications instruction will be given and noted that it will usually be given by a judge (whether live or pre-recorded) to the large jury pool. Thus the references to "the judge" are appropriate in this context.
  - The Committee discussed whether to address the situation where a juror would be upset without their cell phone due to extenuating circumstances (i.e. family member with health issues). The Committee ultimately felt that this concern was remedied by the Note on Use, which permits the Judge to deviate from the instructions in its discretion.
  - The Committee discussed whether "iPad" should be included where there is a general reference to "tablet." The Committee voted that this additional verbiage was unnecessary and removed the same. "Many of you have cell phones, computers, and other electronic devices such as smartphones or tablets, iPads, and laptops."
  - The Committee also discussed the fact that the instruction is inherently confusing in that some judges may allow the jurors to keep their phones and some may not. One Committee member noted that most judicial circuits would have a circuit-wide policy one way or the other. The Committee discussed whether to make these two concepts optional.
  - The Committee discussed that the list of the types of electronic devices is very cumbersome and discussed whether the simple phrase "electronic devices" should be used singularly throughout. The Committee agreed to change all individual references to specific devices to "electronic devices" generally.
  - The Committee discussed whether two separate instructions are appropriate – one for use of electronic devices while at the courthouse and one to govern once the jurors return home. This would obviate the need for "computer."
  - The Committee discussed whether to highlight that the restriction is required for purposes other than to prevent distractions. "Why is this restriction imposed? Besides avoiding distractions, a basic rule is that jurors must decide the case only on the evidence presented in the courtroom."

- The Committee discussed whether this simple addition does not highlight the distractions issue adequately.
    - The Committee discussed removing the rhetorical question and how to effectively highlight that there are two distinct reasons for the instruction.
    - The Committee discussed whether the rhetorical question is silly or can be perceived as patronizing. Others noted that it makes the conversation more casual. Alternatively, a rhetorical question makes the concept sound “debatable,” despite the fact it is a mandate.
    - “This restriction is imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom.”
  - The Committee discussed whether an additional sentence is needed: “However when you investigate, research, or make inquiries on your own, the trial judge has no way to make sure that the information you obtain is proper for the case.”
    - Rephrased as follows: “If you investigate, research, or inquire on your own, the trial judge has no way to make sure that the information you obtain is proper for the case.”
  - The Committee discussed whether types of distractions should be delineated further.
  - The Committee agreed to relocate the following paragraph to further down in the instruction:
    - “If the trial judge allows you to keep your electronic devices, you cannot use them to take photographs, video recordings, or audio recordings of the proceedings in the courtroom or your fellow jurors. You must not use any device to search the Internet or to find out anything related to any cases in the courthouse.”
  - The Committee felt the instruction, as drafted, does not appropriately limit the ability of the juror to use electronic devices during the proceedings for texting, tweeting etc.
  - The Committee again stressed that the restrictions differ between when the jurors are in the Courtroom and when they are outside the courtroom.
    - The Committee discussed the following revision: “If the trial judge allows you to keep your electronic devices, you cannot use them during the proceedings in the courtroom. You must not use any electronic device to search the Internet or to find out anything related to any cases in the courthouse.”
    - The Committee noted that the text of the Rule ties the restrictions to the court proceedings. The Committee discussed the use of electronic devices during recesses, after hours etc.
  - The Committee generally noted that this is an overall, preliminary instruction and this is not the instruction to be given to the final jury. The thrust of the instruction should be “do not use your electronic devices and the judge will give you more instructions.”
    - Member proposed that the instruction should be a broad prohibition: “If the trial judge allows you to keep your electronic devices, you cannot use them for any purpose while you are in the courtroom. You must not use any electronic device to search the Internet or to find out anything related to any cases in the courthouse.”
- The Committee discussed removing “in this age of electronic...” and agreed it was cumbersome and not necessary.
- The Committee discussed the language “the judge may also impose a penalty upon any juror who violates this instruction” and noted that the penalties should be highlighted to stress the importance of this Rule.
  - The Committee discussed changing “juror” to “you” to clarify that you do not have to be empaneled on a jury to be sanctioned.

- The Committee discussed whether to move penalty language up front to ensure the same is heard and appreciated.
- The Committee discussed condensing the sentences regarding penalties and possibility of a mistrial.

### **201.2 Introduction of Participants and Their Roles**

- Florida Supreme Court requested that this rule be revised to incorporate the mandates of 2.451. The Committee noted that this instruction will be read by the Judge.
- The Committee noted that the instruction does not require modification until the paragraph beginning “In order to have a fair and lawful trial...”
- The Committee discussed whether “posting” should be specifically outlined or whether it is clearly included within communication. The Committee noted that in an earlier paragraph, a definition of communication, including posting, tweeting etc. is included.
- The Committee noted that the Rule prohibits electronic devices in the jury deliberation.
- The Committee discussed whether prior explanation (Qualifications Instructions for Rule 2.451) is appropriate for duplication here, or if additional guidance is appropriate to be given by the trial judge.
- The Committee discussed the following language: “What are the reasons for these rules? All of us are depending on you to follow these rules, so that there will be a fair and lawful resolution to this case. When you are allowed to ask questions in court, which will be considered in the presence of the trial judge and the parties, the trial judge can make sure the questions and answers are proper for the case. When, however, you investigate, research, or make inquiries on your own, the trial judge has no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. That is contrary to our judicial system, which assures every party the right to ask questions about and challenge the evidence being considered against it and to present argument with respect to that evidence. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.”
  - The Committee discussed whether the fairness and justice portions of the instruction, as previously drafted by SJI Civil, are important to be included here or are encapsulated within the instruction as (drafted above and) proposed by this Committee.
    - Proposed succinct language: “Our system of justice is based on the principle of fairness, and obtaining or transmitting information outside the presence of everyone in the courtroom undermines this principle.”
    - The Committee noted that the fairness/justice principle is outlined in the following paragraph adequately and that additional language is not necessary. The Committee voted on this principle and decided to remove the language.
- The Committee reviewed the portion of the instruction regarding penalties – “Any juror who violates these restrictions...”
  - The Committee discussed whether to more clearly describe that mistrial requires the entire process to start over. The Committee felt that this concept was clearly addressed as currently drafted.

### **201.3 – Explanation of the Voir Dire Process** [No changes made]

### **202.2 – Explanation of the Trial Procedure**

- Only change made by SJI Civil was to add “tablets” to description of electronic devices.

- The Committee discussed whether to change the list of devices to “electronic devices” throughout.

### **301.10 – Instruction Before Recess**

- The Committee noted that this instruction is very long and that jurors may have limited attention when they know a break is imminent.
- The Committee noted that the “emergency contact” language is redundant as it will be given at multiple prior times and can be removed.
- The Committee discussed whether to change the language “Do not talk to anyone . . .” to remove the phrase “you must not discuss the case with anyone until the verdict is received or you are excused...”
- Changed “this means” to “this also means”

### **700 – Closing Instructions**

- The Committee felt no changes were necessary to this instruction.

**Global Vote of Approval:** The Committee voted on changes made today and agreed to approve the same.

## **SUPREME COURT COMMITTEE ON STANDARD JURY INSTRUCTIONS FOR BUSINESS AND CONTRACT CASES**

### **Minutes for 3/13/14 and 3/14/14 Meeting *Unapproved***

### **Old Business (Instructions/Areas of Inquiry):**

- Instruction Incorporating Rule 2.451 Update
  - At the Committee’s last meeting, the Committee reviewed and revised the instructions drafted by SJI Civil that incorporate Rule 2.451. After the meeting, the Committee was advised that the instructions drafted by SJI Civil were drafted and approved by SJI Civil after serious, lengthy, and detailed work by that committee. This Committee found that it did not have the knowledge of or the benefit of the level of detailed and careful work that SJI Civil contributed to the instructions prior to the revisions made by this Committee at its last meeting.
  - Since this Committee’s last meeting, the various instructions were submitted by SJI Civil for publication. The instructions were published in the February 15, 2014 edition of The Florida Bar News and online. No comments were received as a result of this publication. SJI Criminal revised its instructions to match the instructions prepared and approved by SJI Civil. SJI Criminal has not received any comments to these instructions.
  - Motion by Eduardo Palmer to adopt the form of instructions drafted and approved by SJI Civil; Seconded by Jane Kreuzler-Walsh. Motion unanimously approved.
  - SJI Civil, Criminal and Business & Contract will prepare and submit a joint report to the Florida Supreme Court with respect to the proposed instructions. Report to Florida Supreme Court is due March 31, 2014.
  - Committee discussed that this will serve as a stand-alone set of instructions to enable the judges to use the same right away.