Filing # 47779590 E-Filed 10/18/2016 04:26:16 PM

RECEIVED, 10/18/2016 04:28:35 PM, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES REPORT 2016-10 **CASE NO.: SC16-**

_____/

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

This report, proposing amended instructions to the Florida Standard Jury Instructions in Criminal Cases, is filed pursuant to Article V, section 2(a) of the Florida Constitution.

	Instruction #	Title
Proposal 1	**19.1**	**Bribery of a Public Servant**
Proposal 2	**19.2**	**Bribery by a Public Servant**
Proposal 3	**19.3**	**Unlawful Compensation or Reward to Public Servant for Official Behavior**
Proposal 4	**19.4**	**Unlawful Compensation or Reward by Public Servant for Official Behavior**
Proposal 5	**19.5**	**Unlawful Compensation or Reward to Public Servant for Official Behavior**
Proposal 6	**19.6**	**Unlawful Compensation or Reward by Public Servant for Official Behavior**
Proposal 7	**19.7**	**Official Misconduct**

The proposals are in Appendix A. Words and punctuation to be deleted are shown with strike-through marks; words and punctuation to be added are underlined. All proposals were published in the May 15, 2016 issue of The Florida Bar *News*. No comments were received.

INITIAL NOTE

The Committee revised Instructions 19.1-19.7 because the 2016 Legislature amended the public corruption statutes. The main changes in Chapter 2016-151 were to expand the applicability of offenses in Chapter 838 to "officers and employees of a public entity." Accordingly, the Committee revised the definition of "public servant" and added a definition of "public entity" throughout these instructions. Additionally, under the old law, the criminal violations in Chapter 838 generally required the public servant to act "corruptly." Under the amended laws, the criminal intent was changed from "corruptly" to "knowingly and intentionally."

Finally, many of the statutes covered by Instructions 19.1-19.7 refer to the phrase "not authorized by law." In order for jurors to have direction regarding that phrase, the Committee relied on *Czajkowski v. State*, 178 So. 3d 498 (Fla. 4th DCA 2015), as support for the idea to insert language from sections 112.313(2) and (4), Florida Statutes, into these instructions.

The Committee proposed these instructions in SC16-1184. On August 26, 2016, the Court severed these proposals from SC16-1184 and instructed the Committee not to resubmit them until the Court resolved *Czajkowski v. State*, SC15-2313. On October 7, 2016, the Court decided not to review *Czajkowski* and stated that no motion for rehearing would be allowed. Accordingly, the Committee now resubmits these proposals.

PROPOSAL #1: INSTRUCTION 19.1

This instruction covers Bribery of a Public Servant, section 838.015(1), Florida Statutes. The latest version of the statute, which becomes effective October 1, 2016, reads as follows:

"Bribery" means to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

The majority of the Committee recommended the following five elements to capture the statute:

1. (Name of public servant) **was a public servant.**

2. (Defendant) **knew that** (name of public servant) **was a public servant.**

3. (Defendant) **knowingly and intentionally [gave] [offered] [promised]** (name of public servant) **a pecuniary or other benefit.**

4. (Defendant's) **[gift] [offer] [promise] was made with the intent or purpose to influence** (name of public servant) **in the performance of any act [or omission] that**

Give 4a or 4b as applicable.

a. (defendant) **believed to be [within the official discretion of** (name of public servant)**] [in violation of a public duty of** (name of public servant)**] [in performance of a public duty of** (name of public servant)**].**

b. (name of public servant) **represented as being [within [his] [her] official discretion] [in violation of [his] [her] public duty] [in performance of [his] [her] public duty].**

5. The pecuniary or other benefit was not authorized by law.

The definition of "corruptly" is deleted because the Bribery statute no longer contains that word. Also, the Committee thought there needed to be a factual finding that the person bribed was a public servant. Accordingly, the Committee deleted the part of the instruction where the judge tells the jury that the (office of person bribed) is a public servant.

The new definitions of "public servant" are added along with the new definition of "public entity." Because no statutory definition of "pecuniary" exists, the Committee added its own definition as: "in the form of money." The Committee used the statutory definition of "benefit," located in section 838.014(1), Florida Statutes. The Committee relied on *Czajkowski* to explain the meaning of "not authorized by law."

The Committee added a new "*Give if applicable*" paragraph to explain that the State need not prove the public servant had assumed office, which is based on section 838.015(2). The Committee also added an italicized "*Give if applicable*" heading above the other section 838.015(2) paragraph. Finally, the Committee deleted the paragraph now labeled section 838.014(4), Florida Statutes, because the subject of that paragraph is covered in the new definition of "public servant."

One member thought the "knowingly and intentionally" language in the statute modified only the act of giving, offering, or promising. Accordingly, that member did not believe the State should be required to prove element #2 - D knew (name of public servant) was a public servant. The rest of the Committee disagreed. No comments were received after publication. Upon final review, the vote was 8-1 to file the proposal with the Court.

PROPOSAL #2: INSTRUCTION 19.2

Instruction 19.2 is similar to Instruction 19.1, except this instruction covers Bribery by a Public Servant as opposed to Bribery of a Public Servant. The statute, which is set forth above, is proposed to be covered with four elements:

1. (Defendant) **was a public servant.**

2. (Defendant) **knowingly and intentionally [requested] [solicited] [accepted] [agreed to accept for [himself] [herself] [or another]] from** (person making bribe) **a pecuniary or other benefit.**

3. (Defendant's) **[request] [solicitation] [acceptance] [agreement to accept] was made with intent of being influenced in the performance of some act [or omission] that**

Give 3a or 3b as applicable.

a. (person making bribe) **believed to be**

[within the official discretion of (defendant)**.]**
[in violation of public duty of (defendant)**.]**
[in performance of public duty of (defendant)**.]**

b. (defendant) **represented as being**

[within [his] [her] official discretion].
[in violation of [his] [her] public duty].
[in performance of [his] [her] public duty].

4. The pecuniary or other benefit was not authorized by law.

The definition of "corruptly" was deleted because the Bribery statute no longer contains that word. Also, the Committee thought there needed to be a factual finding that the person bribed was a public servant. Accordingly, the Committee deleted the part of the instruction where the judge tells the jury that the (office of defendant) is a public servant.

The new definitions of "public servant" were added along with the new definition of "public entity." Because no statutory definition of "pecuniary" exists, the Committee added its own definition of "pecuniary" as "in the form of money." The Committee used the statutory definition of "benefit," located in section 838.014(1). Then, as mentioned above, the Committee relied on *Czajkowski* to explain the meaning of "not authorized by law."

The Committee added a new "*Give if applicable*" paragraph to explain that the State need not prove the public servant had assumed office, which is based on

section 838.015(2), Florida Statutes. The Committee also added an italicized "*Give if applicable*" heading above the other section 838.015(2) paragraph. Finally, the Committee deleted the paragraph now labeled section 838.014(4), because the subject of that paragraph is covered in the latest definition of "public servant."

The vote to amend this instruction as outlined above was unanimous. No comments were received after publication. Upon final review, the vote was unanimous to file the proposal with the Court.

PROPOSAL #3: INSTRUCTION 19.3

This instruction covers the crime of Unlawful Compensation or Reward to a Public Servant for Official Behavior, section 838.016(1), Florida Statutes. The only change made to the body of the revised statute was to replace "corruptly" with "knowingly and intentionally." The statute reads as follows:

> **838.016 Unlawful compensation or reward for official behavior.**
> (1) It is unlawful for any person to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty. This section does not preclude a public servant from accepting rewards for services performed in apprehending any criminal.

The Committee captured the statute with five elements, one of which requires the defendant to know that the person was a public servant. The idea that the defendant had to act corruptly was deleted from element #4, but "knowingly and intentionally" was added to renumbered element #3. In addition, the old definitions of "public servant and "corruptly" were deleted. The new definitions of "public servant" and "governmental entity" were added. "Pecuniary" and "benefit" were defined as in the other public corruption instructions. As mentioned above, the Committee relied on *Czajkowski* to explain to jurors the meaning of "not authorized by law."

One member thought the "knowingly and intentionally" in the statute modified only the act of giving, offering, or promising. Accordingly, that member did not believe the State should be required to prove element #2 - D knew (name of public servant) was a public servant. The rest of the Committee disagreed. No

comments were received after publication. Upon final review, the vote was 8-1 to file the proposal with the Court.

PROPOSAL #4: INSTRUCTION 19.4

This instruction covers the crime of Unlawful Compensation or Reward by a Public Servant for Official Behavior, section 838.016(1), Florida Statutes. The latest version of the statute was set forth above.

The Committee made three changes to the elements section. First, the Committee deleted the existing language in element #3 that states the money or benefit was something of value or advantage to the defendant. The Committee did so because later in the proposed instruction, "pecuniary" is defined as "in the form of money" and "benefit" was defined as gain or advantage. The Committee did, however, add an element #4 that would require the State to prove the pecuniary or other benefit was not authorized by law. Also, the Committee deleted the requirement that the State prove the defendant acted corruptly, but "knowingly and intentionally" was added to element #2. In addition, the old definitions of "public servant and "corruptly" were deleted. The new definitions of "public servant" and "governmental entity" were added. "Pecuniary" was defined as in the other instructions. The definition of "benefit" is relocated so that it comes immediately after the definition of "pecuniary." The Committee relied on *Czajkowski* to explain the meaning of "not authorized by law."

No comments were received after publication. Upon final review, the vote was unanimous to file the proposal with the Court.

PROPOSAL #5: INSTRUCTION 19.5

This instruction covers the crime of Unlawful Compensation or Reward to a Public Servant for Official Behavior, section 838.016(2), Florida Statutes. The only change made to the body of the new statute was to replace "corruptly" with "knowingly and intentionally." The revised statute reads as follows:

> (2) It is unlawful for any person to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.

The Committee captured the latest version of the statute with five elements, one of which requires the defendant to know that the person was a public servant. The requirement that the State prove the defendant acted corruptly was also deleted although "knowingly and intentionally" was added to element #3. In addition, the old definitions of "public servant" and "corruptly" were deleted. The new definitions of "public servant" and "governmental entity" were added. "Pecuniary" and "benefit" were defined as in the other instructions. As mentioned above, the Committee relied on *Czajkowski* to explain the meaning of "not authorized by law."

One member thought the "knowingly and intentionally" in the statute modified only the act of giving, offering, or promising. Accordingly, that member did not believe the State should be required to prove element #2 - D knew (name of public servant) was a public servant. The rest of the Committee disagreed. No comments were received after publication. Upon final review, the vote was 8-1 to file the proposal with the Court.

PROPOSAL #6: INSTRUCTION 19.6

This instruction covers the crime of Unlawful Compensation or Reward by a Public Servant for Official Behavior, section 838.016(2), Florida Statutes.

The Committee made three changes to the elements of the crime. First, the Committee added "knowingly and intentionally" to element #2 and deleted "corruptly" from old element #4. Second, the Committee deleted the existing language in element #3 that states the money or benefit was something of value or advantage to the defendant. The Committee did so because later in the instruction, "pecuniary" is defined as "in the form of money" and "benefit" is defined as gain or advantage. Third, the Committee created a new element #4 that requires the State to prove the pecuniary or other benefit was not authorized by law.

In addition, the old definitions of "public servant and "corruptly" were deleted. The new definitions of "public servant" and "governmental entity" were added. "Pecuniary" was defined as in the other instructions. The definition of "benefit" is relocated so that it comes immediately after the definition of "pecuniary." Then, as was mentioned above, the Committee relied on *Czajkowski* to explain what "not authorized by law" means.

No comments were received after publication. Upon final review, the vote was unanimous to file the proposal with the Court.

PROPOSAL #7: INSTRUCTION 19.7

Instruction 19.7 covers the crime of Official Misconduct, section 838.022, Florida Statutes. The main changes in the revised statute were to add the possibility

that a "public contractor" could be guilty of the crime and to replace "with corrupt intent" with "knowingly and intentionally." The revised statute reads as follows:

838.022 Official misconduct.
(1) It is unlawful for a public servant or public contractor, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, by:
(a) Falsifying, or causing another person to falsify, any official record or official document;
(b) Concealing, covering up, destroying, mutilating, or altering any official record or official document, except as authorized by law or contract, or causing another person to perform such an act; or
(c) Obstructing, delaying, or preventing the communication of information relating to the commission of a felony that directly involves or affects the government entity served by the public servant or public contractor.

(2) For the purposes of this section:
(a) The term "public servant" does not include a candidate who does not otherwise qualify as a public servant.
(b) An official record or official document includes only public records.

(3) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Accordingly, **"[public contractor]**" was added to element #1. Also, element #3 is proposed to be deleted and replaced with "knowingly and intentionally" as part of element #2.

The Committee relied on *Czajkowski* to explain the meaning of "not authorized by law." The new definitions of "public servant" and "public contractor" and "governmental entity" are added. Also, a new section is added to reflect section 838.022(2)(a), which states that the term "public servant" does not include a candidate who does not otherwise qualify as a public servant. Additionally, a definition of "person" and "office or employee of a person" is added to explain the definition of "public contractor." The reliance on section 1.01(3), Florida Statutes, is based on the definition of "public contractor" within section 838.014(6), Florida Statutes.

The Committee deleted the explanation of "with corrupt intent" because that phrase is no longer part of the statute. The Committee added its own definition of "pecuniary." The Committee also deleted the existing definition of "public

servant" because it has been replaced in the new legislation. Finally, the Committee added a new sentence in the definition of "felony" which will enable the judge to instruct the jury that (name of crime) is a felony.

All votes to change this instruction were unanimous. No comments were received after publication. Upon final review, the vote was unanimous to file the proposal with the Court.

CONCLUSION

The Standard Jury Instructions in Criminal Cases Committee respectfully requests the Court authorize for use the proposals in Appendix A.

Respectfully submitted this 18th day of October, 2016.

s/ Judge F. Rand Wallis_____
The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Florida Bar Number: 980821
WallisR@flcourts.org

CERTIFICATE OF FONT COMPLIANCE

I hereby certify that this report has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

s/ Judge F. Rand Wallis
The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Florida Bar Number: 980821
WallisR@flcourts.org