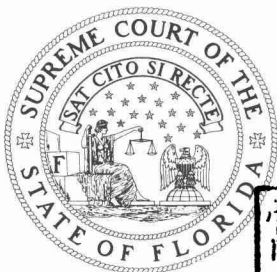


FLORIDA STANDARD JURY INSTRUCTIONS — CONTRACT AND BUSINESS CASES

FIRST EDITION



THE FLORIDA BAR

CONTINUING LEGAL EDUCATION

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This book contains standard jury instructions prepared by the Florida Supreme Court Committee on Standard Jury Instructions in Contract and Business Cases. Because it is impossible to cover every circumstance or issue with standard instructions, this book includes only those instructions which occur with enough frequency to have warranted their preparation.

Although the Florida Supreme Court has approved this book, the Court has not expressed an opinion as to the instructions' correctness. Also, because of changes in the law, these instructions may become outdated or in need of revision or supplementation. For these reasons, parties remain free to contest a standard instruction's legal correctness or to request additional or alternative instructions.

A. Getting Started

When compiling a set of proposed instructions, the following minimum steps should be taken:

Determine the current and complete law required for instructing the jury in your case.

Make sure you are using the current version of Florida Standard Jury Instructions (FSJI). The official version of FSJI (Contract and Business) is located at the committee's website, www.floridasupremecourt.org/contract_jury_instructions/

index.shtml. You also can check for the latest updates by accessing the most recent publication date on the “Court Decisions & Rules” link of the Florida Supreme Court’s website homepage, www.floridasupremecourt.org. Also, check the “Rule Cases” link on the Clerk’s Office webpage for instructions. Ensure that all updates from The Florida Bar are fully and correctly inserted in printed versions of the book, and check the committee’s website for any approved instructions that have not yet reached publication.

Compile a complete set of proposed instructions for your case from the instructions in this book and, if necessary, by modifying standard instructions or drafting your own case-specific instructions using other appropriate sources.

B. Using This Book For The First Time

The introductory passages below provide useful guidance for preparation of jury instructions by first-time users of this book. Assembling a set of proposed instructions for the trial judge follows custom and organization which may vary somewhat depending on the type of case, and the judge may have specific requirements as well. The standard instructions in this book are included as examples of how a set of instructions is customarily assembled. Even if these standard instructions are not specifically applicable to your particular case, they can assist you in organizing your proposed instructions. Remember that standard instructions may not fully cover the law in any given case, and case-specific instructions may be required.

C. Finding The Right Instruction

The instructions are listed by subject matter in the table of contents. At the start of each section, there is a list of the instructions in that section. All instructions are numbered and presented in numerical order. An instruction may be located by number by quickly scanning the numbers in the running heads.

D. Ensuring The Instruction Is Current

Supplements to this book will have pages containing the date when the committee last revised the page. No date means the page was part of the original book. The authorities identified below certain instructions may include the dates for authorities on which the committee based the instruction. If the law has changed, the instruction may need to be modified accordingly. The committee’s process of revising standard instructions can be lengthy because it involves discovering the need for a change, researching the law, preparing and revising

proposed instructions, and publishing the proposed instructions for comment. Based on comments received, the proposed instructions may again be modified. Only after this process is completed does the committee submit the proposed instructions to the Florida Supreme Court for approval. Even if the Court approves new instructions, the instructions may not have appeared in a printed update to this book. All new instructions and revisions to this book, including the latest Florida Supreme Court opinions and text of instructions, are published on the Florida Supreme Court's website homepage, www.floridasupremecourt.org, and at www.floridasupremecourt.org/contract_jury_instructions/index.shtml. Check the site to ensure that the book you are using is up-to-date and to ensure that you have the instruction's most current version.

E. Assembling A Set Of Instructions

This book is arranged in the order in which the trial judge normally will instruct the jury, together with additional sections covering oaths, voir dire, and instructions for evidentiary and supplemental issues. To improve juror understanding, the committee has used "plain English" terminology wherever possible without altering the instructions' substantive meaning.

F. Drafting Case-Specific Instructions

In most cases, standard jury instructions will be used to instruct the jury in whole or part. However, the committee has not developed standard instructions on substantive issues for all types of contract and business cases. The trial judge has the responsibility to choose and give appropriate and complete instructions in a given case, whether or not the instructions are "standard." See, e.g., *In the Matter of the Use by the Trial Courts of the Standard Jury Instructions*, 198 So.2d 319 (Fla. 1967).

When drafting case-specific instructions, the format, sequence, and technique used in the standard instructions should be followed to the extent possible. Any instructions in this book on introductory and procedural matters must be used to the extent that they correctly apply in a given case. Florida Rule of Civil Procedure Form 1.985 sets forth the procedure to be followed when varying from the standard jury instructions in this book.

G. Referring To Instructions By Number

Refer to instructions by number to facilitate cross-referencing in electronic versions, in case citations, and in publications by other publishers.

H. Providing Written Instructions To The Jury

Florida Rule of Civil Procedure 1.470(b) provides that the court shall furnish a written copy of its instructions to each juror. The trial judge must include all instructions. *All Bank Repos, Inc. v. Underwriters of Lloyds of London*, 582 So.2d 692, 695 (Fla. 4th DCA 1991). The committee *strongly* encourages the trial judge to provide the written instructions to the jury before the judge's oral instructions so that jurors can follow along when the judge reads the instructions aloud. When assembling the written instructions which the judge will supply to the jury, omit all titles, comments, and instructional notes.

I. When Instructions Should Be Given

Florida Rule of Civil Procedure 1.470(b) provides that instructions may be given during the trial and either before or after final argument. The timing of instructions is a matter within the sound discretion of the trial judge.

The committee envisions that before voir dire, the judge will give a brief explanation of the case. Once the jury has been selected, and before opening statements, the committee *strongly* recommends that the judge give jury instructions on the case. In most cases, the committee believes that it will be possible to give the jury a complete set of instructions. There will, however, be instances in which some instructions may depend on the admission of certain evidence or the judge's rulings, and it will not be possible to give a complete set of instructions. In those instances, the committee recommends giving a set of instructions as complete as possible to the jury.

These instructions are organized to facilitate giving the final instructions before final argument. The committee also *strongly* recommends that the judge consider giving the substantive law instructions before final argument. If the judge gives the instructions before final argument, the judge must give the final procedural instructions after counsel conclude final arguments.

J. Included Instructions

A brief description of the individual sections follows:

SECTION 100: OATHS, contains the standard oaths which may be necessary before and during trial.

SECTION 200: PRELIMINARY INSTRUCTIONS, contains instructions for use during jury selection and after the jury has been selected and sworn.

The instructions for after the jury has been selected include the jury's duties and conduct. Because the committee contemplates that the judge will give the jury a full substantive instruction before trial begins, reference will also have to be made to some of the following sections.

SECTION 300: EVIDENCE INSTRUCTIONS, contains instructions on how the jury must deal with various items of evidence or the judge's rulings.

SECTION 400: SUBSTANTIVE INSTRUCTIONS, contains the principal issues which the jury is to resolve and the legal principles which govern the resolution of those issues, organized according to specific causes of action.

It may not be sufficient in all cases merely to define and submit these basic issues to the jury. It may be necessary, for example, to instruct the jury concerning a preliminary issue. It also may be necessary to withdraw from the jury's consideration an issue about which there has been some controversy during the trial.

The instructions in section 400 are suitable for framing the issues regardless of whether the claim made is an original claim, a counterclaim, or a cross-claim. These instructions also can be used when one party makes two or more claims in the same action.

In cases in which a counterclaim or cross-claim exists, the judge ordinarily will concentrate on each claim separately, selecting the instructions from section 400 that are appropriate to that particular claim, charge the jury with respect to the issues on that claim including defense issues, and return again to the beginning of section 400 to give the instructions appropriate to the issues on the next claim.

SECTION 500: DAMAGES, contains instructions on damages arranged so that the various elements of damage proper for consideration in any given case may be selected. The model charges contain guidance on straightforward and complicated or multiple claim cases. It is up to the judge to find a convenient manner to instruct on multiple claims without misleading the jury.

SECTION 600: SUBSTANTIVE INSTRUCTIONS — GENERAL, contains basic instructions necessary in almost every case, such as weighing evidence.

SECTION 700: CLOSING INSTRUCTIONS, sets forth closing instructions and an instruction introducing the forms of verdict.

SECTION 800: SUPPLEMENTAL MATTERS, sets forth instructions for issues during jury deliberation and for discharging the jury.

K. Variance From Standard Instructions

The trial judge has the discretion to insert or omit minor words in a given instruction for clarity. The committee does not discourage such minor editorial modifications to conform a standard instruction to a given case or circumstance, provided the substance of the instruction is unchanged.

While minor, non-substantive modifications are permitted, Florida Rule of Civil Procedure Form 1.985 provides:

The forms of Florida Standard Jury Instructions appearing on the court's website at www.floridasupremecourt.org/jury-instructions/instructions.html may be used by the trial judges of this state in charging the jury in civil actions to the extent that the forms are applicable, unless the trial judge determines that an applicable form of instruction is erroneous or inadequate. In that event the trial judge shall modify the form or give such other instruction as the judge determines necessary to accurately and sufficiently instruct the jury in the circumstances of the action. In that event the trial judge shall state on the record or in a separate order the manner in which the judge finds the standard form erroneous or inadequate and the legal basis of that finding. Similarly, in all circumstances in which the notes accompanying the Florida Standard Jury Instructions contain a recommendation that a certain type of instruction not be given, the trial judge may follow the recommendation unless the judge determines that the giving of such an instruction is necessary to accurately and sufficiently instruct the jury, in which event the judge shall give such instruction as the judge deems appropriate and necessary. In that event the trial judge shall state on the record or on a separate order the legal basis of the determination that such instruction is necessary.

See McConnell v. Union Carbide Corp., 937 So.2d 148, 153 (Fla. 4th DCA 2006), discussing the limited range of judicial discretion.

Note, however, that the contents of this book are approved for publication by the Florida Supreme Court subject to the following disclaimer, which appears in whole or in part in opinions approving standard instructions:

[W]e express no opinion on the correctness of these instructions and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions nor contesting the legal correctness of these instructions. We further caution all interested parties that the notes and comments associated with the instructions reflect only the opinion of the committee and are not necessarily indicative of the views of this Court as to their correctness or applicability.

Standard Jury Instructions-Civil Cases (No. 99-2), 777 So.2d 378, 379 (Fla. 2000).

L. Use Of Special Verdicts

Special verdicts are required or used in many cases. When that occurs, the committee recommends that the questions on the special verdict be incorporated into the jury instructions. An ideal place to do so is in the Burden of Proof instructions, where the “your verdict should be ...” language should be changed to “answer question number ____ yes (or no).” This will assist the jury in understanding how to decide the case and complete the special verdict form.

M. Understanding The Signals In This Book

Boldface type, brackets, parentheses, italics, Notes on Use, and Sources and Authorities are used in standard instructions to give certain directions as follows:

Boldface type identifies words upon which the trial judge must instruct the jury.

Brackets express variables or alternatives which the judge should select for instructing the jury. Bracketed material always appears in boldface type because some or all of the enclosed words must be provided as part of the instruction. The Notes on Use often provide guidance on the variables appropriate in a given circumstance.

Parentheses signify the need for the trial judge to insert a proper name, a specific item or element, or some other variable. Because the words within the parentheses are directional in nature and not spoken to the jury, they do not appear in boldface type. They merely serve as signals to insert names, titles, or other words that must be provided as part of the instruction. In like manner, throughout the instructions the parties are referred to as “claimant” and “defendant,” and these labels may appear in parentheses. The committee does not intend that these labels be used in the instructions which the judge gives to the jury. The judge should name or refer to the parties in the most convenient and clear way.

Italics identify directions to the trial judge.

Notes on Use may appear immediately after an instruction to provide guidance in the use of an instruction. Where the committee determines that an instruction on a particular subject does not materially assist the jury, or that the instruction is likely to be argumentative or negative, or is for other reasons inappropriate, the Notes on Use will contain the committee’s recommendation that the judge give

no instruction. Notes on Use also are used to set out the committee's reasons for recommending particular treatment.

**ORDERS OF THE SUPREME COURT CREATING
AND REVISING THESE INSTRUCTIONS**

116 So.3d 284 (Fla. 2013)

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