



**FLORIDA RULES OF CRIMINAL PROCEDURE
SECTION IX
[ALL-IN-ONE DOCUMENT]**

THE TRIAL

{AS OF: 1/1/2017}

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

visit TBD's [website](#) for the most up-to-date information

TABLE OF CONTENTS | IX: THE TRIAL

#	Rule No	Title	Page
I01	3.250	Accused as Witness	4
I02	3.251	Right to Trial by Jury	5
I03	3.260	Waiver of Jury Trial	6
I04	3.270	Number of Jurors	7
I05	3.280	Alternate Jurors	8
I06	3.281	List of Prospective Jurors	9
I07	3.290	Challenge to Panel	10
I08	3.300	Voir Dire Examination, Oath, and Excusing of...	11
I09	3.310	Time for Challenge	13
I10	3.315	Exercise of Challenges	14
I11	3.320	Manner of Challenge	15
I12	3.330	Determination of Challenge for Cause	16
I13	3.340	Effect of Sustaining Challenge	17
I14	3.350	Peremptory Challenges	18
I15	3.360	Oath of Trial Jurors	20
I16	3.361	Witness Attendance and Subpoenas	21
-	n/a	Appendix	22



FLORIDA RULES OF CRIMINAL PROCEDURE

IX THE TRIAL

RULES: 3.250 through 3.361



RULE 3.250 | ACCUSED AS WITNESS

In all criminal prosecutions the accused may choose to be sworn as a witness in the accused's own behalf and shall in that case be subject to examination as other witnesses, but no accused person shall be compelled to give testimony against himself or herself, nor shall any prosecuting attorney be permitted before the jury or court to comment on the failure of the accused to testify in his or her own behalf.

Committee Notes

1968 Adoption. Same as section 918.09, Florida Statutes.

1972 Amendment. Same as prior rule. The committee considered The Florida Bar proposed amendment to this rule, but makes no recommendation with respect thereto.



RULE 3.251 | RIGHT TO TRIAL BY JURY

In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury in the county where the crime was committed.

Committee Notes

1972 Adoption. Substance of Art. I, §16, Florida Constitution.



RULE 3.260 | WAIVER OF JURY TRIAL

A defendant may in writing waive a jury trial with the consent of the state.

Committee Notes

1968 Adoption. This is the same as Federal Rule of Criminal Procedure 23(a). This changes existing law by providing for consent of state.

1972 Amendment. Changes former rule by deleting “the approval of the Court,” thus making trial by judge mandatory where both parties agree. The committee felt that the matter of withdrawal of a waiver was a matter within the inherent discretion of the trial judge and that no rule is required.



RULE 3.270 | NUMBER OF JURORS

Twelve persons shall constitute a jury to try all capital cases, and 6 persons shall constitute a jury to try all other criminal cases.

Committee Notes

1968 Adoption. Except for substituting the word “persons” for “men,” the suggested rule is a transcription of section 913.10, Florida Statutes. The standing committee on Florida court rules raised the question as to whether this rule is procedural or substantive and directed the subcommittee to call this fact to the attention of the Supreme Court.

1972 Amendment. Same as prior rule.



RULE 3.280 | ALTERNATE JURORS

(a) Selection. The court may direct that jurors, in addition to the regular panel, be called and impanelled to sit as alternate jurors. Alternate jurors, in the order in which they are impanelled, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, be subject to the same examination, take the same oath, and have the same functions, powers, facilities, and privileges as the principal jurors. Except as hereinafter provided regarding capital cases, an alternate juror who does not replace a principal juror shall be discharged at the same time the jury retires to consider its verdict.

(b) Responsibilities. At the conclusion of the guilt or innocence phase of the trial, each alternate juror will be excused with instructions to remain in the courtroom. The jury will then retire to consider its verdict, and each alternate will be excused with appropriate instructions that the alternate juror may have to return for an additional hearing should the defendant be convicted of a capital offense.

Committee Notes

1968 Adoption. Save for certain rewording, the suggested rule is a transcription of section 913.10(2), Florida Statutes, except that the provisions for the challenging of the alternate jurors has been included more appropriately in the rule relating to challenges.

1972 Amendment. Same as prior rule.

1977 Amendment. This rule clarifies any ambiguities as to what should be done with alternate jurors at the conclusion of a capital case and whether they should be available for the penalty phase of the trial. The change specifies that they will not be instructed as to any further participation until the other jurors who are deliberating on guilt or innocence are out of the courtroom, in order not to influence the deliberating jurors or in any way convey that the trial judge feels that a capital conviction is imminent.



RULE 3.281 | LIST OF PROSPECTIVE JURORS

Upon request, any party shall be furnished by the clerk of the court with a list containing names and addresses of prospective jurors summoned to try the case together with copies of all jury questionnaires returned by the prospective jurors.

Committee Notes

1972 Adoption. ABA Standard 2.2. The furnishing of such a list should result in considerable time being saved at voir dire. Also includes those questionnaires authorized by section 40.101, Florida Statutes, although the statute itself provides for such disclosure.



RULE 3.290 | CHALLENGE TO PANEL

The state or defendant may challenge the panel. A challenge to the panel may be made only on the ground that the prospective jurors were not selected or drawn according to law. Challenges to the panel shall be made and decided before any individual juror is examined, unless otherwise ordered by the court. A challenge to the panel shall be in writing and shall specify the facts constituting the ground of the challenge. Challenges to the panel shall be tried by the court. Upon the trial of a challenge to the panel the witnesses may be examined on oath by the court and may be so examined by either party. If the challenge to the panel is sustained, the court shall discharge the panel. If the challenge is not sustained, the individual jurors shall be called.

Committee Notes

1968 Adoption. This is a transcription of section 913.01, Florida Statutes.

1972 Amendment. Same as prior rule 3.300; order of rule changed to improve chronology.



RULE 3.300 | VOIR DIRE EXAMINATION, OATH, AND EXCUSING OF MEMBER

(a) Oath. The prospective jurors shall be sworn collectively or individually, as the court may decide. The form of oath shall be as follows:

“Do you solemnly swear (or affirm) that you will answer truthfully all questions asked of you as prospective jurors, so help you God?”

If any prospective juror affirms, the clause “so help you God” shall be omitted.

(b) Examination. The court may then examine each prospective juror individually or may examine the prospective jurors collectively. Counsel for both the state and defendant shall have the right to examine jurors orally on their voir dire. The order in which the parties may examine each juror shall be determined by the court. The right of the parties to conduct an examination of each juror orally shall be preserved.

(c) Prospective Jurors Excused. If, after the examination of any prospective juror, the court is of the opinion that the juror is not qualified to serve as a trial juror, the court shall excuse the juror from the trial of the cause. If, however, the court does not excuse the juror, either party may then challenge the juror, as provided by law or by these rules.

Committee Notes

1968 Adoption.

(a) Save for the inclusion of the form of oath, the suggested rule is a transcription of a part of section 913.02(1), Florida Statutes. The form of oath paraphrases in pertinent part the oath set out in section 913.11, Florida Statutes.

(b) The suggested rule is a transcription of the remainder of section 913.02(1), Florida Statutes.

(c) Substantially same as section 913.02(2), Florida Statutes.

1972 Amendment. (a) The language relating to competence to serve as jurors deleted as superfluous, (c) amended for clarification by inserting the clause “that such juror is not qualified to serve as a trial juror” for the clause “that such juror is incompetent.”



1980 Amendment. As to examination by parties, this brings rule 3.300(b) into conformity with Florida Rule of Civil Procedure 1.431(b). This rule also allows the court to examine each prospective juror individually or collectively.



RULE 3.310 | TIME FOR CHALLENGE

The state or defendant may challenge an individual prospective juror before the juror is sworn to try the cause; except that the court may, for good cause, permit a challenge to be made after the juror is sworn, but before any evidence is presented.

Committee Notes

1968 Adoption. Save for the heading and for the inclusion of the phrase, “for cause or peremptorily,” the suggested rule is a transcription of the provisions of section 913.04, Florida Statutes.

1972 Amendment. Prior rule amended only by deleting some language felt by the committee to be superfluous.



RULE 3.315 | EXERCISE OF CHALLENGES

On the motion of any party, all challenges shall be addressed to the court outside the hearing of the jury panel in a manner selected by the court so that the jury panel is not aware of the nature of the challenge, the party making the challenge, or the basis of the court's ruling on the challenge, if for cause.

Committee Notes

1980 Adoption. With the exception of “Upon the motion of any party,” the language is taken directly from Florida Rule of Civil Procedure 1.431(c)(3). This rule had no counterpart in the criminal rules.



RULE 3.320 | MANNER OF CHALLENGE

A challenge to an individual juror may be oral. When a juror is challenged for cause the ground of the challenge shall be stated.

Committee Notes

1968 Adoption. Save for the heading and the insertion of the word “the,” the suggested rule is a transcription of the provisions of section 913.05, Florida Statutes. The phrase “for cause or peremptorily” has been added.

1972 Amendment. Same as prior rule [but some terminology has been changed].

RULE 3.330 | DETERMINATION OF CHALLENGE FOR CAUSE

The court shall determine the validity of a challenge of an individual juror for cause. In making such determination the juror challenged and any other material witnesses, produced by the parties, may be examined on oath by either party. The court may consider also any other evidence material to such challenge.

Committee Notes

1968 Adoption. The suggested rule is essentially a transcription of sections 913.06 and 913.07, Florida Statutes, except for the first and last sentences.

1972 Amendment. Same as prior rule [but some terminology has been changed].



RULE 3.340 | EFFECT OF SUSTAINING CHALLENGE

If a challenge for cause of an individual juror is sustained, the juror shall be discharged from the trial of the cause. If a peremptory challenge to an individual juror is made, the juror shall be discharged likewise from the trial of the cause.

Committee Notes

1968 Adoption. The first sentence of the suggested rule except for the inclusion of the words “for cause” is a transcription of section 913.09, Florida Statutes. The last sentence has been added.

1972 Amendment. Same as prior rule.



RULE 3.350 | PEREMPTORY CHALLENGES

(a) Number. Each party shall be allowed the following number of peremptory challenges:

(1) Felonies Punishable by Death or Imprisonment for Life. Ten, if the offense charged is punishable by death or imprisonment for life.

(2) All Other Felonies. Six, if the offense charged is a felony not punishable by death or imprisonment for life.

(3) Misdemeanors. Three, if the offense charged is a misdemeanor.

(b) Codefendants. If 2 or more defendants are jointly tried, each defendant shall be allowed the number of peremptory challenges specified above, and in such case the state shall be allowed as many challenges as are allowed to all of the defendants.

(c) Multiple Counts and Multiple Charging Documents. If an indictment or information contains 2 or more counts or if 2 or more indictments or informations are consolidated for trial, the defendant shall be allowed the number of peremptory challenges that would be permissible in a single case, but in the interest of justice the judge may use judicial discretion in extenuating circumstances to grant additional challenges to the accumulated maximum based on the number of charges or cases included when it appears that there is a possibility that the state or the defendant may be prejudiced. The state and the defendant shall be allowed an equal number of challenges.

(d) Alternate Jurors. If 1 or 2 alternate jurors are called, each party is entitled to 1 peremptory challenge, in addition to those otherwise allowed by law, for each alternate juror so called. The additional peremptory challenge may be used only against the alternate juror and the other peremptory challenges allowed by law shall not be used against the alternate juror.

(e) Additional Challenges. The trial judge may exercise discretion to allow additional peremptory challenges when appropriate.



Committee Notes

1968 Adoption. The suggested rule is a transcription of section 913.08, Florida Statutes, excluding subdivision (5), which is lifted from section 913.10(2), Florida Statutes, and included since the several provisions relate to peremptory challenges. The question was raised regarding multiple counts or consolidation in their relation to the number of challenges. It was decided not to imply approval of multiple counts or consolidation. The standing committee on Florida court rules raised the question as to whether or not this rule is procedural or substantive and directed the subcommittee to call this fact to the attention of the supreme court.

1972 Amendment. Substantially same as prior rule; introductory language modernized.

1977 Amendment. This proposed rule amends rule 3.350(e) to allow the defendant and the state an equal number of peremptory challenges and to permit the court to grant additional challenges to both parties where it appears that the state would otherwise be prejudiced.

1992 Amendment. The amendment adds (e) that specifically sets out the trial court's discretion to allow peremptory challenges in addition to those provided for in the rule. This amendment was one of several proposed by the jury management committee that provided for a reduction in the number of peremptory challenges allowed by the rule. The majority of the criminal procedure rules committee, while recommending against adoption of the remaining proposals of the jury management committee, nevertheless felt it would be appropriate to add (e) to clarify that the trial court's discretion is not limited to those situations set out in (c) of the rule (i.e., multiple counts or informations or indictments consolidated for trial).



RULE 3.360 | OATH OF TRIAL JURORS

The following oath shall be administered to the jurors:

“Do you solemnly swear (or affirm) that you will well and truly try the issues between the State of Florida and the defendant and render a true verdict according to the law and the evidence, so help you God?”

If any juror affirms, the clause “so help you God” shall be omitted.

Committee Notes

1968 Adoption. The suggested rule is a transcription of section 913.11, Florida Statutes.

1972 Adoption. Language of prior rule amended slightly to modernize.



RULE 3.361 | WITNESS ATTENDANCE AND SUBPOENAS

(a) Subpoenas generally. Subpoenas for testimony before the court and subpoenas for production of tangible evidence before the court may be issued by the clerk of the court or by any attorney of record in an action.

(b) Subpoena for testimony or production of tangible evidence.

(1) A subpoena for testimony or production of tangible evidence before the court shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony or produce the evidence at a time and place specified in the subpoena.

(2) On oral request of an attorney, the clerk shall issue a subpoena for testimony before the court or a subpoena for the production of tangible evidence before the court, signed and sealed but otherwise in blank, and the subpoena shall be filled in by the attorney before service.

(c) For production of tangible evidence.

(1) If a subpoena commands a person or entity to produce books, papers, documents, or tangible things, the person or entity may move the court to quash or modify the subpoena before the time specified in the subpoena for compliance.

(2) The court may (A) quash or modify the subpoena if it is unreasonable and oppressive, or (B) require the person in whose behalf the subpoena is issued to advance the reasonable cost of producing the books, papers, documents, or tangible things.

(d) Attendance and enforcement. A witness subpoenaed for testimony before the court or for production of tangible evidence before the court shall appear and remain in attendance until excused by the court or by all parties. A witness who refuses to obey a subpoena or who departs without being excused properly may be held in contempt.



APPENDIX



COPYRIGHT NOTICE

TextBookDiscrimination.com is not the author of these rules. Instead, TextBookDiscrimination.com merely re-printed and reformatted them for easier use.

ORIGINAL SOURCE

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Original Source	www.FloridaBar.org/Rules

INTERACTIVE VERSION

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Web	TextBookDiscrimination.com/Rules/RCrimP/FL/T009

CONTACT INFORMATION

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

Congratulations! You're now ***booked up*** on Section IX from the Florida Rules of Criminal Procedure!

