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## **APPENDIX E**

**From:** Ralph Artigliere  
**Sent:** Sunday, February 28, 2016 2:34:28 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Standard Jury Instructions Committee  
**Subject:** Preliminary Instruction

Hello, Laura.

I hope this finds you well and the Committee continuing to do its great work. I have enjoyed seeing the excellent product coming from the Committee since my last term ended.

I noticed something when preparing a jury communications class for new civil judges this month. It is not a correction, but more a suggestion, and it has to do with telling jurors how to communicate with the court. In the closing instructions, we tell them clearly: **If any of you need to communicate with me for any reason, write me a note and give it to the bailiff.**

However, in the preliminary instruction, we are not nearly so clear. **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. 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].**

**However, you may communicate directly with courtroom personnel about matters concerning your comfort and safety, such as [juror parking] [location of break areas] [how and when to assemble for duty] [dress] [what personal items can be brought into the courthouse or jury room] [list any other types of routine ex parte communications permitted].**

To me, we are looking at this as folks who know what goes on in the courtroom as opposed to jurors who would need to be pretty perceptive to abstractly categorize the different options we give them in the first paragraph of that preliminary instruction. Sure, this language tracks Rule 1.431, but rules are made for lawyers and judges, not jurors. Interestingly the statute on this is a bit more direct and comprehensive: "The court shall instruct the jury that any questions directed to witnesses or the court must be in writing, unsigned, and given to the bailiff." Fla. Stat. 40.50(3).

I suggest the following modification of the first of those two paragraphs of the preliminary instruction, which would be better understood by lay persons: **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].**

I am sure the Committee can improve on my suggestion. I am equally sure that some will say this invites juror questions to the court. My response to that is: it is far better for judge and lawyers to know that a juror has what they consider to be an important question than to have the juror not know that they can comment or ask. Also, clearly delineating the process takes away the element of them orally asking the bailiff, which has its own potential pitfalls on the part of the bailiff, including failing to communicate it to the judge, responding to the question, or having the question said out loud to the bailiff in front of other jurors, potentially poisoning the whole group.

Please give my best to the Committee and thank them for their tireless and excellent work.

I would like to know what happens with this suggestion, even if it is not acted upon.

Ralph Artigliere

**From:** Ralph Artigliere

**Sent:** Sunday, February 28, 2016 2:37:22 PM (UTC-05:00) Eastern Time (US & Canada)

**To:** Standard Jury Instructions Committee

**Subject:** FW: Preliminary Instruction CORRECTION

Sorry Laura, the statute with the correct language is Fla. Stat. 40.50(4), not subsection (3). I hit send too soon!

Thanks,

Ralph Artigliere  
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**From:** Judge Brown

**Sent:** Thursday, May 26, 2016 9:54:23 AM (UTC-05:00) Eastern Time (US & Canada)

**To:** Standard Jury Instructions Committee

**Subject:** 202.4

Please consider adding: "... before the witness leaves the witness stand...." To Standard Jury Instruction 202.4. I have had at least one juror want to ask a question after the witness has left the building.

Thank you.

JB

John T. Brown

Circuit Court Judge

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