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APPENDIX C

SUPREME COURT COMMITTEE ON
STANDARD JURY INSTRUCTIONS IN CIVIL CASES

MINUTES

Carlton Fields
Conference Room MP 1-2, 40th Floor
100 SE 2nd Street, Suite 4200
Miami, Florida 33131-2113

July 14, 2016 (1:00 p.m. to 5:00 p.m.)

Members Present: Rebecca Mercier Vargas (Chair); Laura Whitmore (Vice Chair); Linda H. Babb; Wendy W. Berger; Steven L. Brannock (via phone); Beatrice A. Butchko; Jeffrey A. Cohen; James Daniel (via phone); Jack Day; Gary D. Fox; Bryan S. Gowdy; Barbara W. Green; Robert M. Gross (via phone); Robert M. Klein; Joseph Lewis; Douglas J. McCarron; Seth Miles; Jason L. Odom; Robert E. O’Quinn; Daniel B. Rogers; David J. Sales; Thomas Slater; Jonathan B. Trohn; Alan F. Wagner; Peter Wechsler (via phone); Charles T. Wiggins (via phone); Melvin B. Wright (via phone); Joseph Lang, Jr. (ex officio)

Also Present: Nichole Segal (Reporter); Heather Telfer (Bar Staff Liaison)

Members Absent: Brian Baggot; Thomas E. Dukes, III; Matthew C. Lucas; Elizabeth Metzger; Donald A. Myers, Jr.; Richard J. Suarez

EXCERPT – JUROR CONDUCT DISCUSSION

July 14, 2016 (1:00 p.m. to 5:00 p.m.)

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3. JUROR CONDUCT (pages 190–208 of the materials)

Berger gave the report of the subcommittee. The subcommittee met to discuss proposed changes to Instructions 201.2 (Introduction of Participants and Their Roles) and 202.4 (Juror Questions).

i. 201.2

A proposed change to this instruction was submitted by former committee member Ralph Artigliere. Butchko explained that Mr. Artigliere was a member of this Committee and does a lot of teaching and judicial education so he likely put significant thought into this recommendation based upon his experience.

Mr. Artigliere suggested that the instruction be amended to make clear that jurors should use a note if they have a question for the judge and that they should not share the content of their communication with anyone, including the other jurors. He suggested the following addition:

All of your communications with courtroom personnel, or me, will be part of the record of these proceedings. That means those communications shall either be made in open court with the court reporter present or, if they are in writing, the writing will be filed with the court clerk. This means, if you are outside the courtroom, any communication with me must be in writing, unsigned, and handed directly to the bailiff. Do not share the content of the writing with anyone, including other jurors. I have instructed the courtroom personnel that any communications you have with them outside of my presence must be reported to me, and I will tell the parties [and their attorneys] about any communication from you that I believe may be of interest to the parties [and their attorneys].

Berger explained that the suggested language comports with the language of section 40.50(4), Florida Statutes.

The subcommittee unanimously agreed to adopt the language proposed by Mr. Artigliere.

Slater questioned the necessity of the language regarding not identifying the juror by name on the note. Berger explained that the language is in other parts of the instructions so this is consistent.

With regards to keeping the contents of the notes to themselves, Berger explained it is best so that the content does not taint other jurors.

Trohn asked how judges hear from jurors of juror misconduct during trial. Berger said they do not unless a juror passes a note out. With that in mind, Trohn asked how the court could inquire further if it did not know who sent the note. Berger explained that in such an instance, she would generally question the entire jury about the situation.

Butchko mentioned that the subcommittee discussed that jurors sometimes ask the bailiff questions and some bailiffs will respond, even though they should not. This amendment is intended to curtail that sort of thing. With regards to asking the jurors not to sign the notes, she thinks it helps in not tipping the hat to the attorneys about what the juror is thinking.

Fox moved, Whitmore seconded, and the Committee unanimously approved the recommendation of the subcommittee.

A proposed change to this instruction was submitted by Circuit Judge John T. Brown of Fort Walton Beach. Judge Brown suggested amending 202.4 to add that questions must be asked of witnesses “before the witness leaves the witness stand.” He believed that this would alleviate the problem of jurors asking questions after a witness has been excused and has left the building.

The subcommittee unanimously agreed to add the following language to the instruction:

It is important to know that if you have a question you believe should be asked of a witness, you must raise your hand and request that I ask the witness the question before the witness leaves the witness stand. You will not have an opportunity to ask the witness a question once the witness leaves the courtroom.

The next issue the subcommittee considered was where the language should be included. A majority of the subcommittee agreed to add it to after the second paragraph of the “Questions for witnesses” portion of the instruction.

Vargas thought the original instruction was clear but Judge Brown mentioned in his submission to the Committee that he had jurors request to submit questions for witnesses after the witness had left the stand on several occasions.

Day agreed that he has also had the situation arise where jurors did not understand fully the timing of asking questions. He has added similar language in instructions in the past.

Miles recommended adding language into the first sentence to make it clear that the question had to be asked before the witness left the stand. Berger said this was one of the possibilities posed by the subcommittee, but a majority of the subcommittee thought it best to add the above paragraph in between the second and third paragraphs.

Butchko noted that this language is helpful for judges who do not really like to highlight that jurors can ask questions. The information is made clear to the jurors and they will know they have to ask questions before the witness leaves the stand.

Whitmore moved, Rogers seconded, and the Committee unanimously approved the recommendation of the subcommittee.

The amendments to 201.2 and 202.4 will be published for comment. Comments will be discussed at the October meeting.

The Committee had already published the talking to witnesses instructions. Vargas questioned whether those should be held and included in the report on

these. The filing subcommittee will discuss.

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