



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

CONDUCT OF TRIAL; JURY INSTRUCTIONS

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FLORIDA RULES OF CRIMINAL PROCEDURE

X CONDUCT OF TRIAL; JURY INSTRUCTIONS

RULES: 3.370 through 3.430



RULE 3.370 | REGULATION AND SEPARATION OF JURORS

(a) During Trial. After the jurors have been sworn they shall hear the case as a body and, within the discretion of the trial judge, may be sequestered. In capital cases, absent a showing of prejudice, the trial court may order that between the guilt and penalty phases of the trial the jurors may separate for a definite time to be fixed by the court and then reconvene before the beginning of the penalty phase.

(b) After Submission of Cause. Unless the jurors have been kept together during the trial the court may, after the final submission of the cause, order that the jurors may separate for a definite time to be fixed by the court and then reconvene in the courtroom before retiring for consideration of their verdict.

(c) During Deliberations. Absent exceptional circumstances of emergency, accident, or other special necessity or unless sequestration is waived by the state and the defendant, in all capital cases in which the death penalty is sought by the state, once the jurors have retired for consideration of their verdict, they must be sequestered until such time as they have reached a verdict or have otherwise been discharged by the court. In all other cases, the court, in its discretion, either on the motion of counsel or on the court's initiative, may order that the jurors be permitted to separate. If jurors are allowed to separate, the trial judge shall give appropriate cautionary instructions.

Committee Notes

1968 Adoption. (a) Taken from section 919.01, Florida Statutes.

(b) Taken from section 919.02, Florida Statutes.

1972 Amendment. (a) and (b) substantially the same as former rule 3.380, except that some language has been modernized. New provision permits nonsequestered jury to separate after receiving case for consideration.

Former rule 3.370 has been deleted as its substance is now contained in new Rules 3.150 through 3.153 on Joinder and Severance.



RULE 3.371 | JUROR QUESTIONS OF WITNESSES

(a) Judicial Discretion. At the discretion of the presiding trial judge, jurors may be allowed to submit questions of witnesses during the trial.

(b) Procedure. The trial judge shall utilize the following procedure if a juror indicates that the juror wishes to ask a question:

- (1) the questions must be submitted in writing;
- (2) the trial judge shall review the question outside the presence of the jury;
- (3) counsel shall have an opportunity to object to the question outside the presence of the jury;
- (4) counsel shall be allowed to ask follow up questions;
and
- (5) the jury must be advised that if a question submitted by a juror is not allowed for any reason, the juror must not discuss it with the other jurors and must not hold it against either party.



RULE 3.372 | JUROR NOTEBOOKS

In its discretion, the court may authorize documents and exhibits to be included in notebooks for use by the jurors during trial to aid them in performing their duties.



RULE 3.380 | MOTION FOR JUDGMENT OF ACQUITTAL

(a) Timing. If, at the close of the evidence for the state or at the close of all the evidence in the cause, the court is of the opinion that the evidence is insufficient to warrant a conviction, it may, and on the motion of the prosecuting attorney or the defendant shall, enter a judgment of acquittal.

(b) Waiver. A motion for judgment of acquittal is not waived by subsequent introduction of evidence on behalf of the defendant. The motion must fully set forth the grounds on which it is based.

(c) Renewal. If the jury returns a verdict of guilty or is discharged without having returned a verdict, the defendant's motion may be made or renewed within 10 days after the reception of a verdict and the jury is discharged or such further time as the court may allow.

Committee Notes

1968 Adoption. Substantially same as section 918.08, Florida Statutes, except as follows:

(a) The existing statutory practice of granting directed verdicts is abolished in favor of the federal practice of having the judge enter a judgment of acquittal.

(b) The wording was changed to comply with the judgment of acquittal theory. A majority of the committee felt that the substance of the existing statute was all right, but a minority felt that the language should be changed so that a defendant would waive an erroneous denial of his motion for judgment of acquittal by introducing evidence. This point was raised in *Wiggins v. State*, 101 So.2d 833 (Fla. 1st DCA 1958), wherein the court said that this statute is "ineptly worded."

1972 Amendment. (a) and (b) same as prior rule 3.660, transferred to better follow trial chronology. (c) provides time period for renewal of motion and is new.

1980 Amendment. This brings rule 3.380(c) into conformity with Florida Rule of Civil Procedure 1.480(b) as it relates to the number of days (10) within which a party, either in a civil or criminal case, may make or renew a motion for judgment of acquittal. There appears to be no sound reason for the distinction between the criminal rule (4 days or such greater time as the court may allow, not to exceed 15 days) and the civil rule (10 days).



RULE 3.381 | FINAL ARGUMENTS

In all criminal trials, excluding the sentencing phase of a capital case, at the close of all the evidence, the prosecuting attorney shall be entitled to an initial closing argument and a rebuttal closing argument before the jury or the court sitting without a jury. Failure of the prosecuting attorney to make a closing argument shall not deprive the defense of its right to make a closing argument or the prosecuting attorney's right to then make a rebuttal argument. If the defendant does not present a closing argument, the prosecuting attorney will not be permitted a rebuttal argument.



RULE 3.390 | JURY INSTRUCTIONS

(a) Subject of Instructions. The presiding judge shall instruct the jury only on the law of the case before or after the argument of counsel and may provide appropriate instructions during the trial. If the instructions are given prior to final argument, the presiding judge shall give the jury final procedural instructions after final arguments are concluded and prior to deliberations. Except in capital cases, the judge shall not instruct the jury on the sentence that may be imposed for the offense for which the accused is on trial.

(b) Form of Instructions. The instruction to a jury shall be orally delivered and shall also be in writing. All written instructions shall also be filed in the cause.

(c) Written Request. At the close of the evidence, or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action on the request and of the instructions that will be given prior to their argument to the jury.

(d) Objections. No party may raise on appeal the giving or failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the presence of the jury.

(e) Transcript and Review. When an objection is made to the giving of or failure to give an instruction, no exception need be made to the court's ruling thereon in order to have the ruling reviewed, and the grounds of objection and ruling thereon shall be taken by the court reporter and, if the jury returns a verdict of guilty, transcribed by the court reporter and filed in the cause.



Committee Notes

1972 Adoption. The committee adopted section 918.10, Florida Statutes, with only minor modification as to terminology.

1988 Amendment. To assist the jury in understanding the jury instructions.

1992 Amendment. Suggested change in wording to make (d) clearer and easier to understand and also so it more closely follows its federal counterpart, Federal Rule of Criminal Procedure 30.



RULE 3.391 | SELECTION OF FOREPERSON OF JURY

The court shall instruct the jurors to select one of their number foreperson.

Committee Notes

1968 Adoption. This rule was inserted in order to clarify the system of selecting jury foreman.

1972 Amendment. Same as former rule 3.390.



RULE 3.400 | MATERIALS TO THE JURY ROOM

(a) Discretionary Materials. The court may permit the jury, upon retiring for deliberation, to take to the jury room:

- (1) a copy of the charges against the defendant;
- (2) forms of verdict approved by the court, after being first submitted to counsel;
- (3) all things received in evidence other than depositions. If the thing received in evidence is a public record or a private document which, in the opinion of the court, ought not to be taken from the person having it in custody, a copy shall be taken or sent instead of the original.

(b) Mandatory Materials. The court must provide the jury, upon retiring for deliberation, with a written copy of the instructions given to take to the jury room.

Committee Notes

1968 Adoption. (1) and (2) same as section 919.04(1) and (2), Florida Statutes.

Section (3) was changed from the existing section 919.04(3) by adding to the things which should not be taken with or sent to the jury, written or recorded statements or confessions. It was felt by the committee that the present practice of allowing such things to be taken with the jury is unfair and emphasizes such statements or confessions to the jury. Since they are always read to the jury they should receive no additional emphasis than the testimony of any witness from the stand. [Court did not approve this change; the proposal was not adopted; and F.S.A. §919.04(3) was transferred unchanged to Rule 1.400(c).]

1972 Amendment. (a) permits a copy of the indictment or information to be taken to the jury room. The committee deliberated at length about this provision but finally approved same. (b), (c), and (d) are same as former rule 3.400(a), (b), and (c) [but some terminology has been changed].



RULE 3.410 | JURY REQUEST TO REVIEW EVIDENCE OR FOR ADDITIONAL INSTRUCTIONS

(a) If, after they have retired to consider their verdict, jurors request additional instructions or to have any testimony read or played back to them they may be conducted into the courtroom by the officer who has them in charge and the court may give them the additional instructions or may order the testimony read or played back to them. The instructions shall be given and the testimony presented only after notice to the prosecuting attorney and to counsel for the defendant. All testimony read or played back must be done in open court in the presence of all parties. In its discretion, the court may respond in writing to the inquiry without having the jury brought before the court, provided the parties have received the opportunity to place objections on the record and both the inquiry and response are made part of the record.

(b) In a case in which the jury requests to have the transcripts of trial testimony, the following procedures must be followed:

(1) The trial judge must deny the requests for transcripts.

(2) The trial judge must instruct jurors that they can, however, request to have any testimony read or played back, which may or may not be granted at the court's discretion.

(3) In cases in which jurors make only a general request for transcripts, as opposed to identifying any particular witness' testimony that they wish to review, the trial judge must instruct jurors that, if they request a read or play back, they must specify the particular trial testimony they wish to have read or played back.

(c) If, after being properly instructed in accordance with subdivision (b), the jurors request a read or play back of any trial testimony, the trial judge must follow the procedures set forth in subdivision (a).



Committee Notes

1968 Adoption. Same as section 919.05, Florida Statutes.

1972 Amendment. This is the same as former rule 3.410, except that the former rule made it mandatory for the trial judge to give additional instructions upon request. The committee feels that this should be discretionary.



RULE 3.420 | RECALL OF JURY FOR ADDITIONAL INSTRUCTIONS

The court may recall the jurors after they have retired to consider their verdict to give them additional instructions or to correct any erroneous instructions given them. The additional or corrective instructions may be given only after notice to the prosecuting attorney and to counsel for the defendant.

Committee Notes

1968 Adoption. Same as section 919.06, Florida Statutes.

1972 Amendment. Same as former rule.



RULE 3.430 | JURY NOT RECALLABLE TO HEAR ADDITIONAL EVIDENCE

After the jurors have retired to consider their verdict the court shall not recall the jurors to hear additional evidence.

Committee Notes

1968 Adoption. Same as section 919.07, Florida Statutes.

1972 Amendment. Same as prior rule.



APPENDIX



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