CIVIL JURY TRIAL

BENCH BOOK

1999

W. LOWELL BRAY, JR.
Circuit Judge
West Pasco Judicial Center
7530 Little Road
New Port Richey, FL 34654
(727) 847-8128
(727) 847-8164 FAX
wbray@co.pinellas.fl.us

{IT HAS BEEN CONTEMPLATED THAT THIS BOOK MAY BE USED IN TWO FORMS. IT MAY BE PRINTED IN HARD COPY AND PLACED IN A BINDER. TO FACILITATE THIS USE A SET OF DIVIDER LABELS HAS BEEN INCLUDED AS THE LAST PAGE. IT MAY ALSO BE USED DIRECTLY FROM COMPUTER. TO MAKE THE TEXT MORE MANAGEABLE IN THAT FORM THE TABLE OF CONTENTS AND EACH SUB-TABLE HAS BEEN HYPER-LINKED TO THE MATERIAL TO WHICH IT REFERS.}

TABLE OF CONTENTS

I. MEETING WITH COUNSEL

CHECK LIST

COURTROOM DECORUM

STANDARDS OF PROFESSIONAL COURTESY
FOR THE SIXTH JUDICIAL CIRCUIT
(K. TRIAL CONDUCT AND COURTROOM DECORUM

CHECK LIST

Ongoing Settlement Discussions

Motions in Limine

Statement of Case (to be read to jury)

List of Witnesses (to be read to jury)

All Documents Given to Clerk (to be marked for identification)

Juror Notebooks

Jury Instructions

Intended Schedule

Rules for Voir Dire

Courtroom Decorum

Problems in Obtaining Presence of or Scheduling Witnesses

View of Property Scheduled

Publishing Evidence to Jury

Expert Witnesses (not to be qualified by court in presence of jury)

Invoking Rule of Sequestration

COURTROOM DECORUM

(to be handed to counsel)

THE REQUIREMENTS STATED IN THIS RULE ARE MINIMAL, NOT ALL INCLUSIVE; AND ARE INTENDED TO EMPHASIZE AND SUPPLEMENT, NOT SUPPLANT OR LIMIT, THE ETHICAL OBLIGATIONS OF COUNSEL UNDER THE CODE OF PROFESSIONAL RESPONSIBILITY OR THE TIME HONORED CUSTOMS OF ATTORNEYS IN THE COURTROOM. THIS COURT SUGGESTS THE FOLLOWING MINIMUM STANDARDS BE FOLLOWED FOR ALL ATTORNEYS APPEARING IN THIS DIVISION.

WHEN APPEARING IN THIS COURT, UNLESS EXCUSED BY THE COURT, ALL COUNSEL (INCLUDING ALL PERSONS AT THE COUNSEL TABLE} SHALL:

1. STAND AS COURT IS OPENED, RECESSED OR ADJOURNED.
2. STAND WHEN THE JURY ENTERS OR RETIRES FROM THE COURTROOM.
3. STAND WHEN ADDRESSING, OR BEING ADDRESSED BY THE COURT.
4. STAND AT THE LECTERN WHILE MAKING OPENING STATEMENTS OR CLOSING ARGUMENTS.
5. STAND AT THE LECTERN WHILE EXAMINING ANY WITNESS; EXCEPT THAT COUNSEL MAY APPROACH THE CLERK'S DESK OR THE WITNESS FOR PURPOSES OF HANDLING OR TENDERING EXHIBITS. ASK THE COURT FOR PERMISSION TO APPROACH THE WITNESS.
6. ADDRESS ALL REMARKS TO THE COURT, NOT TO OPPOSING COUNSEL.
7. AVOID DISPARAGING PERSONAL REMARKS OR ACRIMONY TOWARD OPPOSING COUNSEL AND REMAIN WHOLLY DETACHED FROM ANY ILL FEELING BETWEEN THE LITIGANTS OR WITNESSES.
8. REFER TO ALL PERSONS, INCLUDING WITNESSES, OTHER COUNSEL, AND THE PARTIES BY THEIR SURNAMES AND NOT BY THEIR FIRST OR GIVEN NAMES.
9. EXAMINE, OR CROSS EXAMINE EACH WITNESS WITHOUT ANY QUESTIONING BY COCOUNSEL. THE ATTORNEY STATING THE OBJECTIONS, IF ANY, DURING DIRECT EXAMINATION SHALL BE THE

ATTORNEY RECOGNIZED FOR CROSS-EXAMINATION.

10. REQUEST PERMISSION BEFORE APPROACHING THE BENCH.. ANY DOCUMENTS COUNSEL WISHES TO HAVE THE COURT EXAMINE SHOULD BE HANDED TO THE CLERK.

11. NOT TENDER TO A WITNESS ANY PAPER OR EXHIBIT PREVIOUSLY MARKED FOR IDENTIFICATION. ANY EXHIBIT OFFERED IN EVIDENCE SHOULD, AT THE TIME OF SUCH OFFER, BE HANDED TO OPPOSING COUNSEL.

12. STATE ONLY THE LEGAL GROUNDS FOR ANY OBJECTION WITHIN THE HEARING OF THE JURY AND SHOULD WITHHOLD ALL FURTHER COMMENT OR ARGUMENT UNLESS ELABORATION IS REQUESTED BY THE COURT.

13. NOT REPEAT OR ECHO THE ANSWER GIVEN BY THE WITNESS.

14. MAKE ALL OFFERS OF OR REQUESTS FOR, A STIPULATION PRIVATELY, NOT WITHIN THE HEARING OF THE JURY.

15. NOT EXPRESS, IN OPENING OR IN CLOSING ARGUMENT, PERSONAL KNOWLEDGE OR OPINION CONCERNING ANY MATTER IN ISSUE, NOR READ OR PURPORT TO READ FROM DEPOSITION OR TRIAL TRANSCRIPTS, NOR SUGGEST TO THE JURY, DIRECTLY OR INDIRECTLY, THAT IT MAY OR SHOULD REQUEST TRANSCRIPTS OR THE READING OF ANY TESTIMONY BY THE REPORTER.

16. ADMONISH ALL PERSONS AT COUNSEL TABLE THAT GESTURES, FACIAL EXPRESSION, AUDIBLE COMMENTS, OR THE LIKE, AS MANIFESTATIONS OF APPROVAL OR DISAPPROVAL DURING THE TESTIMONY OF WITNESSES, OR AT ANY OTHER TIME, ARE ABSOLUTELY PROHIBITED.

17. AVOID ALL PERSONALITIES BETWEEN COUNSEL. THE PERSONAL HISTORY OR PECULIARITIES OF COUNSEL ON OPPOSING SIDES SHOULD NOT BE ALLUDED TO. PERSONAL COLLOQUIES BETWEEN COUNSEL WHICH CAUSE DELAY OR PROMOTE CONFUSION SHOULD BE AVOIDED.

18. TREAT ADVERSE WITNESSES AND SUITORS WITH FAIRNESS AND CONSIDERATION. NO ABUSIVE LANGUAGE OR OFFENSIVE PERSONAL REFERENCES SHALL BE INDULGED.

19. CONDUCT HIMSELF OR HERSELF BEFORE THE COURT AND WITH OTHER LAWYERS WITH CANDOR AND FAIRNESS. THE CONTENTS OF A PAPER, THE TESTIMONY OF A WITNESS, THE LANGUAGE OR ARGUMENT OF OPPOSING COUNSEL OR THE LANGUAGE OF A DECISION OR OTHER AUTHORITY CITED SHOULD NOT KNOWINGLY BE MISINTERPRETED. EVIDENCE KNOWN TO BE MISINTERPRETED

SHOULD NOT BE OFFERED. IN AN ARGUMENT ADDRESSED TO THE COURT, REMARKS OR STATEMENTS SHOULD NOT BE INTERJECTED TO INFLUENCE THE JURY OR SPECTATORS.

20. MAKE SUGGESTIONS LOOKING TO THE COMFORT OR CONVENIENCE OF JURORS WITHIN THE JURY'S HEARING. BEFORE AND DURING TRIAL, A LAWYER SHOULD ATTEMPT TO AVOID COMMUNICATING WITH JURORS, EVEN AS TO MATTERS FOREIGN TO THE CAUSE.

21. PROMOTE RESPECT FOR THE COURT AND ITS JUDGMENTS BY COUNSEL BY YIELDING GRACEFULLY TO THE RULINGS OF THE COURT. REMARKS TO THE CONTRARY SHOULD BE AVOIDED, IN COURT AND OUT. EASY AND AMPLE MEANS TO CORRECT ERRORS ARE AFFORDED BY ORDERLY PROCEDURE.

(The above materials on Courtroom Decorum were prepared utilizing materials developed by the Honorable Peter J. T. Taylor, Circuit Court Judge, Thirteenth Judicial Circuit, Tampa, Florida.)

K. TRIAL CONDUCT AND COURTROOM DECORUM

1. When a matter is noted for trial on a court calendar, it may be removed only with the permission of the judge.

2. We will conduct examination of jurors and witnesses from a suitable distance. We will not crowd or lean over the witness or jury. We will avoid blocking opposing counsel's view of the witness during interrogation.

3. We will address all public remarks to the court, not to opposing counsel. We will address all objections, requests and observations to the court.

4. We will request permission before approaching the bench. We will submit all documents to opposing counsel for examination prior to submission to the court.

5. We will have the clerk pre-mark potential exhibits.

6. We will admonish all persons at the counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

7. During trials and evidentiary hearings, we will notify the court and opposing counsel of the number of witnesses and duration of testimony anticipated to be called that day and the following day (including depositions to be read). We will cooperate in sharing with opposing counsel all visual-aid equipment.

8. We will not mark on or alter exhibits, charges, graphs, and diagrams without opposing counsel's permission or leave of court.

9. We will accede to reasonable requests for waivers of potential formalities if the client's interests are not adversely affected.

10. In civil cases, we will stipulate all facts and principles of law which are not in dispute.

II. GREETING THE JURY

GREETING THE JURY
(Monologue)

SWEARING THE VOIR NIRE

GREETING THE JURY
(Monologue)

GOOD MORNING, LADIES AND GENTLEMEN. WELCOME. ALL OF US HERE APPRECIATE YOUR COMING TO SERVE THIS WEEK. FOR OUR SYSTEM OF JUSTICE TO WORK, IT IS ESSENTIAL THAT CITIZENS LIKE YOURSELVES BE WILLING TO COME AND WORK WITH US.

I WOULD LIKE FOR YOU TO BE ACQUAINTED WITH THE COURT PERSONNEL WITH WHOM YOU WILL BE WORKING.

THE (woman/man) SEATED IN FRONT OF ME IS THE COURT REPORTER, (name) IT IS (her/his) DUTY TO TAKE DOWN EVERYTHING THAT IS SAID HERE IN THE COURTROOM. THAT INCLUDES WHAT I AM NOW SAYING AND WILL INCLUDE WHAT YOU SAY IN A FEW MINUTES WHEN YOU ARE ASKED TO ANSWER SOME QUESTIONS. PLEASE REMEMBER TWO THINGS ABOUT (her/him). FIRST, (she/he) MUST HEAR WHAT YOU SAY, AS WE ALL MUST, SO PLEASE SPEAK UP. SECOND ALTHOUGH (she/he) IS QUITE PROFICIENT AT (her/his) JOB, (she/he) CAN ONLY TAKE DOWN WHAT ONE PERSON SAYS AT A TIME. PLEASE DO NOT TALK WHILE ANYONE ELSE IS TALKING. DO NOT ANSWER A QUESTION BEFORE IT IS COMPLETED. IF YOU DO, YOU WILL CAUSE

(her/his) JOB TO BE IMPOSSIBLE.

THE (woman/man) SEATED TO MY LEFT IS OUR DEPUTY CLERK (name). IT IS (her/his) DUTY TO ACT AS THE COURT'S SECRETARY AND TO HAVE CHARGE OF ALL OF THE PAPERS, DOCUMENTS, AND PHYSICAL EVIDENCE IN THIS CASE. WHEN THE TRIAL IS OVER, (she/he) WILL SEE TO IT THAT THE ITEMS RECEIVED INTO EVIDENCE ARE GATHERED TOGETHER, ALONG WITH THE VERDICT FORM FOR THIS CAUSE, AND DELIVERED TO YOU IN THE JURY ROOM.

THE (man/woman) IN UNIFORM YOU HAVE ALREADY MET. (He/she) IS (Mr./Ms.) (name}, OUR BAILIFF. (He/she) IS RESPONSIBLE FOR ORDER, FOR ENFORCING THE COURT'S ORDERS, AND FOR SECURITY HERE IN THE COURTROOM. (He/She) ALSO HAS CHARGE OF THE PHYSICAL OBJECTS IN THE ROOM, INCLUDING NOT ONLY THE FURNITURE, BUT ALSO THE PEOPLE. CONSEQUENTLY, (he/she) WILL BE ASKING YOU TO COME AND GO, STAND AND SIT, ETC. PLEASE ACCOMMODATE (him/her). ALSO, IF, DURING THE COURSE OF THE TRIAL, SOMETHING BEGINS TO INTERFERE WITH YOUR ABILITY TO GIVE THE TRIAL YOUR UNDIVIDED ATTENTION, (give examples), BRING THE MATTER TO THE BAILIFF'S ATTENTION, AND (he/she) WILL ASSIST YOU OR IF NEED BE, BRING THE MATTER TO MY ATTENTION.

HOWEVER, DURING THE COURSE OF THE TRIAL, YOU MUST NOT ASK THE BAILIFF, MYSELF, OR ANY OF THE OTHER COURT PERSONNEL ANY ORAL QUESTIONS ABOUT THE TRIAL. IF YOU HAVE SOME QUESTION ABOUT THE TESTIMONY OR OTHER EVIDENCE, IF YOU WONDER WHY SOME QUESTION WAS OR WAS NOT ASKED, OR WHY SOMETHING WAS OR WAS NOT DONE, PLEASE DO NOT ASK THE COURT PERSONNEL ABOUT IT. YOU WILL BE GIVEN AN OPPORTUNITY TO SUBMIT WRITTEN QUESTIONS. I WILL INSTRUCT YOU FURTHER ON THAT AT A LATTER TIME.

SWEARING THE VOIR NIRE

MADAM (Mr.) CLERK, PLEASE SWEAR THE PROSPECTIVE JURORS.

III. VOIR DIRE

OPENING
(Monologue)

VOIR DIRE EXAMINATION
(Dialogue)

ALTERNATE MONOLOGUE AND EXAMINATION

STANDARD JURY INSTRUCTION 1.0

ACCEPTING THE JURY
(Dialogue with Attorneys)

TRIAL JURY
(Rule 1.431)

PERSONS DISQUALIFIED OR EXCUSED FROM JURY SERVICE
(Florida Statute 40.013)

GROUNDS FOR CHALLENGE FOR CAUSE
(Florida Statute 913.03)

SPECIAL JURORS
(Florida Statute 913.15)

LIMITATION ON QUESTIONS
(Quick Reference)

CHALLENGES
(Quick Reference)

DISCRIMINATORY CHALLENGES
(Quick Reference)

OPENING MONOLOGUE

THE FIRST CASE SET FOR TRIAL ON THIS DATE IS _____ PLAINTIFF(S), VERSUS _____, DEFENDANT(S).

IS COUNSEL FOR THE PLAINTIFF(S) READY TO PROCEED TO TRIAL?

IS COUNSEL FOR THE DEFENDANT(S) READY TO PROCEED TO TRIAL?

THE COURT, COUNSEL FOR THE PLAINTIFF(S) AND COUNSEL FOR THE DEFENDANT(S) WILL BE ASKING YOU QUESTIONS TOUCHING ON YOUR QUALIFICATIONS TO SERVE AS JURORS IN THIS PARTICULAR CASE. THIS PART OF THE CASE IS KNOWN AS THE "VOIR DIRE EXAMINATION", "VOIR DIRE" MEANING, "TO SPEAK THE TRUTH."

THIS EXAMINATION IS FOR THE PURPOSE OF DETERMINING IF YOUR DECISION IN THIS CASE WOULD IN ANY WAY BE INFLUENCED BY OPINIONS THAT YOU NOW HOLD OR BY SOME PERSONAL EXPERIENCE OR SPECIAL KNOWLEDGE WHICH YOU MAY HAVE CONCERNING THE SUBJECT MATTER TO BE TRIED. THE QUESTIONS WILL CONCERN, PRIMARILY, YOUR EXPERIENCES AND

YOUR OPINIONS. NO ONE WILL DISAGREE WITH YOUR OPINIONS, YOU ARE ENTITLED TO HAVE THEM. LIKEWISE, NO ONE WILL BLAME OR CONDEMN YOU FOR YOUR EXPERIENCES. ALL OF US, BECAUSE WE LIVE, HAVE EXPERIENCES. THEY ARE NOT NECESSARILY TO OUR CREDIT OR DISCREDIT, THEY ARE SIMPLY PART OF LIFE. NONETHELESS, IT IS NECESSARY FOR US TO KNOW ABOUT YOUR OPINIONS AND EXPERIENCES IF THEY MIGHT EFFECT YOUR DECISION. THE OBJECT IS TO OBTAIN SIX (TWELVE) JURORS WHO WILL IMPARTIALLY TRY THE ISSUES OF THIS CASE UPON THE EVIDENCE PRESENTED IN THIS COURTROOM WITHOUT BEING INFLUENCED BY ANY OTHER FACTORS.

PLEASE UNDERSTAND THAT THIS QUESTIONING IS NOT FOR THE PURPOSE OF PRYING INTO YOUR AFFAIRS FOR PERSONAL REASONS, BUT IS ONLY FOR THE PURPOSE OF OBTAINING AN IMPARTIAL JURY. IF YOUR ANSWERS TO ANY OF THE QUESTIONS ARE EMBARRASSING, OR IF YOU WOULD SIMPLY PREFER NOT TO DISCUSS THE SUBJECT MATTER BEFORE THIS ENTIRE GROUP, PLEASE TELL ME, AND I WILL GIVE YOU AN OPPORTUNITY TO ANSWER THOSE QUESTIONS OUTSIDE THE HEARING OF THE OTHER PROSPECTIVE JURORS AND THE SPECTATORS.

AS YOU HAVE NO DOUBT NOTICED THAT THERE ARE A LARGE NUMBER OF YOU ARE SEATED HERE IN THE COURTROOM, BUT ONLY (SEVEN/THIRTEEN) OF YOU WILL ULTIMATELY BE SEATED IN THE JURY BOX. PLEASE DO NOT FEEL THAT IT DISCREDITS YOU OR REFLECTS NEGATIVELY UPON YOU IF YOU ARE NOT SEATED TO HEAR THIS CASE. YOU ARE ALL QUALIFIED TO SERVE. IT IS SIMPLY A FUNCTION OF HOW OUR JURY SELECTION IS DONE THAT NOT EVERYONE SEATED HERE IN THE COURTROOM CAN SERVE ON THE JURY.

VOIR DIRE EXAMINATION

THIS CASE INVOLVES (read a brief statement of the case)

1. YOU HAVE HEARD OF STATEMENT OF WHAT THIS CASE IS ABOUT. DO ANY OF YOU KNOW ANYTHING ABOUT THIS CASE, EITHER THROUGH YOUR OWN PERSONAL KNOWLEDGE OR BY DISCUSSION WITH ANYONE ELSE, OR BY READING OR HEARING ABOUT IT IN ANY OF THE NEWS MEDIA?

(a) WITHOUT TELLING US WHAT YOU KNOW, PLEASE TELL US HOW YOU KNOW.

(b) DO YOU HAVE A STATE OF MIND WITH REFERENCE TO THIS INCIDENT WHICH WOULD IN ANY WAY PREVENT YOU FROM ACTING WITH IMPARTIALITY?

(c) DO YOU FEEL THAT YOU CAN ELIMINATE AND DISREGARD EVERYTHING YOU HAVE HEARD OR READ PERTAINING TO THIS CASE AND RENDER AN IMPARTIAL VERDICT BASED SOLELY UPON THE EVIDENCE PRESENTED IN THIS COURTROOM?

2. WOULD COUNSEL FOR THE PLAINTIFF PLEASE STAND AND INTRODUCE YOURSELF AND EVERYONE AT YOUR TABLE?

WOULD COUNSEL FOR THE DEFENSE PLEASE STAND AND INTRODUCE YOURSELF AND EVERYONE AT YOUR TABLE?

DO ANY OF YOU RECOGNIZE ANY OF THESE INDIVIDUALS AS SOMEONE TO WHOM YOU ARE RELATED BY BLOOD OR MARRIAGE OR AS SOMEONE WITH WHOM YOU ARE ACQUAINTED THROUGH A PROFESSIONAL, BUSINESS, OR SOCIAL RELATIONSHIP?

(a) IN WHAT CAPACITY HAVE YOU KNOWN _____?

(b) WOULD YOUR KNOWLEDGE OF _____ PREVENT YOU FROM ACTING WITH IMPARTIALITY IN THIS CAUSE?

(c) WOULD YOUR KNOWLEDGE OF _____ CAUSE YOU TO GIVE GREATER OR LESSER WEIGHT TO (HIS/HER) SIDE OF THIS CASE?

3. COUNSEL FOR THE PLAINTIFF AND THEN COUNSEL FOR THE DEFENSE WILL NOW READ TO YOU THE NAMES OF THE WITNESSES WHO MAY BE CALLED DURING THE CASE. IF ANY NAME SHOULD HAPPEN TO BE CALLED TWICE, OR IF SOMEONE MENTIONED NOW DOES NOT ACTUALLY TESTIFY LATER, YOU SHOULD NOT PLACE

ANY SIGNIFICANCE ON THAT FACT.

(after each lawyer finishes)

DO YOU RECOGNIZE THE NAMES OF ANY OF THESE NAMES AS THOSE OF INDIVIDUALS TO WHOM YOU ARE RELATED BY BLOOD OR MARRIAGE OR AS SOMEONE WITH WHOM YOU ARE AQUATINTED THROUGH A PROFESSIONAL, BUSINESS, OR PERSONAL RELATIONSHIP?

(if answer is affirmative)

(a) IN WHAT CAPACITY HAVE YOU KNOWN _____?

(b) WOULD YOUR KNOWLEDGE OF _____ PREVENT YOU FROM ACTING WITH IMPARTIALITY IN THIS CASE?

(c) WOULD YOUR KNOWLEDGE OF _____ CAUSE YOU TO GIVE GREATER OR LESSER WEIGHT TO ANY TESTIMONY THAT (HE OR SHE) MIGHT GIVE IN THIS CASE?

4. DO ANY OF YOU HAVE ANY PHYSICAL DISABILITIES IN MATTERS OF HEARING, SIGHT, OR OTHERWISE, WHICH WOULD CAUSE YOU ANY DIFFICULTY IN PERFORMING YOUR DUTY AS A JUROR IN THIS CASE?

5. DO YOU HAVE ANY FEELING TOWARD ANY OF THE PARTIES OR ATTORNEYS IN THIS ACTION WHICH MIGHT AFFECT YOUR ABILITY TO SERVE AS AN IMPARTIAL JUROR?

6. IF YOU ARE SELECTED AS A JUROR IN THIS CAUSE, WILL YOU RENDER A FAIR AND IMPARTIAL VERDICT BASED UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND THE LAW AS IT PERTAINS TO THIS PARTICULAR CASE AS INSTRUCTED BY THE COURT?

7. DO YOU HAVE ANY REASON WHY YOU CANNOT GIVE THIS CASE YOUR UNDIVIDED ATTENTION AND RENDER A FAIR AND IMPARTIAL VERDICT?

8. IF YOU ARE SELECTED AS A JUROR IN THIS CASE, CAN YOU RENDER A FAIR AND IMPARTIAL VERDICT, BASING YOUR VERDICT SOLELY UPON THE EVIDENCE PRESENTED IN THIS COURTROOM?

9. WILL YOU PROMISE TO ACCEPT AND FOLLOW THE COURT'S INSTRUCTIONS ON THE LAW, EVEN IF YOU FIND THAT YOU DISAGREE WITH THE LAW AND WISH IT WERE DIFFERENT?

10. I AM NOW GOING TO ASK YOU A NUMBER OF QUESTIONS INDIVIDUALLY. PLEASE SPEAK UP SO THAT THE LAWYERS CAN HEAR YOU. I HAVE ADVISED THE LAWYERS THAT THEY WILL NOT BE

ALLOWED TO ASK THESE QUESTIONS AGAIN. COUNSEL, IF YOU ARE UNABLE TO HEAR, STOP US SO THAT WE MAY CORRECT THAT.

FOR THE FIRST ROUND OF QUESTIONS, AND FOR THAT ROUND ONLY, PLEASE STAND WHEN YOU ANSWER SO THAT WE ARE SURE THAT WE HAVE THE RIGHT NAME ASSOCIATED WITH THE RIGHT PERSON. ON THE FIRST ROUND, PLEASE STAND AND GIVE US THE FOLLOWING INFORMATION:

a) YOUR NAME

b) WHAT CITY OR SUBDIVISION YOU LIVE IN

c) IF YOU CAME FROM SOME OTHER AREA OF THE COUNTRY, WHERE YOU CAME FROM

d) YOUR OCCUPATION, OR FORMER OCCUPATION IF YOU ARE RETIRED

e) YOUR SPOUSE'S OCCUPATION

f) YOUR CHILDREN'S OCCUPATIONS IF THEY ARE OLD ENOUGH TO BE EMPLOYED

DON'T THINK YOU HAVE TO REMEMBER ALL OF THAT, I WILL PROMPT YOU AS WE GO.

(after completing this round)

11. MY REMAINING QUESTIONS I WILL ASK OF ONE ROW AT A TIME. IF YOUR ANSWER IS YES, PLEASE RAISE YOUR HAND AND

BE SURE I SEE IT SINCE I WILL HAVE SOME FOLLOW-UP QUESTIONS TO ASK.

THE FIRST QUESTION IS: HAVE YOU EVER BEFORE SERVED AS A JUROR? (first row, second...)

(if affirmative answer, follow up)

a) CRIMINAL OR CIVIL (explain difference) ?

b) WHERE ?

c) HOW LONG AGO?

d) DID YOU HAVE AN OPPORTUNITY TO REACH A VERDICT ?

e) WAS THERE ANYTHING ABOUT THAT SERVICE THAT YOU FEEL WOULD MAKE IT DIFFICULT FOR YOU TO SERVE AGAIN ?

12. PEOPLE INVOLVED IN JURY TRIALS, OTHER THAN THOSE OF US FOR WHOM IT IS PART OF OUR JOB, USUALLY FALL INTO ONE OF THREE CATEGORIES - PLAINTIFF (someone who is suing someone else), DEFENDANT (someone being sued or charged with a crime), OR WITNESS (someone called to the courtroom to testify). HAVE YOU, YOURSELF, OR HAS SOME FAMILY MEMBER OR CLOSE PERSONAL FRIEND BEEN INVOLVED IN A TRIAL AS A PLAINTIFF, DEFENDANT, OR WITNESS?

(if affirmative answer follow up)

a) WAS THAT YOU OR SOMEONE ELSE?

b) AS WHICH, PLAINTIFF, DEFENDANT OR WITNESS ?

c) CRIMINAL OR CIVIL ?

d) WHERE?

e) HOW LONG AGO ?

f) IS THERE ANYTHING ABOUT THAT TRIAL, EITHER THE WAY IT WAS CONDUCTED, THE RESULTS, OR ANYTHING ELSE, WHICH MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

13. HAVE YOU EVER BEEN INVOLVED IN A LAWSUIT THAT DID NOT RESULT IN A TRIAL?

(if affirmative answer follow up)

a) WHEN

b) WHERE

c) WOULD ANYTHING ABOUT THAT MATTER AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

14. HAVE YOU OR HAS ANYONE IN YOUR IMMEDIATE FAMILY OR CLOSE PERSONAL FRIEND HAD ANY SPECIALIZED TRAINING IN LAW ?

15. HAVE YOU EVER BEEN EMPLOYED IN A JOB WHICH REQUIRED YOU TO EVALUATE CLAIMS FOR ANY KIND OF PROPERTY LOSS OR PERSONAL INJURY ?

(optional questions)

1. HAVE YOU OR HAS ANY MEMBER OF YOUR IMMEDIATE

FAMILY OR CLOSE PERSONAL FRIEND EVER SUFFERED AN INJURY SO SERIOUS AS TO REQUIRE TIME OFF FROM WORK OR THAT WOULD HAVE REQUIRED TIME OFF HAD THE PERSON BEEN EMPLOYED ?

(if affirmative answer follow up)

a) YOU OR WHOM ?

b) WHAT TYPE OF INJURY ?

c) ARE (YOU/HE/SHE) STILL UNDER A DOCTOR'S CARE ?

d) DO (YOU/HE/SHE) STILL SUFFER FROM THE INJURY ?

e) WAS THERE A CLAIM FILED AS RESULT OF THE INJURY ?

f) WILL THAT EXPERIENCE AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE ?

2. HAVE YOU OR HAS ANY MEMBER OF YOUR IMMEDIATE FAMILY OR CLOSE PERSONAL FRIEND EVER HAD TRAINING IN MEDICINE, NURSING, OR HEALTH CARE ?

3. DO YOU CURRENTLY HAVE A DRIVER'S LICENSE ?

4. DO YOU HAVE ANY STRONG FEELINGS FOR OR AGAINST CHIROPRACTORS OR CHIROPRACTIC TREATMENT ?

5. HAVE YOU EVER HAD ANY PROPERTY TAKEN BY A GOVERNMENTAL AGENCY ?

6. DO YOU HAVE ANY TRAINING IN REAL ESTATE ?

ALTERNATE MONOLOGUE AND EXAMINATION

IS THE PLAINTIFF READY TO PROCEED?

IS THE DEFENDANT READY TO PROCEED?

GOOD MORNING, LADIES AND GENTLEMEN.

I AM JUDGE _____. I WILL BE THE JUDGE PRESIDING OVER THE JURY SELECTION AS WELL AS THE CIVIL TRIAL.

1. THE COURT REALIZES THAT SERVICE ON A JURY PANEL IS NOT ALWAYS CONVENIENT. HOWEVER, SERVICE ON A JURY PANEL AFFORDS YOU AN OPPORTUNITY TO BE PART OF THE ADMINISTRATION OF JUSTICE BY WHICH THE LEGAL AFFAIRS AND LIBERTIES OF YOUR FELLOW MEN AND WOMEN ARE DETERMINED AND PROTECTED. I WILL MAKE EVERY EFFORT TO SEE THAT YOUR TIME IS NOT WASTED. THE ESTIMATED LENGTH OF THIS TRIAL IS _____ DAYS. THE HOURS WE GENERALLY WORK ARE FROM___ A.M. TO ___ P.M. WITH BREAKS EVERY 1 1/2 HOURS AND A 1 1/2 HOUR BREAK FOR LUNCH.

2. THE ATTORNEYS AND I WILL BE ASKING YOU QUESTIONS TO HELP US DECIDE WHICH OF YOU WILL SERVE AS JURORS IN THIS CASE. THE QUESTIONS ARE ASKED TO DETERMINE IF YOUR DECISION IN THIS CASE MIGHT BE INFLUENCED BY SOME PERSONAL

EXPERIENCE OR SPECIAL KNOWLEDGE THAT YOU HAVE CONCERNING THE SUBJECT OF THIS TRIAL, THE PARTIES, THE WITNESSES, OR ATTORNEYS OR BY OPINIONS THAT YOU NOW HOLD. IT IS NOT UNUSUAL FOR PEOPLE TO HAVE STRONG FEELINGS ABOUT CERTAIN SUBJECTS OR TO IDENTIFY WITH OR FEEL SOME PARTIALITY TOWARD SOMEONE. NOR IS THIS WRONG. HOWEVER, THE PARTIES NEED TO KNOW ABOUT SUCH FEELINGS BECAUSE THEY MAY TEND TO INFLUENCE YOUR THINKING ABOUT THIS CASE. CONSEQUENTLY YOU SHOULD ANSWER AS COMPLETELY AS POSSIBLE OUR QUESTIONS ABOUT SUCH MATTERS.

PLEASE UNDERSTAND THAT THESE QUESTIONS ARE NOT MEANT TO EMBARRASS YOU OR TO PRY INTO YOUR PERSONAL AFFAIRS. THEY ARE INTENDED TO OBTAIN A FAIR AND IMPARTIAL JURY TO TRY THIS CASE. IT IS YOUR DUTY TO ANSWER COMPLETELY AND TRUTHFULLY ALL OF THE QUESTIONS THAT WILL BE ASKED OF YOU. ANY FAILURE TO ANSWER TRUTHFULLY AND COMPLETELY MAY REQUIRE THIS CASE TO END IN A MISTRIAL OR TO BE TRIED AGAIN.

3. EACH SIDE, THE PLAINTIFF AND DEFENDANT HAVE A CERTAIN NUMBER OF "PEREMPTORY CHALLENGES" BY WHICH I

MEAN EACH SIDE CAN CHALLENGE YOU AND ASK THAT YOU BE EXCUSED WITHOUT GIVING A REASON. IF YOU ARE EXCUSED BY EITHER SIDE, PLEASE DO NOT FEEL OFFENDED OR FEEL THAT YOUR HONESTY OR INTEGRITY IS BEING QUESTIONED. IT IS NOT.

4. SO THAT YOU WILL KNOW THE PERSON WITH WHOM YOU WILL BE WORKING AND THEIR DUTIES, I WILL INTRODUCE OUR BAILIFF IS _____. HE ENFORCES THE COURT'S ORDERS, HAS CHARGE OF THE JURY AND MAINTAINS SECURITY. IF YOU HAVE ANY QUESTIONS ABOUT YOUR PERSONAL WELFARE, APART FROM QUESTIONS ABOUT THE CASE BEING TRIED, YOU SHOULD DIRECT THESE QUESTIONS TO THE BAILIFF.

5. IT MAY BE NECESSARY DURING JURY SELECTION AS WELL AS THE TRIAL FOR ME TO TALK PRIVATELY TO THE ATTORNEYS HERE AT THE BENCH OR WITH JURORS OUT OF THE ROOM. PLEASE DON'T SPECULATE ON WHAT THESE CONFERENCES ARE ABOUT. THE BENCH CONFERENCE SHOULD IN NO WAY AFFECT YOUR DUTY AS A PROSPECTIVE JUROR OR JUROR IN THIS CASE.

6. I WILL NOW RANDOMLY SELECT 14 INDIVIDUALS TO TAKE A SEAT IN THE JURY BOX AS DIRECTED BY THE BAILIFF. PLEASE FOLLOW THE BAILIFF’S INSTRUCTION.

(swear in the jury panel)

7. DO ANY OF YOU KNOW ANYTHING ABOUT THIS CASE, EITHER THROUGH YOUR OWN PERSONAL KNOWLEDGE, RUMOR OR BY DISCUSSION WITH SOMEONE ELSE, OR HAVE YOU READ OR HEARD ABOUT IT IN THE NEWS MEDIA ?

[INSERT IF ANSWER IS YES.] (DO YOU HAVE A STATE OF MIND WITH REFERENCE TO THE CASE WHICH WOULD IN ANY WAY PREVENT YOU FROM ACTING IMPARTIALLY ? DO YOU FEEL YOU COULD ELIMINATE AND DISREGARD EVERYTHING YOU HAVE READ OR HEARD AND RENDER AN IMPARTIAL VERDICT SOLELY UPON THE EVIDENCE PRESENTED IN THIS COURTROOM ?)

8. THIS CASE IS SCHEDULED FOR _____ DAYS/WEEKS, COMMENCING ON_____ DO ANY OF YOU HAVE ANY PHYSICAL DEFECTS: HEARING, SIGHT OR OTHERWISE, WHICH WOULD RENDER YOU INCAPABLE OF PERFORMING YOUR DUTY AS A JUROR IN THIS CASE, INCLUDING SITTING FOR PERHAPS 1 1/2 TO 2 HOURS AT A TIME? IF YOU HEARD THIS QUESTION, PLEASE RAISE YOUR HAND.

9. NOW THE ATTORNEY FOR THE PLAINTIFF WILL INTRODUCE HIMSELF/HERSELF AND THE WITNESSES HE/SHE INTENDS TO CALL.

THEN THE ATTORNEY FOR THE DEFENDANT WILL INTRODUCE HIMSELF/HERSELF, HIS/HER CLIENT, AND THE WITNESSES HE/SHE WILL CALL. IF YOU KNOW ANY OF THE INDIVIDUALS NAMED, YOU WILL NEED TO INFORM THE COURT.

ARE YOU RELATED BY BLOOD OR MARRIAGE TO

OR DO YOU KNOW THE DEFENDANT (OR WITNESS) FROM ANY BUSINESS OR SOCIAL RELATIONSHIP?

[INSERT IF ANSWER IS YES.]

(IN WHAT CAPACITY?

WILL THIS FACT PREVENT YOU FROM ACTING WITH IMPARTIALITY IN THIS CASE?

WOULD YOUR KNOWLEDGE OF CAUSE YOU TO GIVE GREATER OR LESSOR WEIGHT TO ANY STATEMENTS HE/SHE MIGHT MAKE (OR EVIDENCE PRESENTED BY HIS/HER ATTORNEY) (OR TESTIMONY OF WITNESSES IN THIS CASE BY REASON OF SUCH KNOWLEDGE?)

DO ANY OF YOU KNOW EACH OTHER? *[TO WHAT EXTENT WOULD YOUR RELATIONSHIP OR ACQUAINTANCE AFFECT YOUR ABILITY TO REACH YOUR OWN VERDICT AND NOT A VERDICT OF SOMEONE ELSE ON THE JURY?)*

10. DO YOU HAVE ANY BIAS OR PREJUDICE EITHER FOR OR

AGAINST THE DEFENDANT OR PLAINTIFF?

11. IF YOU ARE SELECTED AS A JUROR IN THIS CASE, WILL YOU RENDER A FAIR AND IMPARTIAL VERDICT BASED UPON THE EVIDENCE PRESENTED IN THIS COURTROOM AND THE LAW OF THE STATE OF FLORIDA AS IT PERTAINS TO THIS PARTICULAR CASE AS INSTRUCTED BY THE COURT? IF ANY OF YOU FEEL YOU CANNOT, RAISE YOUR HAND.

12. DO YOU HAVE ANY OTHER REASON WHY YOU CANNOT GIVE THIS CASE YOUR INDIVIDUAL ATTENTION AND RENDER A FAIR AND IMPARTIAL VERDICT?

BEFORE THE ATTORNEYS ASK QUESTIONS OF YOU, PLEASE INTRODUCE YOURSELF TO THE COURT AND PARTIES AND PROVIDE THE FOLLOWING INFORMATION FOR THE COURT:

YOUR FULL NAME

YOUR EMPLOYMENT, OR PRIOR EMPLOYMENT IF RETIRED

YOUR SPOUSE'S NAME AND EMPLOYMENT, OR PRIOR EMPLOYMENT IF RETIRED

YOUR CHILDREN'S EMPLOYMENT, IF WORKING, OR PRIOR EMPLOYMENT IF PRESENTLY UNEMPLOYED

YOUR PRIOR JURY SERVICE AND STATE WHETHER THE SERVICE

WAS ON A CIVIL OR CRIMINAL TRIAL.

14. THE ATTORNEYS WILL NOW ASK QUESTIONS OF YOU. WHAT THEY SAY IS NOT EVIDENCE, NOR IS IT THE LAW. THE COURT WILL INSTRUCT YOU ON THE LAW AT A LATER TIME. I DO ASK THAT YOU LISTEN YOU ATTENTIVELY TO THEIR QUESTIONS AND RESPOND AUDIBLY SO THAT BOTH SIDES CAN HEAR.

COUNSEL FOR PLAINTIFF MAY NOW PROCEED WITH YOUR VOID DIRE OF THE PANEL. PLEASE DO NOT ASK QUESTIONS I HAVE ALREADY ASKED OF THE PANEL.

COUNSEL FOR DEFENDANT MAY NOW PROCEED WITH YOUR VOIR DIRE OF THE PANEL. PLEASE DO NOT ASK QUESTION I HAVE ALREADY ASKED OF THE PANEL.

STANDARD JURY INSTRUCTION 1.0

THE ATTORNEYS AND I WILL BE ASKING YOU QUESTIONS TO HELP US DECIDE WHICH OF YOU WILL SERVE AS JURORS IN THIS CASE. THE QUESTIONS ARE ASKED TO DETERMINE IF YOUR DECISION IN THIS CASE MIGHT BE INFLUENCED BY SOME PERSONAL EXPERIENCE OR SPECIAL KNOWLEDGE THAT YOU HAVE CONCERNING THE SUBJECT OF THIS TRIAL, THE PARTIES, WITNESSES, OR ATTORNEYS OR BY OPINIONS THAT YOU NOW HOLD. IT IS NOT UNUSUAL FOR PEOPLE TO HAVE STRONG FEELINGS ABOUT CERTAIN SUBJECTS OR TO IDENTIFY WITH OR FEEL SOME PARTIALITY TOWARD ONE SIDE OR THE OTHER. HOWEVER, IT WOULD BE A VIOLATION OF YOUR OATH AS PROSPECTIVE JURORS TO FAIL TO ANSWER TRUTHFULLY AND AS COMPLETELY AS POSSIBLE OUR QUESTIONS ABOUT SUCH MATTERS.

PLEASE UNDERSTAND THAT THESE QUESTIONS ARE NOT MEANT TO EMBARRASS YOU OR TO PRY INTO YOUR PERSONAL AFFAIRS. THEY ARE INTENDED TO OBTAIN A FAIR AND IMPARTIAL JURY TO TRY THIS CASE. IT IS YOUR DUTY TO ANSWER COMPLETELY AND TRUTHFULLY ALL OF THE QUESTIONS THAT WILL BE ASKED OF

YOU. ANY FAILURE TO ANSWER TRUTHFULLY AND COMPLETELY MAY REQUIRE THIS CASE TO END IN A MISTRIAL OR TO BE TRIED AGAIN.

ACCEPTING THE JURY
(Dialogue with Attorneys)

(After counsel has completed Voir Dire and talked with the client. call attorneys to the bench.)

DOES COUNSEL FOR PLAINTIFF HAVE ANY CHALLENGE FOR CAUSE WITH RESPECT TO ANYONE ON THE PANEL ?

DOES COUNSEL FOR DEFENDANT HAVE ANY CHALLENGE FOR CAUSE WITH RESPECT TO ANYONE ON THE PANEL ?

(Rule on challenges)

WITH RESPECT TO THE FIRST SIX (TWELVE) PROSPECTIVE JURORS, DOES PLAINTIFF HAVE ANY PEREMPTORY CHALLENGE ?

WITH RESPECT TO THE FIRST SIX (TWELVE) PROSPECTIVE

JURORS, DOES DEFENDANT HAVE ANY PEREMPTORY

CHALLENGE ?

(Repeat until 6 or 12 are selected.)

WE WILL NOW CONSIDER THE MATTER OF AN ALTERNATE.

I WILL GIVE EACH OF YOU ONE CHALLENGE WITH RESPECT TO THE

ALTERNATE.

DOES PLAINTIFF WISH TO CHALLENGE MR./MS. _____ AS

THE ALTERNATE ?

DOES DEFENDANT WISH TO CHALLENGE MR./MS._____AS THE ALTERNATE ?

(Repeat until alternate is selected)

OUR JURY WILL CONSIST OF *(Read into the record the names of all the jurors and the alternate)*

THANK YOU, COUNSEL, PLEASE STEP BACK.

(To voir nire)

LADIES AND GENTLEMEN, I AM ABOUT TO CALL THE NAMES OF THOSE WHO WILL BE SITTING ON THIS JURY. AS YOUR NAME IS CALLED, PLEASE COME FORWARD AND TAKE A SEAT AS DIRECTED BY OUR BAILIFF.

(When the Jury is seated)

MADAM (MR.) CLERK, PLEASE SWEAR THE JURORS TO TRY THE ISSUES OF THIS CASE.

(NOTE: If trial is not to begin until later in the week, defer swearing the jury until then.)

(Clerk: Do you solemnly swear that you will well and truly try the issues between, Plaintiff, and, Defendant, and render a true verdict according to the law and the evidence ?)

TRIAL JURY
(Civil Rule 1.431)

(a) Questionnaire.

(1) The circuit court may direct the authority charged by law with the selection of prospective jurors to furnish each prospective juror with a questionnaire in the form approved by the supreme court from time to time to assist the authority in selecting prospective jurors. The questionnaire shall be used after the names of jurors have been selected as provided by law but before certification and the placing of the names of prospective jurors in the jury box. The questionnaire shall be used to determine those who are not qualified to serve as jurors under any statutory ground of disqualification.

(2) To assist in voir dire examination at trial, any court may direct the clerk to furnish prospective jurors selected for service with a questionnaire in the form approved by the supreme court from time to time. The prospective jurors shall be asked to complete and return the forms. Completed forms may be inspected in the clerk's office and copies shall be available in court during the voir dire examination for use by parties and the court.

(b) Examination by Parties. The parties 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 court may ask such questions of the jurors as it deems necessary, but the right of the parties to conduct a reasonable examination of each juror orally shall be preserved.

(c) Challenge for Cause.

(1) On motion of any party the court shall examine any prospective juror on oath to determine whether that person is related to any party or to the attorney of any party within the third degree or is related to any person alleged to have been wronged or injured by the commission of the wrong for the trial of which the juror is called or has any interest in the action or has formed or expressed and opinion or is sensible of any bias or prejudice concerning it or is an employee or has been an

employee of any party within 30 days before the trial. A party objecting to the juror may introduce any other competent evidence to support the objection. If it appears that the juror does not stand indifferent to the action or any of the foregoing grounds of objection exists or that the juror is otherwise incompetent, another shall be called in that juror's place.

(2) The fact that any person selected for jury duty from bystanders or the body of the county and not from a jury list lawfully selected has served as a juror in the court in which that person is called at any other time within 1 year is a ground of challenge for cause.

(3) When the nature of any civil action requires a knowledge of reading, writing, and arithmetic, or any of them, to enable a juror to understand the evidence to be offered, the fact that any prospective juror does not possess the qualifications is a ground of challenge for cause.

d) Peremptory Challenges. Each party is entitled to 3 peremptory challenges
of jurors, but when the number of parties on opposite sides is unequal, the opposing parties are entitled to the same aggregate number of peremptory challenges to be determined on the basis of 3 peremptory challenges to each party on the side with the greater number of parties. The additional peremptory challenges accruing to multiple parties on the opposing side shall be divided equally among them. Any additional peremptory challenges not capable of equal division shall be exercised separately or jointly as determined by the court.

(e) Exercise of Challenges. All challenges shall be addressed to the court outside the hearing of the jury 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.

(f) Swearing of Jurors. No one shall be sworn as a juror until the jury has been accepted by the parties or until all challenges have been exhausted.

(g) Alternate Jurors.

(1) The court may direct that 1 or 2 jurors be impaneled to sit as alternate jurors in addition to the regular panel. Alternate jurors in the order in which they are called shall replace jurors who have become unable or disqualified to perform their duties

before the jury retires to consider its verdict. 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 principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider the verdict.

(2) If alternate jurors are called, each party shall be entitled to one peremptory challenge in the selection of the alternate juror or jurors, but when the number of parties on opposite sides is unequal, the opposing parties shall be entitled to the same aggregate number of peremptory challenges to be determined on the basis of 1 peremptory challenge to each party on the side with the greater number of parties. The additional peremptory challenge allowed pursuant to this subdivision may be used only against the alternate jurors. The peremptory challenges allowed pursuant to subdivision (d) of this rule shall not be used against the alternate jurors.

(h) Interview of a Juror. A party who believes that grounds for legal challenge to a verdict exists may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to the challenge. The motion shall be served within 10 days after rendition of the verdict unless good cause is shown for the failure to make the motion within that time. The motion shall state the name and address of each juror to be interviewed and the grounds for challenge that the party believes may exist. After notice and hearing, the trial judge shall enter an order denying the motion or permitting the interview. If the interview is permitted, the court may prescribe the place, manner, conditions, and scope of the interview.

PERSONS DISQUALIFIED OR EXCUSED FROM JURY SERVICE
(Florida Statute 40.013)

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror.

(2)(a) Neither the Governor, nor Lieutenant Governor, nor any Cabinet officer, nor clerk of court, or judge shall be qualified to be a juror.

(b) Any full-time federal, state, or local law enforcement officer or such entities' investigative personnel shall be excused from jury service unless such persons choose to serve.

(3) No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the state or any county or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state or such county or municipal corporation.

(4) Any expectant mother and any parent who is not employed full time and who has custody of a child under 6 years of age, upon request, shall be excused from jury service.

(5) A presiding judge may, in his or her discretion, excuse a practicing attorney, a practicing physician, or a person who is physically infirm from jury service, except that no person shall be excused from service on a civil trial jury solely on the basis that the person is deaf or hearing impaired, if that person wishes to serve, unless the presiding judge makes a finding that consideration of the evidence to be presented requires auditory discrimination or that the timely progression of the trial will be considerably affected thereby. However, nothing in this subsection shall affect a litigant's right to exercise a peremptory challenge.

(6) A person may be excused from jury service upon a showing of hardship, extreme inconvenience, or public necessity.

(7) A person who was summoned and who reported as a prospective juror in any court in that person's county of residence within 1 year before the first day for which the person is being considered for jury service is exempt from jury service for 1 year from the last day of service.

(8) A person 70 years of age or older shall be excused from jury service upon request. A person 70 years of age or older may also be permanently excused from jury service upon written request. A person who is permanently excused from jury service may subsequently request, in writing, to be included in future jury lists provided such person meets the qualifications required by this chapter.

(9) Any person who is responsible for the care of a person who, because of mental illness, mental retardation, senility, or other physical or mental incapacity, is incapable of caring for himself or herself shall be excused from jury service upon request.

History.--s. 3, ch. 3010, 1877; s. 1, ch. 4015, 1891; RS 1149; GS 1572; RGS 2774; CGL 4451; s. 2, ch. 26848, 1951; s. 7, ch. 73-334; s. 1, ch. 77-102; s. 1, ch. 77-431; s. 4, ch. 79-235; s. 1, ch. 80-170; s. 1, ch. 83-210; s. 1, ch. 87-75; s. 1, ch. 92-8; s. 1, ch. 92-297; s. 1, ch. 93-125; s. 245, ch. 95-147; s. 1, ch. 97-199.

GROUNDS FOR CHALLENGE TO INDIVIDUAL JURORS FOR CAUSE (Florida Statute 913.03)

A challenge for cause to an individual juror may be made only on the following grounds:

(1) The juror does not have the qualifications required by law;

(2) The juror is of unsound mind or has a bodily defect that renders him or her incapable of performing the duties of a juror, except that, in a civil action, deafness or hearing impairment shall not be the sole basis of a challenge for cause of an individual juror;

(3) The juror has conscientious beliefs that would preclude him or her from finding the defendant guilty;

(4) The juror served on the grand jury that found the indictment or on a coroner's jury that inquired into the death of a person whose death is the subject of the indictment or information;

(5) The juror served on a jury formerly sworn to try the defendant for the same offense;

(6) The juror served on a jury that tried another person for the offense charged in the indictment, information, or affidavit;

(7) The juror served as a juror in a civil action brought against the defendant for the act charged as an offense;

(8) The juror is an adverse party to the defendant in a civil action, or has complained against or been accused by the defendant in a criminal prosecution;

(9) The juror is related by blood or marriage within the third degree to the defendant, the attorneys of either party, the person alleged to be injured by the offense charged, or the person on whose complaint the prosecution was instituted;

(10) The juror has a state of mind regarding the defendant, the case, the person alleged to have been injured by the offense charged, or the person on whose complaint the prosecution was instituted that will prevent the juror from acting with impartiality, but the formation of an opinion or impression regarding the guilt or innocence of the defendant shall not be a sufficient ground for challenge to a juror if he or she declares and the court determines that he or she can render an impartial verdict according to the evidence;

(11) The juror was a witness for the state or the defendant at the preliminary hearing or before the grand jury or is to be a witness for either party at the trial;

(12) The juror is a surety on defendant's bail bond in the case.

History.--s. 184, ch. 19554, 1939; CGL 1940 Supp. 8663(191); s. 85, ch. 70-339; s. 5, ch. 93-125; s. 1520, ch. 97-102.

913.15 SPECIAL JURORS
(Florida Statute 913.5)

The court may summon jurors in addition to the regular panel.

History.--RS 2853; GS 3909; RGS 6007; CGL 8301; s. 91, ch. 70-339.

CHALLENGES
(Quick Reference)

A. HOW AND WHEN EXERCISED

1. Judge cannot restrict or prevent "backstriking." Tedder v. Video Electronics, Inc., 491 So.2d 533 (Fla. 1986).

2. Error to require parties to exercise all preemptory challenges simultaneously in writing – challenges should be allowed singularly, alternately, and orally. Ter Keurst v. Miami Electric Co., 486 So.2d 547 (Fla. 1986),

3. Challenge for cause must be ruled upon when made – error to defer until after preemptory challenge made. Peek v. State, 413 So.2d 1225 (Fla. 3d DCA 1982), rev. denied, 424 So.2d 763 (1982).

B. WHAT CONSTITUTES CAUSE

1. Court is given broad discretion on challenge for cause and will be reversed only on a showing of manifest error. Cook v. State, 542 So.2d 964 (Fla. 1989); General Foods (Maxwell House Division) v. Brown, 419 So.2d 393 (Fla. 2d DCA 1982).

2. Test is whether there is a basis for reasonable doubt as to a juror possessing the state of mind which will enable him or her to render and impartial verdict based solely on the evidence submitted and the law announced at trial. Singer v. State, 109 So.2d 7 (Fla. 1959).

3. Close cases should be resolved in favor of excusing the juror. Sydleman v. Benson, 463 So.2d 533, (Fla. 4th DCA 1985); Levy v. Hawk's Cay, Inc., 543 So.2d 1299, (Fla. 3d DCA 1989); Imbimbo v. State, 555 So.2d 954, (Fla. 4th DCA 1990).

4. Juror must unequivocally assert an ability to be fair and impartial – error not to excuse one who will "try to be fair." Sikes v. Seaboard Coastline R.R. Co., 487 So.2d 1118 (Fla. 1st DCA 1986), Club West, Inc. v. Tropigas of Florida, Inc., 514 So.2d 426 (Fla. 3d DCA 1987);

Auriemme v. State, 501 So.2d 41 (Fla. 5th DCA 1986); Robinson v. State, 506 So.2d 1070 (Fla. 5th DCA 1987).

5. Not error to dismiss, for cause, two voir niremen who said they would give more weight to the testimony of a medical doctor than to that of a chiropractor but would not reject, out of hand, testimony by a chiropractor. Nowling v. Williams, 316 So.2d 547 (Fla. 1975).

DISCRIMINATORY CHALLENGES
(Quick Reference)

1. Racially-based peremptory challenges are impermissible. The court should supply the following test procedure:

   A. The initial presumption is that peremptories will ge exercised in a non-discriminatory manner.

   B. A party concerned about the other side's use of peremptory challenges must make a timely objection and demonstrate on the record that the challenged persons are members of a distinct racial group and that there is a strong likelihood that they have been challenged solely because of their race.

   C. If a party meets this burden, then the trial court must decide if there is a substantial likelihood that the peremptory challenges are being exercised solely on the basis of race. (If the Court finds no such likelihood, no inquiry may be made of the person exercising the questioned peremptories.)

   D. If the court decides that such a likelihood has been shown to exist, the burden shifts to the complained –about party to show that the questioned challenges were not exercised solely because of the prospective jurors' race.

   E. The reasons given in response to the Court's inquiry need not be equivalent to those for a challenge for cause.

   F. If the party shows that the challenges were based on the particular case on trial the parties or witnesses, or characteristics of the challenged person other than race, then the inquiry should end and jury selection continue.

   G. If the party has actually been challenging the prospective jurors solely on the basis of race, then the court should dismiss the jury pool and start voir dire over with a new pool.

State v. Neil, 457 So.2d 481 (Fla. 1984).

2. Presence of one or more of the following factors will tend to show that the parties' reasons are racially motivated:

   A. The alleged group bias is not shown to be shared by the juror in question.

   B. Failure to examine the juror or perfunctory examination, assuming neither the trial court nor opposing counsel has questioned the juror.

   C. Singling the juror out for special questions designed to invoke a special response.

   D. The parties' reason is unrelated to the facts of the case.

   E. A challenge based on reasons equally applicable to jurors who are not challenged.

State v. Slappy, 522 So.2d 18 (Fla. 1988), cert. denied, 108 S.Ct. 2873 (1988).

3. A challenging party must establish that it was forced to accept on objectionable juror to show reversible error. Penn v. State, 574 So.2d 1079 (Fla. 1991).

4. A white party has standing to challenge exclusion of a black juror. Cook v. State, 553 So.2d 1359 (Fla. 2d DCA 1989).

5. The Neil rule applies to civil cases. Johson v. Florida Farm Bureau Casualty Insurance Company, 542 So.2d 367 (Fla. 4th DCA 1988); American Security Insurance Company v. Hettel, 572 So.2d 1020 (Fla. 2d DCA 1991); Edmonson v. Leesville Concrete Co., 111 S.Ct. 2007 (1991).

6. Remedy for a Neil violation may be seating the improperly challenged juror rather than striking the entire panel. Joiner v. State, 618 So. 2d 174 (Fla. 1993).

7. Not abuse of discretion to deny challenge to sole black who (like plaintiff) had been struck in rear end accident when other seated juror has been in accidents. Harrison v. Emanuel, 694 So.2d 759 (Fla. 4th DCA 1997).

8. The Neil/Slappy analysis also applies to challenges based on gender. Abshire v. State, 642 So.2d 542 (Fla. 1994).

9. Objecting party must:

   A. Make timely objection.

   B. Show that venire person is member of distinct racial group.

   C. Request court ask striking party its reason for strike. Proponent of strike has burden to come forward with a race-neutral explanation.

   D. Court, if it finds the explanation to be facially race neutral and if it believes the explanation, should sustain the strike. Melbourne v. State, 679 So.2d 754 (Fla. 1996).

IV. PRELIMINARY INSTRUCTIONS

STANDARD INSTRUCTION 1.1

MODIFIED INSTRUCTION

EMINENT DOMAIN PRELIMINARY INSTRUCTION

PRELIMINARY INSTRUCTIONS 1.1

(Swear Jury)

Responsibility of jury and judge

YOU HAVE NOW BEEN SWORN AS THE JURY TO TRY THIS CASE. THIS IS A CIVIL CASE INVOLVING DISPUTED CLAIMS BETWEEN THE PARTIES. THOSE CLAIMS AND OTHER MATTERS WILL BE EXPLAINED TO YOU LATER. AS THE JUDGE, I WILL DECIDE THE QUESTIONS OF LAW THAT ARISE DURING THE TRIAL. BEFORE YOU START YOUR JURY DELIBERATIONS AT THE CLOSE OF THE TRIAL, I WILL TELL YOU THE LAW THAT YOU ARE TO FOLLOW AND APPLY IN REACHING YOUR VERDICT. BY YOUR JURY VERDICT, YOU WILL DECIDE THE DISPUTED ISSUES OF FACT. IN OTHER WORDS, IT IS YOUR RESPONSIBILITY TO DETERMINE THE FACTS AND TO APPLY THE LAW TO THOSE FACTS. THUS, THE FUNCTION OF THE JURY AND THE FUNCTION JUDGE ARE WELL DEFINED AND DO NOT OVERLAP. THIS IS ONE OF THE FUNDAMENTAL PRINCIPLES OF OUR SYSTEM OF JUSTICE.

(Steps in trial.)

BEFORE PROCEEDING FURTHER, IT WILL BE HELPFUL FOR YOU TO UNDERSTAND HOW A TRIAL IS CONDUCTED. IN A FEW MOMENTS, THE LAWYERS FOR THE PARTIES WILL HAVE AN OPPORTUNITY TO MAKE AN OPENING STATEMENT. IN THE OPENING STATEMENT, THE LAWYERS MAY EXPLAIN TO YOU THE ISSUES IN THE CASE AND SUMMARIZE THE FACTS THE LAWYERS EXPECT THE EVIDENCE TO SHOW. FOLLOWING THE OPENING STATEMENTS, WITNESSES MAY BE CALLED TO TESTIFY UNDER OATH. THE WITNESSES MAY BE EXAMINED AND CROSS-EXAMINED BY THE LAWYERS.

AFTER ALL THE WITNESSES AND EVIDENCE HAS BEEN RECEIVED, THE LAWYERS WILL AGAIN HAVE AN OPPORTUNITY TO TALK TO YOU AND MAKE THEIR FINAL ARGUMENTS. THE STATEMENTS THAT THE LAWYERS MAKE DURING OPENING STATEMENTS AND THE ARGUMENTS ARE NOT TO BE CONSIDERED BY YOU AS EVIDENCE IN THE CASE OR YOUR INSTRUCTIONS ON THE LAW. NEVERTHELESS, THESE STATEMENTS AND ARGUMENTS ARE INTENDED TO HELP YOU PROPERLY UNDERSTAND THE ISSUES, EVIDENCE, AND THE LAW, SO GIVE THE LAWYERS YOUR CLOSE ATTENTION.

FOLLOWING THE FINAL ARGUMENTS BY THE LAWYERS, I WILL

INSTRUCT YOU ON THE LAW TO USE DURING YOUR DELIBERATIONS.

(Things to be avoided.)

YOU SHOULD GIVE CAREFUL ATTENTION TO THE TESTIMONY AND OTHER EVIDENCE AS IT IS RECEIVED AND PRESENTED FOR YOUR CONSIDERATION. HOWEVER, YOU SHOULD NOT FORM OR EXPRESS ANY OPINION ABOUT THE CASE UNTIL YOU HAVE RECEIVED ALL THE EVIDENCE, HEARD THE ARGUMENTS OF THE LAWYERS, AND HEARD THE INSTRUCTIONS ON THE LAW FROM ME. IN OTHER WORDS, YOU SHOULD NOT FORM OR EXPRESS ANY OPINION ABOUT THE CASE UNTIL YOU ARE RETIRED TO THE JURY ROOM TO CONSIDER YOUR VERDICT, AFTER YOU HAVE HEARD ALL OF THESE MATTERS.

THE CASE MUST BE TRIED, OR HEARD BY YOU, ONLY ON THE EVIDENCE PRESENTED DURING THE TRIAL IN YOUR PRESENCE, AND IN THE PRESENCE OF THE LAWYERS AND MYSELF. YOU MUST NOT CONDUCT ANY INVESTIGATION OF YOUR OWN. YOU MUST NOT VISIT ANY OF THE PLACES DESCRIBED IN THE EVIDENCE OR THE SCENE OF THE OCCURRENCE THAT IS THE SUBJECT OF THIS TRIAL, UNLESS I DIRECT YOU TO. YOU MUST ALSO AVOID READING NEWSPAPER HEADLINES AND ARTICLES RELATING TO THIS CASE AND TRIAL.

YOU MUST ALSO AVOID SEEING OR HEARING TELEVISION AND RADIO COMMENTS OR ACCOUNTS OF THIS TRIAL WHILE IT IS IN PROGRESS.

(*Objections.)*

THE LAWYERS ARE TRAINED IN THE RULES OF EVIDENCE AND TRIAL PROCEDURE, AND IT IS THEIR DUTY TO MAKE ALL OBJECTIONS THEY FEEL ARE PROPER. WHEN A LAWYER MAKES AN OBJECTION, I WILL EITHER OVERRULE OR SUSTAIN THE OBJECTION. IF I OVERRULE AN OBJECTION, THE WITNESS WILL ANSWER. WHEN I SUSTAIN AN OBJECTION, THE WITNESS WILL NOT ANSWER. IF I SUSTAIN AN OBJECTION, AND DO NOT LET A WITNESS ANSWER, YOU MUST NOT SPECULATE ON WHAT MIGHT HAVE HAPPENED, OR WHAT THE WITNESS MIGHT HAVE SAID, HAD I LET THE WITNESS ANSWER. YOU SHOULD NOT DRAW ANY INFERENCE FROM THE QUESTION ITSELF.

(The judge's conferences with attorneys.)

DURING THE TRIAL, IT MAY BE NECESSARY FOR ME TO CONFER WITH THE ATTORNEYS OUT OF YOUR HEARING, TALKING ABOUT MATTERS OF LAW AND OTHER MATTERS THAT REQUIRE CONSIDERATION BY ME ALONE. 1T IS IMPOSSIBLE FOR ME TO PREDICT WHEN SUCH A CONFERENCE MAY BE REQUIRED OR HOW

LONG IT WILL LAST. WHEN SUCH CONFERENCES OCCUR, THEY WILL BE CONDUCTED SO AS TO CONSUME AS LITTLE OF YOUR TIME AS NECESSARY FOR A FAIR AND ORDERLY TRIAL OF THE CASE.

(Recesses.)

DURING THE TRIAL WE WILL TAKE RECESSES. DURING THESE RECESSES YOU SHALL NOT DISCUSS THE CASE AMONG YOURSELVES OR WITH ANYONE ELSE. ALSO, YOU MUST NOT PERMIT ANYONE TO SAY ANYTHING TO YOU, OR IN YOUR PRESENCE, ABOUT THE CASE. AND YOU MUST NOT TALK WITH THE LAWYERS, THE WITNESSES, OR ANY OF THE PARTIES ABOUT ANYTHING, UNTIL YOUR DELIBERATIONS ARE FINISHED. IN THIS WAY ANY APPEARANCE OF SOMETHING IMPROPER CAN BE AVOIDED.

IF DURING A RECESS YOU SEE ONE OF THE LAWYERS AND THE LAWYER DOES NOT SPEAK TO YOU, OR SEEM TO PAY ATTENTION TO YOU, UNDERSTAND THE LAWYER IS NOT DISCOURTEOUS BUT ONLY AVOIDING THE APPEARANCE OF SOME IMPROPER CONTACT WITH YOU. IF ANYONE TRIES TO SAY SOMETHING TO YOU, OR IN YOUR PRESENCE, ABOUT THIS CASE, TELL THEM YOU ARE ON THE JURY TRYING THE CASE AND ASK THEM TO STOP. IF THEY KEEP ON, LEAVE THEM AT ONCE AND IMMEDIATELY REPORT THE MATTER TO ANY OF

THE BAILIFFS, WHO WILL TELL ME.

AT THIS TIME, THE LAWYERS WILL HAVE AN OPPORTUNITY TO MAKE THEIR OPENING STATEMENTS. IN THEIR OPENING STATEMENTS, THE LAWYERS MAY EXPLAIN TO YOU THE ISSUES IN THE CASE AND GIVE YOU A SUMMARY OF THE FACTS THE LAWYERS EXPECT THE EVIDENCE WILL SHOW. UNDER OUR RULES OF PROCEDURE, THE LAWYER FOR THE PLAINTIFF, _____, WILL GO FIRST.

MODIFIED INSTRUCTION

YOU HAVE NOW BEEN SWORN AS THE JURY TO TRY THIS CASE. BY YOUR VERDICT(S) YOU WILL DECIDE THE DISPUTED ISSUES OF FACT. THE COURT WILL DECIDE THE QUESTIONS OF LAW THAT ARISE DURING THE TRIAL AND, BEFORE YOU RETIRE TO DELIBERATE AT THE CLOSE OF THE TRIAL, THE COURT WILL INSTRUCT YOU ON THE LAW THAT YOU ARE TO FOLLOW AND APPLY IN REACHING YOUR VERDICT(S).

YOU SHOULD GIVE CAREFUL ATTENTION TO THE TESTIMONY AND EVIDENCE AS IT IS RECEIVED AND PRESENTED FOR YOUR CONSIDERATION, BUT YOU SHOULD NOT FORM OR EXPRESS ANY OPINION ABOUT THE CASE UNTIL YOU HAVE RETIRED TO THE JURY ROOM TO CONSIDER YOUR VERDICT(S), AFTER HAVING HEARD ALL OF THE EVIDENCE, THE CLOSING ARGUMENTS OF THE ATTORNEYS, AND THE CHARGE OF THE COURT.

DURING THE TRIAL YOU MUST NOT DISCUSS THE CASE AMONG YOURSELVES OR WITH ANYONE ELSE, NOR PERMIT ANYONE TO DISCUSS IT IN YOUR PRESENCE. YOU MUST AVOID READING NEWSPAPER HEADLINES AND ARTICLES RELATING TO THE TRIAL.

YOU MUST ALSO AVOID SEEING OR HEARING TELEVISION AND RADIO COMMENTS OR ACCOUNTS OF THE TRIAL WHILE IT IS IN PROGRESS. YOU MUST NOT VISIT THE SCENE OF THE OCCURRENCE THAT IS THE SUBJECT OF THE TRIAL UNLESS THE COURT DIRECTS THE JURY TO VIEW THE SCENE.

FROM TIME TO TIME DURING THE TRIAL I MAY BE CALLED ON TO MAKE RULINGS OF LAW ON OBJECTIONS OR MOTIONS BY THE ATTORNEYS. YOU SHOULD NOT INFER FROM ANY SUCH RULING THAT I HAVE ANY OPINIONS ON THE MERITS OF THE CASE FAVORING ONE SIDE OR THE OTHER. AND IF I SUSTAIN AN OBJECTION TO A QUESTION ASKED OF A WITNESS AND DO NOT PERMIT IT TO BE ANSWERED, YOU SHOULD NOT SPECULATE ON WHAT ANSWER MIGHT HAVE BEEN GIVEN, NOR DRAW ANY INFERENCE FROM THE QUESTION ITSELF.

DURING THE TRIAL IT MAY BE NECESSARY FOR ME TO CONFER WITH THE ATTORNEYS OUT OF THE HEARING OF THE JURY WITH RESPECT TO MATTERS OF LAW AND OTHER MATTERS THAT REQUIRE CONSIDERATION BY THE COURT ALONE. IT IS IMPOSSIBLE TO PREDICT WHEN SUCH A CONFERENCE MAY BE REQUIRED OR HOW LONG IT WILL LAST. WHEN SUCH CONFERENCES OCCUR, THEY WILL

BE CONDUCTED SO AS TO CONSUME AS LITTLE OF THE JURY'S TIME AS IS CONSISTENT WITH AN ORDERLY AND FAIR DISPOSITION OF THE CASE. DURING THE TRIAL YOU MUST NOT TALK TO THE PARTIES, THE WITNESSES, OR THE ATTORNEYS. THE ATTORNEYS OPERATE UNDER A CODE OF CONDUCT WHICH PROHIBITS THEIR TALKING TO YOU AT ALL ABOUT ANY SUBJECT DURING THE COURSE OF THE TRIAL. SHOULD THEY MEET YOU ABOUT THE BUILDING OR IN ANY LOCATION, THEY WILL NOT SPEAK TO YOU OR EVEN ACKNOWLEDGE YOUR PRESENCE. PLEASE DO NOT HOLD THIS AGAINST THEM, BUT RECOGNIZE THE RESTRICTIONS UNDER WHICH THEY MUST FUNCTION.

YOU WILL BE GIVEN PAPER AND PENCILS OR PENS FOR THE PURPOSE OF NOTE TAKING. FOR THOSE OF YOU WHO ARE NOTETAKERS, THIS WILL BE A GREAT RELIEF. FOR THOSE OF YOU WHO ARE NOT, PLEASE DON'T FEEL YOU MUST NOW BECOME NOTE-TAKERS MERELY BECAUSE THE PADS ARE BEFORE YOU. YOUR MEMORY SKILLS HAVE SERVED YOU WELL IN YOUR LIFE AND WILL CONTINUE TO SERVE YOU WELL IN THIS TRIAL.

(give one of the following two paragraphs)

(a)

WHEN WE RECESS YOU MAY LEAVE YOUR NOTES IN THE JURY DELIBERATION ROOM OR IN YOUR SEAT HERE IN THE COURTROOM OR YOU MAY TAKE THEM WITH YOU TO REVIEW FROM TIME TO TIME. IF YOU REMOVE YOUR NOTES FROM THE COURTROOM PLEASE REMEMBER THAT THEY MUST BE KEPT CONFIDENTIAL. YOU SHOULD NOT SHOW THEM TO ANYONE OR DISCUSS THEM WITH ANYONE.

YOU SHOULD ALSO UNDERSTAND THAT POSSESSION OF THE NOTES IS YOUR RESPONSIBILITY WE WILL NOT STOP OR DELAY THE TRIAL BECAUSE SOMEONE HAS FORGOTTEN OR MISPLACED HIS OR HER NOTES AND WISHES TO RETRIEVE THEM.

(b)

LEAVE YOUR PADS FACE DOWN IN THE JURY ROOM WHEN YOU LEAVE AT EACH RECESS. DO NOT TAKE THE NOTES WITH YOU AT THE END OF THE DAY. BE SURE TO PUT YOUR NAME ON THE NOTES AND LEAVE THEM IN THE JURY ROOM. THE BAILIFF WILL COLLECT THEM AND THE CLERK WILL SECURE THEM FOR YOU. NO ONE WILL READ THEM.

YOU MAY TAKE YOUR NOTES INTO THE JURY ROOM AT THE CLOSE OF THE TRIAL AND USE THEM DURING YOUR DELIBERATIONS. HOWEVER I WOULD GIVE YOU ONE CAUTION ABOUT THE USE OF THE

NOTES. NOTES ARE FOR THE BENEFIT OF THE NOTE- TAKER. IF, WHEN YOU ARE DELIBERATING, YOU FIND THAT YOU HAVE A CLEAR MEMORY ABOUT A FACT OR A PIECE OF EVIDENCE, AND ANOTHER JUROR WHO TOOK NOTES WROTE IT DOWN DIFFERENTLY; PLEASE DON'T CONCEDE THAT YOUR MEMORY IS FAULTY MERELY BECAUSE SOMEONE ELSE'S NOTES ARE DIFFERENT. NOTE- TAKERS ARE NOT MAGICALLY ACCURATE. IF YOU HAVE A CLEAR MEMORY ABOUT A FACT, PLEASE RELY ON YOUR MEMORY. DO NOT ELEVATE ANOTHER JUROR'S WRITTEN RECOLLECTION TO A POSITION HIGHER THAN THAT OF YOUR OWN MEMORY. NEITHER IS NECESSARILY MORE RELIABLE THAN THE OTHER.

AFTER YOU HAVE COMPLETED YOUR DELIBERATIONS AND REACHED YOUR VERDICT, THE BAILIFF WILL COLLECT ALL OF YOUR NOTES AND DESTROY THEM. NO ONE OTHER THAN YOU WILL EVER READ YOUR NOTES.

YOU WILL NOTICE THAT DURING THE TRIAL I TOO AM TAKING NOTES. IF I SIT UP AND BEGIN TO WRITE NOTES, THAT IS NOT A SIGNAL TO YOU THAT WHAT IS BEING SAID IS IMPORTANT OR MORE IMPORTANT THAN THE OTHER EVIDENCE YOU ARE HEARING. IN FACT I AM NOT SENDING YOU ANY SIGNALS AT ALL ABOUT

ANYTHING. BECAUSE OUR TASKS ARE QUITE DIFFERENT , WHAT I AM LISTENING FOR IS DIFFERENT FROM WHAT YOU ARE LISTENING FOR. DO NOT CONCLUDE FROM ANYTHING I DO DURING THE TRIAL THAT SOME PARTS OF THE TRIAL ARE IMPORTANT AND SOME ARE NOT. YOU SHOULD LISTEN TO ALL THE EVIDENCE. THEN, AFTER YOU HAVE HEARD IT ALL, YOU SHOULD DECIDE, AS BEST YOU CAN, WHAT EVIDENCE WAS IMPORTANT AND WHAT WAS NOT.

IN THIS TRIAL YOU WILL BE PERMITTED TO ASK QUESTIONS OF WITNESSES OR THE COURT. THIS PROCESS MAY HELP YOU CLEAR UP AREAS OF CONFUSION OR CONFLICT. BY MAKING THIS OPPORTUNITY AVAILABLE TO YOU WE ARE NEITHER ENCOURAGING YOU TO ASK NOR DISCOURAGING YOU FROM ASKING QUESTIONS. THE OPTION IS MERELY MADE AVAILABLE TO YOU TO HELP YOU DO YOUR JOB AS A JUROR.

A FEW RULES APPLY TO YOUR QUESTIONING. FIRST, THE RULES OF EVIDENCE THAT GOVERN AND CONTROL THE LAWYER'S QUESTIONS GOVERN AND CONTROL YOURS AS WELL. I AM AWARE THAT YOU DO NOT HAVE A FORMAL LEGAL EDUCATION AND ARE NOT FAMILIAR WITH THE RULES OF EVIDENCE.

NEVERTHELESS, THEY APPLY TO YOUR QUESTIONS JUST AS THEY APPLY TO THOSE OF THE LAWYERS. IF I DO NOT ALLOW A QUESTION OF YOURS TO BE ASKED IT DOES NOT MEAN THAT THE QUESTION WAS UNIMPORTANT OR IN SOME WAY WRONG, BUT THAT THE RULES OF EVIDENCE DO NOT ALLOW IT. DO NOT ATTACH ANY SIGNIFICANCE TO MY FAILURE TO ASK A QUESTION.

THERE IS A PROCEDURE WE MUST FOLLOW IN THIS MATTER AND IT IS THIS. AFTER THE LAWYERS HAVE COMPLETED THEIR DIRECT AND CROSS AND RE-DIRECT AND RE-CROSS EXAMINATION OF A WITNESS, AND BEFORE I LET THE WITNESS STAND DOWN, I WILL LOOK TO YOU AND ASK IF ANY OF YOU HAVE QUESTIONS FOR THIS WITNESS. IF YOU DO, PLEASE RAISE YOUR HAND, THEN WRITE OUT THE QUESTION ON A PIECE OF PAPER, DO NOT SIGN THE PAPER. HAND IT TO THE BAILIFF. I WILL GIVE COUNSEL AN OPPORTUNITY TO READ IT AT THE BENCH AND TO COMMENT, BUT THE ULTIMATE DECISION TO ALLOW IT TO BE ASKED OR NOT IS MINE ALONE, AND IS MADE BASED ON MY INTERPRETATION OF THE RULES.

IF I FIND IT PROPER, I WILL PUT YOUR QUESTION TO THE WITNESS OR ALLOW ONE OF THE LAWYERS TO ASK IT OR THE LAWYERS MAY BE ABLE TO AGREE ON THE ANSWER AND SIMPLY

TELL YOU. AFTER THE ANSWER, I WILL ASK IF YOU HAVE A FOLLOW-UP QUESTION OR IF ANY OTHER JURORS HAVE QUESTIONS. WHEN THAT IS COMPLETE, I WILL ALLOW COUNSEL TO HAVE THE LAST WORD BY ASKING ANY FOLLOW-UP QUESTIONS THEY MAY HAVE THAT MAY HAVE BEEN SUGGESTED BY YOUR QUESTIONS.

IF YOU HAVE A QUESTION IT SHOULD BE ASK BEFORE THE WITNESS HAS BEEN RELEASED. NO QUESTIONS ABOUT TESTIMONY MAY BE ASKED OF COUNSEL OR OF ME, BUT I MAY BE ABLE TO ANSWER SOME QUESTIONS ON LAW OR PROCEDURE. QUESTIONS FOR THE COURT SHOULD BE ASKED IN THE SAME MANNER AS QUESTIONS FOR THE WITNESSES. DO YOU ALL UNDERSTAND THIS PROCEDURE?

(if notebooks are provided)

TO HELP YOU BETTER UNDERSTAND THE CASE AS IT IS PRESENTED, NOTEBOOKS HAVE BEEN PREPARED FOR EACH OF YOU. THE BAILIFF WILL HAND THOSE OUT TO YOU NOW. THESE NOTEBOOKS CONTAIN PAPER FOR YOU TO USE IN TAKING YOUR NOTES AND PRINTED MATERIAL WHICH I WILL GO OVER WITH YOU AT THIS TIME.

(*briefly review material in notebooks)*

FROM TIME TO TIME DURING THE TRIAL WE MAY BE ADDING DOCUMENTS TO YOUR NOTEBOOKS, AND AT THE END OF THE TESTIMONY THE COURT MAY CHANGE SOME OF THE INSTRUCTIONS CONTAINED IN YOUR NOTEBOOK. THIS IS OFTEN NECESSARY, NOT BECAUSE THE LAW HAS CHANGED OR THE COURT HAS CHANGED ITS MIND, BUT BECAUSE TRIALS ARE DYNAMIC EXERCISES, AND RULINGS MADE BY THE BY THE COURT DURING THE TRIAL OR UNEXPECTED DEVELOPMENTS IN THE EVIDENCE MAY CHANGE WHAT LAW APPLIES TO THE CASE.

YOU WILL BE ALLOWED TO TAKE THE NOTEBOOKS WITH YOU WHEN YOU GO INTO THE JURY ROOM TO DELIBERATE YOUR VERDICT. WHEN YOU COMPLETE YOUR SERVICE IN THIS CASE YOU SHOULD RETURN THE NOTEBOOKS TO THE BAILIFF.

EMINENT DOMAIN PRELIMINARY INSTRUCTIONS

(first give MODIFIED INSTRUCTION *then*)

THIS CASE IS ONE IN EMINENT DOMAIN, WHICH MEANS THE POWER OF THE GOVERNMENT TO TAKE PRIVATE PROPERTY FOR A PUBLIC PURPOSE, FOR WHICH IT IS REQUIRED TO PAY FULL COMPENSATION TO THE OWNERS FOR THE PROPERTY TAKEN. THE PROCEDURE BY WHICH THE POWER OF EMINENT DOMAIN IS EXERCISED IS CALLED "CONDEMNATION." THE TERMS "CONDEMNATION" AND "EMINENT DOMAIN" SOMETIMES ARE USED INTERCHANGEABLY.

BY YOUR VERDICT YOU WILL DECIDE THE DISPUTED ISSUES OF FACT, WHICH IN THIS CASE CONFIRM THE AMOUNT TO BE PAID TO THE OWNERS FOR THE PROPERTY AND IMPROVEMENTS TAKEN IN THE PROCEEDING, TOGETHER WITH CERTAIN SPECIAL DAMAGES AND EXPENSES CAUSED BY THE TAKING, IF APPLICABLE.

THE PROPRIETY OF THE TAKING ITSELF IS NOT A MATTER TO BE CONSIDERED BY YOU. NEITHER IS THE LOCATION NOR THE DECISION TO CONSTRUCT THE PROJECT A MATTER OF YOUR CONCERN. THE COURT HAS ALREADY DETERMINED THAT THE PETITIONER IS ENTITLED TO CONDEMN THE PROPERTY INVOLVED IN THIS ACTION. THE SOLE QUESTION TO BE DECIDED BY YOU IS THE AMOUNT OF MONEY TO BE PAID TO THE OWNERS AS FULL COMPENSATION.

YOU MUST NOT VISIT OR VIEW THE PROPERTY THAT IS THE SUBJECT MATTER OF THIS TRIAL UNTIL THE COURT DIRECTS YOU TO DO SO. YOU WILL MAKE A PERSONAL INSPECTION OF THE PROPERTY INVOLVED IN THE ACTION. TRANSPORTATION TO THE SITE WILL BE PROVIDED AND YOU WILL VIEW THE PROPERTY UNDER THE SUPERVISION OF THE COURT. THE PURPOSE OF THE VIEW IS TO ENABLE YOU TO BETTER APPLY THE EVIDENCE AND TESTIMONY TO THE PROPERTY IN QUESTION.

IN CONCLUSION, OBSERVE CLOSELY EACH WITNESS AS HE OR SHE TESTIFIES, AND CONSIDER CAREFULLY ALL THE EVIDENCE THAT IS OFFERED, FOR IT IS YOU WHO MUST DETERMINE FROM THIS EVIDENCE WHERE THE TRUTH LIES.

KEEP AN OPEN MIND. REFRAIN FROM FORMING OR EXPRESSING OPINIONS CONCERNING THE CASE UNTIL IT IS CONCLUDED AND THE COURT HAS DIRECTED YOU TO RETIRE AND DELIBERATE YOUR VERDICT.

V. OPENING STATEMENT

JURY INSTRUCTION

ALTERNATE JURY INSTRUCTION

OPENING STATEMENT
(Quick Reference)

JURY INSTRUCTION
(from Standard Instruction 1.1)

.

AT THIS TIME THE ATTORNEYS FOR THE PARTIES WILL HAVE AN OPPORTUNITY TO MAKE THEIR OPENING STATEMENTS, IN WHICH THEY MAY EXPLAIN TO YOU THE ISSUES IN THE CASE AND GIVE YOU A SUMMARY OF THE FACTS THEY EXPECT THE EVIDENCE WILL SHOW.

ALTERNATE JURY INSTRUCTION

AT THIS TIME THE ATTORNEYS FOR THE PARTIES WILL HAVE AN OPPORTUNITY TO MAKE OPENING STATEMENTS, IN WHICH THEY MAY EXPLAIN TO YOU THE ISSUES IN THE CASE AND SUMMARIZE THE FACTS THAT THEY EXPECT THE EVIDENCE WILL SHOW. AFTER ALL THE EVIDENCE HAS BEEN RECEIVED, THE ATTORNEYS WILL AGAIN HAVE AN OPPORTUNITY TO ADDRESS YOU AND TO MAKE THEIR FINAL ARGUMENTS. THE STATEMENTS THAT THE ATTORNEYS NOW MAKE AND THE ARGUMENTS THAT THEY LATER MAKE ARE NOT TO BE CONSIDERED BY YOU EITHER AS EVIDENCE IN THE CASE OR AS YOUR INSTRUCTION ON THE LAW. NEVERTHELESS, THESE STATEMENTS AND ARGUMENTS ARE INTENDED TO HELP YOU PROPERLY UNDERSTAND THE. ISSUES, THE EVIDENCE, AND APPLICABLE LAW, AND SO YOU SHOULD GIVE THEM YOUR CLOSE ATTENTION.

OPENING STATEMENT
(Quick Reference)

1. TIME FOR OPENING STATEMENT

   A. Allowing counsel only five minutes for opening statement is reversible error. Maleh v. Florida East Coast Properties, 491 So.2d 290 (Fla. 3d DCA 1986); Bullock v. Mt. Sinai Hospital, 501 So.2d 738 (Fla. 3d DCA 1987); Quarrel v. Minervini, 510 So.2d 977 (Fla. 3d DCA 1987).

   B. Allowing to plaintiffs ten minutes for opening is reversible error. Knapp v. Shores, 550 So.2d 1155 (Fla. 3d DCA 1989).

2. PRESERVING OPENING UNTIL DEFENDANT'S CASE

   Not abuse of discretion to refuse to allow defendant to wait until after plaintiff has rested before making opening – if defendant intends to put on one witness or no case, opening should not be delayed. If defendant has lengthy case, opening may be deferred. Allen v. Hopper, 171 So.2d 513 (Fla. 1936); Montana v. State, 223 So.2d 771 (Fla. 3d DCA 1969).

3. IMPROPER CONDUCT OR COMMENT

   A. No reversible error where counsel's comments during his opening statement were relevant to the reason for appellee leaving the scene of the accident, were invited by appellants and were not made to prejudice the jury. Wigley v. Cochran, 684 So.2d 340 (Fla. 4th DCA 1997).

   B. Remarks concerning the motivation for the action were improper but cured by a proper cautionary instruction. Garcia v. American Income Life Insurance Co., 664 So.2d 301 (Fla. 3d DCA 1995).

   (Note: Cases on improper closing argument can probably be used by analogy.)

4. USE OF EXHIBITS

   There appear to be no instructive Florida cases, but courts generally allow the use of exhibits unless the opposing party can demonstrate prejudice.

VI. SPECIAL INSTRUCTIONS
(given during trial)

INVOKING THE RULE OF SEQUESTRATION

THE COURT HAS INVOKED A RULE OF PROCEDURE WHICH REQUIRES YOUR EXCLUSION FROM THE COURTROOM AT ALL TIMES EXCEPT DURING THE TIME WHEN YOU TESTIFY IN THIS CASE. YOU ARE DIRECTED TO REMAIN OUT OF THE COURTROOM EXCEPT WHEN YOU ARE CALLED TO TESTIFY. WHILE YOU ARE WAITING TO TESTIFY, AND AFTER YOU HAVE DONE SO, YOU ARE NOT TO DISCUSS THIS CASE OR YOUR TESTIMONY AMONG YOURSELVES OR WITH ANYONE ELSE. YOU MAY, HOWEVER, DISCUSS YOUR TESTIMONY WITH COUNSEL FOR EITHER PARTY IN THIS CAUSE.

ANY VIOLATION OF THIS DIRECTION MAY NOT ONLY SUBJECT YOU TO CONTEMPT OF COURT, BUT MAY ALSO DISQUALIFY YOU AS A WITNESS IN THIS CASE. YOU WILL NOW RETIRE FROM THE COURTROOM UNTIL YOU ARE CALLED.

COUNSEL FOR EACH OF THE PARTIES ARE INSTRUCTED TO ADVISE THEIR RESPECTIVE WITNESSES WHO ARE NOT PRESENT AT THIS TIME OF THE DIRECTION I HAVE JUST GIVEN, AND EACH OF THEM SHALL BE GOVERNED THEREBY.

ADVERSE PARTY INSTRUCTION

A PARTY IS PERMITTED TO CALL AN ADVERSE PARTY TO THE STAND AND EXAMINE THE ADVERSE PARTY BY LEADING QUESTIONS. IF ANY TESTIMONY RECEIVED FROM THE ADVERSE PARTY IS CONTRADICTED BY OTHER EVIDENCE, THEN THE PARTY CALLING (HIM) (HER) TO THE STAND IS NOT BOUND BY THAT PORTION OF (HIS) (HER) TESTIMONY. (See RCP 1.450(a)).

READING DEPOSITION TESTIMONY
(Standard Instruction 1.3)

MEMBERS OF THE JURY, THE SWORN TESTIMONY OF _____ , GIVEN BEFORE TRIAL, WILL NOW BE READ TO YOU. YOU ARE TO CONSIDER AND WEIGH THIS TESTIMONY AS THOUGH THE WITNESS HAD TESTIFIED HERE IN PERSON.

VIDEO DEPOSITION TESTIMONY

(Judge - to lawyers- Do you want the Court Reporter to report the video?)

MEMBERS OF THE JURY, THE SWORN TESTIMONY OF _____ , WILL BE PRESENTED TO YOU BY VIDEOTAPE. YOU ARE TO CONSIDER AND WEIGH THIS TESTIMONY AS THOUGH THE WITNESS HAD TESTIFIED HERE IN PERSON.

INSTRUCTION ABOUT RELEVANCY

(To be given before ruling on the first relevancy objection in the trial)

YOU HAVE JUST HEARD AN OBJECTION MADE ON THE BASIS OF RELEVANCY. RELEVANT EVIDENCE IS EVIDENCE WHICH PROVES OR TENDS TO PROVE OR DISPROVE A MATERIAL FACT OR ISSUE. WHEN A LAWYER MAKES A "RELEVANCY" OBJECTION, COUNSEL IS SUGGESTING THAT THE INFORMATION CALLED FOR BY THE QUESTION DOES NOT PROVE OR TEND TO PROVE OR DISPROVE ONE OF THE MATERIAL OR IMPORTANT FACTS OR ISSUES IN THIS CASE. IF I AGREE, I WILL SUSTAIN THE OBJECTION. IF I DISAGREE, I WILL OVERRULE THE OBJECTION.

INSTRUCTION ABOUT HEARSAY

(To be given before ruling on the first hearsay objection at trial)

YOU HAVE JUST HEARD AN OBJECTION MADE ON THE BASIS OF HEARSAY. HEARSAY EVIDENCE HAS SOME COMPLEXITIES TO IT BUT THE SHORT VERSION IS THAT IT IS AN OUT OF COURT STATEMENT, OFFERED IN COURT, USUALLY BY SOMEONE OTHER THAN THE PERSON WHO MADE THE STATEMENT, AND OFFERED TO PROVE THAT WHAT WAS SAID WAS TRUE. GENERALLY, HEARSAY IS NOT ADMISSIBLE BUT THERE ARE A NUMBER OF EXCEPTIONS TO THIS RULE. THIS IS *(IS NOT)* ONE OF THOSE EXCEPTIONS AND, THEREFORE, I WILL SUSTAIN *(OVERRULE)* THE OBJECTION.

DEAD MAN'S STATUTE (FAILURE TO TESTIFY)
(Standard Instruction 1.4)

BECAUSE (name of deceased or insane person) CANNOT TESTIFY, THE LAW DOES NOT PERMIT A PARTY OR OTHER INTERESTED PERSON TO BE EXAMINED OVER OBJECTION BY [deceased's] [insane person's] (state the capacity in which a person objects pursuant to 90.05 F .S.)IN REGARD TO A TRANSACTION OR COMMUNICATION BETWEEN THE WITNESS AND THE [deceased] [insane person] .THAT SUCH AN OBJECTION TO TESTIMONY HAS BEEN MADE AND SUSTAINED IS NOT TO BE CONSIDERED BY YOU IN ANY WAY, EITHER FOR OR AGAINST THE PARTY MAKING THE OBJECTION OR FOR OR AGAINST THE [party who] [party in whose behalf the witness] WAS THUS PREVENTED FROM TESTIFYING.

NOTE ON USE

1. Since the privilege afforded by the Dead Man's Statute (90.05 F.S.) may be waived *[e.g., Small v. Shure,* 94 So. 2d 371 (Fla. 1957)*]*, this instruction should be given only when (a) the testimony subject to the application of ~90.05 is offered and (b) objection is made by a party entitled to object and is sustained.

2. The committee recommends that this charge be given during the trial when the objection is made and sustained and that the charge not thereafter be repeated unless necessary in the circumstances of the case.

VII. WITNESSES

OATH OF WITNESS

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU GIVE IN THIS CAUSE WILL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?

TESTING CHILD FOR COMPETENCY

WHAT IS YOUR NAME?

WHO ARE YOUR PARENTS?

HOW OLD ARE YOU?

WHERE DO YOU LIVE?

DO YOU GO TO SCHOOL ?

WHERE?

WHAT GRADE ARE YOU IN?

DO YOU GO TO SUNDAY SCHOOL ?

DO YOU GO TO CHURCH?

YOU HELD UP YOUR HAND JUST NOW- WHAT DOES THAT MEAN?

WHAT DOES IT MEAN TO TELL THE TRUTH?

SUPPOSE YOU DIDN'T TELL THE TRUTH, WHAT WOULD HAPPEN?

(See Crenshaw; v. State, 87 So. 328.)

ADMONITION TO WITNESS

(given if requested)

MR./MS. , YOU SHOULD LISTEN CAREFULLY TO THE QUESTION ASKED AND ANSWER IT SPECIFICALLY. DON'T VOLUNTEER OTHER INFORMATION BEYOND WHAT IS ASKED FOR, DON'T ATTEMPT TO ARGUE WITH THE ATTORNEY, DON'T BE CONCERNED WITH WHY THE QUESTION IS BEING ASKED OR WHAT THE ATTORNEY IS TRYING TO PROVE. YOUR RESPONSIBILITY IS SIMPLY TO ANSWER THE QUESTION ASKED AND TO DO NOTHING FURTHER.

TENDER OF EXPERT WITNESS

(Quick Reference)

Attorneys habitually elicit the witness' education and background and tender him to the Court (within the hearing of the jury) as an expert. There is no legal authority for this, and the judge who accepts the witness as an expert within the hearing of the jury probably makes an improper comment on the evidence.

" [I]t is questionable whether it is proper procedure for a court to expressly declare a witness an 'expert.' " Chambliss v. White Motor Coro., 481 So.2d 6 (Fla. lst DCA 1986) .

"Although it is for the court to determine whether a witness is qualified to testify as an expert, there is no requirement that the court specifically make that finding in open court upon proffer of the offering party. Such an offer and finding by the Court might influence the jury in its evaluation of the expert and the better procedure is to avoid an acknowledgement of the witnesses' expertise by the Court." United States v. Bartlev, 855 F.2d 547 (8th Cir. 1988) .

The "key question is not the expert's qualifications in some field. But whether the precise question on which he will be asked to opine is within his field of expertise…" Berry v. City of Detroit 25 F.3d 1342 (6th Cir. 1994)

"Except in ruling on an objection, the court should not, in the presence of the jury, declare that a witness is qualified as an expert or to render an expert opinion, and counsel should not ask the court to do so." Standard 17, Civil Trial Practice Standards of the Section of Litigation of the American Bar Association (1998)

USE OF DEPOSITIONS IN COURT PROCEEDINGS
(Civil Rule 1.330)

(a) **Use of Depositions**. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice of it so far as admissible under the rules of evidence applied as though the witness were then present and testifying in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or a person designated under rule 1.310(b)(6) or 1.320(a) to testify on behalf of a public or private corporation, a partnership or association, or a governmental agency that is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or (F)the witness is an expert or skilled witness.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.

(5) Substitution of parties pursuant to rule 1.260 does not affect the right to use depositions previously taken and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken for it.

(6) If a civil action is afterward brought, all depositions lawfully taken in a medical liability mediation proceeding may be used in the civil action as if originally taken for it.

(b) **Objections to Admissibility** . Subject to the provisions of rule 1.300(b)

and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part of it for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

(c) **Effect of Taking or Using Depositions**. A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part of it for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) **Effect of Errors and Irregularities.**

(1) *As To Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind that might be obviated, removed, or cured if promptly presented are waived unless timely objection to them is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under rule 1.320 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 10 days after service of the last questions authorized.

(4) *As to Completion and Return.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, or otherwise dealt with by the officer under rules 1.310 and 1.320 are waived unless a motion to suppress the deposition or some part of it is made with

reasonable promptness after the defect is, or with due diligence might have been, discovered.

DEPOSITIONS OF EXPERT WITNESSES
(Civil Rule 1.390)

(a) **Definition.** The term "expert witness" as used herein applies exclusively to a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify .

(b) **Procedure**. The testimony of an expert or skilled witness may be taken at any time before the trial in accordance with the rules for taking depositions and may be used at trial, regardless of the place of residence of the witness or whether the witness is within the distance prescribed by rule 1.330(a)(3). No special form of notice need be given that the deposition will be used for trial.

(c) **Fee**. An expert or skilled witness whose deposition is taken shall be allowed a witness fee in such reasonable amount as the court may determine. The court shall also determine a reasonable time within which payment must be made, if the deponent and party cannot agree. All parties and the deponent shall be served with notice of any hearing to determine the fee. Any reasonable fee paid to an expert or skilled witness may be taxed as costs.

(d) **Applicability**. Nothing in this rule shall prevent the taking of any deposition as otherwise provided by law.

INTERROGATORIES TO PARTIES
(Civil Rule 1.340)

(a) **Procedure for Use**. Without leave of court, any party may serve upon any other party written interrogatories to be answered (1) by the party to whom the interrogatories are directed, or (2) if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish the information available to that party. Interrogatories may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading upon that party. The interrogatories shall not exceed 30, including all subparts, unless the court permits a larger number on motion and notice and for good cause. If the Supreme Court has approved a form of interrogatories for the type of action, the initial interrogatories shall be in the form approved by the court. Other interrogatories may be added to the approved forms without leave of court, so long as the total of approved and additional interrogatories does not exceed 30. Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the attorney making it. The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the process and initial pleading upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for on order under rule 1.380(a) on any objection to or other failure to answer an interrogatory.

(b) **Scope; Use at Trial**. Interrogatories may relate to any matters that can be inquired into under rule 1.280(b), and the answers may be used to the extent permitted by the rules of evidence except as otherwise provided in this subdivision. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of the party. A party shall respond to such an interrogatory by giving the information the party has and the source on which the information is based. Such a qualified answer may not be used as direct evidence for or impeachment against the party giving the answer unless the court finds it otherwise admissible under the rules of evidence. If a party introduces an answer to an interrogatory, any other party may require that party to introduce any other interrogatory and answer that in fairness ought to be considered with it.

(c) **Option to Produce Records.** When the answer to an interrogatory may

be derived or ascertained from the records of the party to whom the interrogatory is directed or from an examination, audit, or inspection of the records or from a compilation, abstract, or summary based on the records and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, an answer to the interrogatory specifying the records from which the answer may be derived or ascertained and offering to give the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries is a sufficient answer. An answer shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained, or shall identify a person or persons representing the interrogated party who will be available to assist the interrogating party in locating and identifying the records at the time they are produced.

(d) **Effect on Co-Party.** Answers made by a party shall not be binding on a co-party.

(e) **Service and Filing.** Interrogatories shall be arranged so that a blank space is provided after each separately numbered interrogatory. The space shall be reasonably sufficient to enable the answering party to insert the answer within the space. If sufficient space is not provided, the answering party may attach additional papers with answers and refer to them in the space provided in the interrogatories. The interrogatories shall be served on the party to whom the interrogatories are directed and copies shall be served on all other parties. A certificate of service of the interrogatories shall be filed, giving the date of service and the name of the party to whom they were directed. The answers to the interrogatories shall be served upon the party originally propounding the interrogatories and a copy shall be served on all other parties by the answering party. The original or any copy of the answers to interrogatories may be filed by any party when the court should consider the answers to interrogatories in determining any matter pending before the court. The court may order a copy of the answers to interrogatories filed at any time when the court determines that examination of the answers to interrogatories is necessary to determine any matter pending before the court.

VIII. EVIDENCE

HEARSAY DECISION CHART

IMPEACHMENT BY PRIOR CONVICTION
(Checklist)

DEFINITION OF A LEADING QUESTION

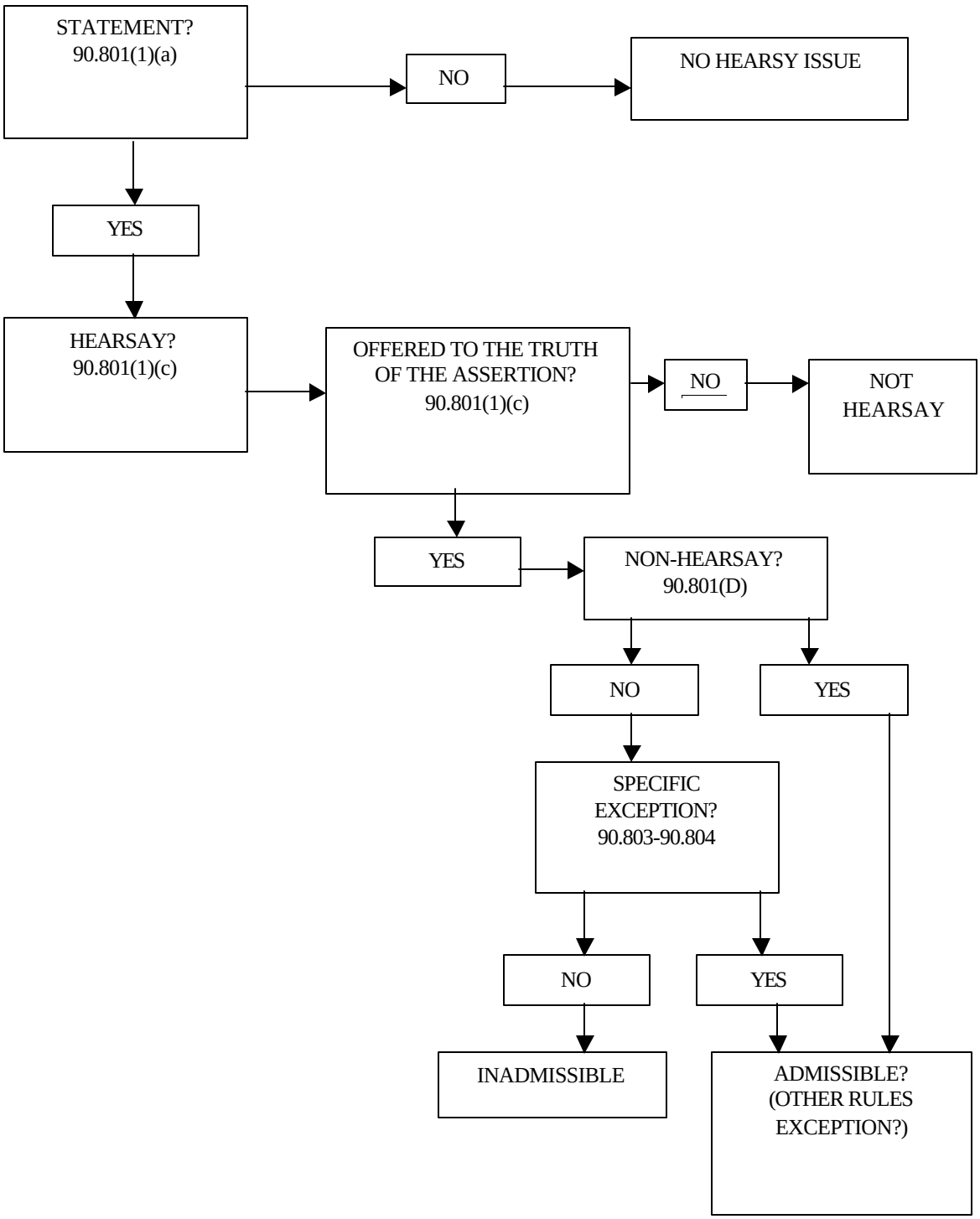
EVIDENCE
(Civil Rule 1.450)

EXCEPTION UNNECESSARY
(Civil Rule 1.470)

EVIDENCE CODE
(Chapter 90)

WITNESSES, RECORDS, AND DOCUMENTS
(Chapter 92)

HEARSAY DECISION CHART



IMPEACHMENT BY PRIOR CONVICTION

(Checklist)

1. Is there a conviction, not merely arrest or accusation? Fulton v. State, 353 So.2d 280 (Fla.1976). Not a withhold of adjudication. Barber v. State, 413 So.2d 482, (Fla. 2d DCA 1982). Not juvenile adjudication. Laffman v. Sherrod, 565 So.2d 760 (Fla. 3d DCA 1990).

2. Does attorney have knowledge of conviction and a certified copy of the judgment? Cummings v. State, 412 So.2d 436, (Fla. 4th DCA 1982).

3. Does provative value outweigh prejudicial effect under F.S. 90.403. State v. Page, 449 So.2d 813 (Fla. 1984).

4. Was conviction too remote in time? New England Oyster House, Inc. v. Yuhas, 494 So.2d 99, (Fla. 3rd DCA), cert. denied, 303 So.2d 333, (Fla. 1974).

5. What was the punishment proscribed by law at the place of conviction? United States v. Barnes, 622 Fed. 2d 107, (5th Cir. 1980).

6. Is the question asked correctly? "Have you ever been convicted of a felony?" "Have you ever been convicted of a crime involving dishonestly or false statement?" Jackson v. State, 570 So.2d 1388, (Fla. 1st DCA 1990).

7. Follow up:

    a. conviction admitted – no follow up; nature of crime or sentence not admissible; Reassure v. Boats Unlimited, Inc., 432 So.2d 1346 (Fla. 4th DCA 1983); details of crime not admissible, Hill v. Sadler, 186 So.2d 52, (Fla. 2d DCA 1966), cert. denied, 192 So.2d 487, (Fla. 1966).

    b. conviction denied – only record of conviction is admissible into record; Parks v. Zitnik, 453 So.2d 434 (Fla. 2d DCA 1984).

8. Rehabilitation on redirect may show:

    a. how long ago conviction was;

b. conviction is on appeal;

c. pardon for conviction.

McArthur v. Cook, 99 So.2d 565 (Fla. 1957).

DEFINITION OF A LEADING QUESTION

A question which suggests only "YES" as an answer or only "NO" as an answer is leading. A question which may be answered either "YES" or "NO" and suggests neither answer as correct is not leading. Porter v. State, 386 So.2d 1209 (Fla. 3rd DCA 1980).

EVIDENCE
(Civil Rule 1.450)

(a) **Record of Excluded Evidence.** In an action tried by a jury if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what the attorney expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed except that the court upon request shall take and report the evidence in full unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(b) **Filing.** When documentary evidence is introduced in an action, the clerk or the judge shall endorse an identifying number or symbol on it and when proffered or admitted in evidence, it shall be filed by the clerk or judge and considered in the custody of the court and not withdrawn except with written leave of court.

EXCEPTIONS UNNECESSARY
(Civil Rule 1.470)

(a) **Adverse Ruling.** For appellate purposes no exception shall be necessary to any adverse ruling, order, instruction, or thing whatsoever said or done at the trial or prior thereto or after verdict, which was said or done after objection made and considered by the trial court and which affected the substantial rights of the party complaining and which is assigned as error .

(b) **Instructions to Jury.** Not later than at the close of the evidence, the parties shall file written requests that the court charge the jury on the law set forth in such requests. The court shall then require counsel to appear before it to settle the charges to be given. At such conference all objections shall be made and ruled upon and the court shall inform counsel of such charges as it will give. No party may assign as error the giving of any charge unless that party objects thereto at such time, or the failure to give any charge unless that party requested the same. The court shall orally charge the jury after the arguments are completed and, when practicable, shall furnish a copy of its charges to the jury.

(c) **Orders on New Trial, Directed Verdict, etc.** It shall not be necessary to object or except to any order granting or denying motions for new trials, directed verdicts, or judgments non obstante veredicto or in arrest of judgment to entitle the party against whom such ruling is made to have the same reviewed by an appellate court.

EVIDENCE CODE
(Chapter 90)

90.101 Short title.--This chapter shall be known and may be cited as the "Florida Evidence Code."

90.102 Construction.--This chapter shall replace and supersede existing statutory or common law in conflict with its provisions.

90.103 Scope; applicability.--

(1) Unless otherwise provided by statute, this code applies to the same proceedings that the general law of evidence applied to before the effective date of this code.

(2) This act shall apply to criminal proceedings related to crimes committed after the effective date of this code and to civil actions and all other proceedings pending on or brought after October 1, 1981.

(3) Nothing in this act shall operate to repeal or modify the parol evidence rule.

90.104 Rulings on evidence.--

(1) A court may predicate error, set aside or reverse a judgment, or grant a new trial on the basis of admitted or excluded evidence when a substantial right of the party is adversely affected and:

(a) When the ruling is one admitting evidence, a timely objection or motion to strike appears on the record, stating the specific ground of objection if the specific ground was not apparent from the context; or

(b) When the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof or was apparent from the context within which the questions were asked.

(2) In cases tried by a jury, a court shall conduct proceedings, to the maximum extent practicable, in such a manner as to prevent inadmissible evidence from being suggested to the jury by any means.

(3) Nothing in this section shall preclude a court from taking notice of fundamental errors affecting substantial rights, even though such errors were not brought to the attention of the trial judge.

90.105 Preliminary questions.--

(1) Except as provided in subsection (2), the court shall determine preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence.

(2) When the relevancy of evidence depends upon the existence of a preliminary fact, the court shall admit the proffered evidence when there is prima facie evidence sufficient to support a finding of the preliminary fact. If prima facie evidence is not introduced to support a finding of the preliminary fact, the court

may admit the proffered evidence subject to the subsequent introduction of prima facie evidence of the preliminary fact.
(3) Hearings on the admissibility of confessions shall be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be similarly conducted when the interests of justice require or when an accused is a witness, if he or she so requests.
90.107 Limited admissibility.--When evidence that is admissible as to one party or for one purpose, but inadmissible as to another party or for another purpose, is admitted, the court, upon request, shall restrict such evidence to its proper scope and so inform the jury at the time it is admitted
90.108 Introduction of related writings or recorded statements.--
(1) When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him or her at that time to introduce any other part or any other writing or recorded statement that in fairness ought to be considered contemporaneously. An adverse party is not bound by evidence introduced under this section.
(2) The report of a court reporter, when certified to by the court reporter as being a correct transcript of the testimony and proceedings in the case, is prima facie a correct statement of such testimony and proceedings.
90.201 Matters which must be judicially noticed.--A court shall take judicial notice of:
(1) Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States.
(2) Florida rules of court that have statewide application, its own rules, and the rules of United States courts adopted by the United States Supreme Court.
(3) Rules of court of the United States Supreme Court and of the United States Courts of Appeal.
90.202 Matters which may be judicially noticed.--A court may take judicial notice of the following matters, to the extent that they are not embraced within s. 90.201:
(1) Special, local, and private acts and resolutions of the Congress of the United States and of the Florida Legislature.
(2) Decisional, constitutional, and public statutory law of every other state, territory, and jurisdiction of the United States.
(3) Contents of the Federal Register.
(4) Laws of foreign nations and of an organization of nations.
(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States.
(6) Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.

(7) Rules of court of any court of this state or of any court of record of the United States or of any other state, territory, or jurisdiction of the United States.
(8) Provisions of all municipal and county charters and charter amendments of this state, provided they are available in printed copies or as certified copies.
(9) Rules promulgated by governmental agencies of this state which are published in the Florida Administrative Code or in bound written copies.
(10) Duly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies.
(11) Facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court.
(12) Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.
(13) Official seals of governmental agencies and departments of the United States and of any state, territory, or jurisdiction of the United States.

90.203 Compulsory judicial notice upon request.--A court shall take judicial notice of any matter in s. 90.202 when a party requests it and:
(1) Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request.
(2) Furnishes the court with sufficient information to enable it to take judicial notice of the matter

90.204 Determination of propriety of judicial notice and nature of matter noticed.--
(1) When a court determines upon its own motion that judicial notice of a matter should be taken or when a party requests such notice and shows good cause for not complying with s. 90.203(1), the court shall afford each party reasonable opportunity to present information relevant to the propriety of taking judicial notice and to the nature of the matter noticed.
(2) In determining the propriety of taking judicial notice of a matter or the nature thereof, a court may use any source of pertinent and reliable information, whether or not furnished by a party, without regard to any exclusionary rule except a valid claim of privilege and except for the exclusions provided in s. 90.403.
(3) If a court resorts to any documentary source of information not received in open court, the court shall make the information and its source a part of the record in the action and shall afford each party reasonable opportunity to challenge such information, and to offer additional information, before judicial notice of the matter is taken.

90.205 Denial of a request for judicial notice.--Upon request of counsel, when a court denies a request to take judicial notice of any matter, the court shall inform

the parties at the earliest practicable time and shall indicate for the record that it has denied the request.

90.206 Instructing jury on judicial notice.--The court may instruct the jury during the trial to accept as a fact a matter judicially noticed.

90.207 Judicial notice by trial court in subsequent proceedings.--The failure or refusal of a court to take judicial notice of a matter does not preclude a court from taking judicial notice of the matter in subsequent proceedings, in accordance with the procedure specified in ss. 90.201-90.206.

90.301 Presumption defined; inferences.--

(1) For the purposes of this chapter, a presumption is an assumption of fact which the law makes from the existence of another fact or group of facts found or otherwise established.

(2) Except for presumptions that are conclusive under the law from which they arise, a presumption is rebuttable.

(3) Nothing in this chapter shall prevent the drawing of an inference that is appropriate.

(4) Sections 90.301-90.304 are applicable only in civil actions or proceedings.

90.302 Classification of rebuttable presumptions.--Every rebuttable presumption is either:

(1) A presumption affecting the burden of producing evidence and requiring the trier of fact to assume the existence of the presumed fact, unless credible evidence sufficient to sustain a finding of the nonexistence of the presumed fact is introduced, in which event, the existence or nonexistence of the presumed fact shall be determined from the evidence without regard to the presumption; or

(2) A presumption affecting the burden of proof that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact.

90.303 Presumption affecting the burden of producing evidence defined.--In a civil action or proceeding, unless otherwise provided by statute, a presumption established primarily to facilitate the determination of the particular action in which the presumption is applied, rather than to implement public policy, is a presumption affecting the burden of producing evidence.

90.304 Presumption affecting the burden of proof defined.--In civil actions, all rebuttable presumptions which are not defined in s. 90.303 are presumptions affecting the burden of proof.

90.401 Definition of relevant evidence.--Relevant evidence is evidence tending to prove or disprove a material fact.

90.402 Admissibility of relevant evidence.--All relevant evidence is admissible, except as provided by law.

90.4025 Admissibility of paternity determination in certain criminal prosecutions.--If a person less than 18 years of age gives birth to a child and the paternity of that child is established under chapter 742, such evidence of paternity is admissible in a criminal prosecution under ss. 794.011, 794.05, 800.04, and [1]827.04(4).

90.403 Exclusion on grounds of prejudice or confusion.--Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. This section shall not be construed to mean that evidence of the existence of available third-party benefits is inadmissible.

90.404 Character evidence; when admissible.--

(1) CHARACTER EVIDENCE GENERALLY.--Evidence of a person's character or a trait of character is inadmissible to prove action in conformity with it on a particular occasion, except:

(a) *Character of accused.*--Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the trait.

(b) *Character of victim.*--

1. Except as provided in s. 794.022, evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the trait; or

2. Evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor.

(c) *Character of witness.*--Evidence of the character of a witness, as provided in ss. 90.608-90.610.

(2) OTHER CRIMES, WRONGS, OR ACTS.--

(a) Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

(b)1. When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a), no fewer than 10 days before trial, the state shall furnish to the accused a written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information. No notice is required for evidence of offenses used for impeachment or on rebuttal.

2. When the evidence is admitted, the court shall, if requested, charge the jury on the limited purpose for which the evidence is received and is to be considered. After the close of the evidence, the jury shall be instructed on the limited purpose for which the evidence was received and that the defendant cannot be convicted for a charge not included in the indictment or information.

(3) Nothing in this section affects the admissibility of evidence under s. 90.610.

90.405 Methods of proving character.--

(1) REPUTATION.--When evidence of the character of a person or of a trait of that person's character is admissible, proof may be made by testimony about that person's reputation.

(2) SPECIFIC INSTANCES OF CONDUCT.--When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of that person's conduct.

90.406 Routine practice.--Evidence of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is admissible to prove that the conduct of the organization on a particular occasion was in conformity with the routine practice.

90.407 Subsequent remedial measures.--Evidence of measures taken after an event, which measures if taken before it occurred would have made the event less likely to occur, is not admissible to prove negligence or culpable conduct in connection with the event.

90.408 Compromise and offers to compromise.--Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value.

90.409 Payment of medical and similar expenses.--Evidence of furnishing, or offering or promising to pay, medical or hospital expenses or other damages occasioned by an injury or accident is inadmissible to prove liability for the injury or accident.

90.410 Offer to plead guilty; nolo contendere; withdrawn pleas of guilty.--Evidence of a plea of guilty, later withdrawn; a plea of nolo contendere; or an offer to plead guilty or nolo contendere to the crime charged or any other crime is inadmissible in any civil or criminal proceeding. Evidence of statements made in connection with any of the pleas or offers is inadmissible, except when such statements are offered in a prosecution under chapter 837.

90.501 Privileges recognized only as provided.--Except as otherwise provided by this chapter, any other statute, or the Constitution of the United States or of the State of Florida, no person in a legal proceeding has a privilege to:

(1) Refuse to be a witness.

(2) Refuse to disclose any matter.

(3) Refuse to produce any object or writing.

(4) Prevent another from being a witness, from disclosing any matter, or from producing any object or writing.

90.5015 Journalist's privilege.--

(1) DEFINITIONS.--For purposes of this section, the term:

(a) "Professional journalist" means a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine. Book authors and others who are not professional journalists, as defined in this paragraph, are not included in the provisions of this section.
(b) "News" means information of public concern relating to local, statewide, national, or worldwide issues or events.
(2) PRIVILEGE.--A professional journalist has a qualified privilege not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news. This privilege applies only to information or eyewitness observations obtained within the normal scope of employment and does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes. A party seeking to overcome this privilege must make a clear and specific showing that:
(a) The information is relevant and material to unresolved issues that have been raised in the proceeding for which the information is sought;
(b) The information cannot be obtained from alternative sources; and
(c) A compelling interest exists for requiring disclosure of the information.
(3) DISCLOSURE.--A court shall order disclosure pursuant to subsection (2) only of that portion of the information for which the showing under subsection (2) has been made and shall support such order with clear and specific findings made after a hearing.
(4) WAIVER.--A professional journalist does not waive the privilege by publishing or broadcasting information.
(5) CONSTRUCTION.--This section must not be construed to limit any privilege or right provided to a professional journalist under law.
(6) AUTHENTICATION.--Photographs, diagrams, video recordings, audio recordings, computer records, or other business records maintained, disclosed, provided, or produced by a professional journalist, or by the employer or principal of a professional journalist, may be authenticated for admission in evidence upon a showing, by affidavit of the professional journalist, or other individual with personal knowledge, that the photograph, diagram, video recording, audio recording, computer record, or other business record is a true and accurate copy of the original, and that the copy truly and accurately reflects the observations and facts contained therein.
(7) ACCURACY OF EVIDENCE.--If the affidavit of authenticity and accuracy, or other relevant factual circumstance, causes the court to have clear and convincing

doubts as to the authenticity or accuracy of the proferred evidence, the court may decline to admit such evidence.
(8) SEVERABILITY.--If any provision of this section or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this section.
90.502 Lawyer-client privilege.--
(1) For purposes of this section:
(a) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.
(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer.
(c) A communication between lawyer and client is "confidential" if it is not intended to be disclosed to third persons other than:
1. Those to whom disclosure is in furtherance of the rendition of legal services to the client.
2. Those reasonably necessary for the transmission of the communication.
(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client.
(3) The privilege may be claimed by:
(a) The client.
(b) A guardian or conservator of the client.
(c) The personal representative of a deceased client.
(d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.
(e) The lawyer, but only on behalf of the client. The lawyer's authority to claim the privilege is presumed in the absence of contrary evidence.
(4) There is no lawyer-client privilege under this section when:
(a) The services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud.
(b) A communication is relevant to an issue between parties who claim through the same deceased client.
(c) A communication is relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer, arising from the lawyer-client relationship.

(d) A communication is relevant to an issue concerning the intention or competence of a client executing an attested document to which the lawyer is an attesting witness, or concerning the execution or attestation of the document.
(e) A communication is relevant to a matter of common interest between two or more clients, or their successors in interest, if the communication was made by any of them to a lawyer retained or consulted in common when offered in a civil action between the clients or their successors in interest.
(5) Communications made by a person who seeks or receives services from the Department of Revenue under the child support enforcement program to the attorney representing the department shall be confidential and privileged as provided for in this section. Such communications shall not be disclosed to anyone other than the agency except as provided for in this section. Such disclosures shall be protected as if there were an attorney-client relationship between the attorney for the agency and the person who seeks services from the department.

90.503 Psychotherapist-patient privilege.--

[1](1) For purposes of this section:
(a) A "psychotherapist" is:
1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or
4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the [2]Department of Health and Rehabilitative Services pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.
(b) A "patient" is a person who consults, or is interviewed by, a psychotherapist for purposes of diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.
(c) A communication between psychotherapist and patient is "confidential" if it is not intended to be disclosed to third persons other than:
1. Those persons present to further the interest of the patient in the consultation, examination, or interview.

2. Those persons necessary for the transmission of the communication.
3. Those persons who are participating in the diagnosis and treatment under the direction of the psychotherapist.
(2) A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient's mental or emotional condition, including alcoholism and other drug addiction, between the patient and the psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist. This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.
(3) The privilege may be claimed by:
(a) The patient or the patient's attorney on the patient's behalf.
(b) A guardian or conservator of the patient.
(c) The personal representative of a deceased patient.
(d) The psychotherapist, but only on behalf of the patient. The authority of a psychotherapist to claim the privilege is presumed in the absence of evidence to the contrary.
(4) There is no privilege under this section:
(a) For communications relevant to an issue in proceedings to compel hospitalization of a patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has reasonable cause to believe the patient is in need of hospitalization.
(b) For communications made in the course of a court-ordered examination of the mental or emotional condition of the patient.
(c) For communications relevant to an issue of the mental or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of his or her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

90.5035 Sexual assault counselor-victim privilege.--

(1) For purposes of this section:
(a) A "rape crisis center" is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.
(b) A "sexual assault counselor" is any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery.
(c) A "victim" is a person who consults a sexual assault counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or sexual battery, an alleged sexual assault or sexual battery, or an attempted sexual assault or sexual battery.

(d) A communication between a sexual assault counselor and a victim is "confidential" if it is not intended to be disclosed to third persons other than:

90.5036 Domestic violence advocate-victim privilege.--

(1) For purposes of this section:

(a) A "domestic violence center" is any public or private agency that offers assistance to victims of domestic violence, as defined in s. 741.28, and their families.

(b) A "domestic violence advocate" means any employee or volunteer who has 30 hours of training in assisting victims of domestic violence and is an employee of or volunteer for a program for victims of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence.

(c) A "victim" is a person who consults a domestic violence advocate for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by an act of domestic violence, an alleged act of domestic violence, or an attempted act of domestic violence.

(d) A communication between a domestic violence advocate and a victim is "confidential" if it relates to the incident of domestic violence for which the victim is seeking assistance and if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the victim in the consultation, assessment, or interview.

2. Those persons to whom disclosure is reasonably necessary to accomplish the purpose for which the domestic violence advocate is consulted.

(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the course of advising, counseling, or assisting the victim. The privilege applies to confidential communications made between the victim and the domestic violence advocate and to records of those communications only if the advocate is registered under s. 39.905 at the time the communication is made. This privilege includes any advice given by the domestic violence advocate in the course of that relationship.

(3) The privilege may be claimed by:

(a) The victim or the victim's attorney on behalf of the victim.

(b) A guardian or conservator of the victim.

(c) The personal representative of a deceased victim.

(d) The domestic violence advocate, but only on behalf of the victim. The authority of a domestic violence advocate to claim the privilege is presumed in the absence of evidence to the contrary.

1. Those persons present to further the interest of the victim in the consultation, examination, or interview.
2. Those persons necessary for the transmission of the communication.
3. Those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor is consulted.
(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or any record made in the course of advising, counseling, or assisting the victim. Such confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege includes any advice given by the sexual assault counselor in the course of that relationship.
(3) The privilege may be claimed by:
(a) The victim or the victim's attorney on his or her behalf.
(b) A guardian or conservator of the victim.
(c) The personal representative of a deceased victim.
(d) The sexual assault counselor, but only on behalf of the victim. The authority of a sexual assault counselor to claim the privilege is presumed in the absence of evidence to the contrary.

90.504 Husband-wife privilege.--

(1) A spouse has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, communications which were intended to be made in confidence between the spouses while they were husband and wife.
(2) The privilege may be claimed by either spouse or by the guardian or conservator of a spouse. The authority of a spouse, or guardian or conservator of a spouse, to claim the privilege is presumed in the absence of contrary evidence.
(3) There is no privilege under this section:
(a) In a proceeding brought by or on behalf of one spouse against the other spouse.
(b) In a criminal proceeding in which one spouse is charged with a crime committed at any time against the person or property of the other spouse, or the person or property of a child of either.
(c) In a criminal proceeding in which the communication is offered in evidence by a defendant-spouse who is one of the spouses between whom the communicatio

90.505 Privilege with respect to communications to clergy.--

(1) For the purposes of this section:
(a) A "member of the clergy" is a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church, or an individual reasonably believed so to be by the person consulting him or her.

(b) A communication between a member of the clergy and a person is "confidential" if made privately for the purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.
(2) A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.
(3) The privilege may be claimed by:
(a) The person.
(b) The guardian or conservator of a person.
(c) The personal representative of a deceased person.
(d) The member of the clergy, on behalf of the person. The member of the clergy's authority to do so is presumed in the absence of evidence to the contrary.

90.5055 Accountant-client privilege.--

(1) For purposes of this section:
(a) An "accountant" is a certified public accountant or a public accountant.
(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults an accountant with the purpose of obtaining accounting services.
(c) A communication between an accountant and the accountant's client is "confidential" if it is not intended to be disclosed to third persons other than:
1. Those to whom disclosure is in furtherance of the rendition of accounting services to the client.
2. Those reasonably necessary for the transmission of the communication.
(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications with an accountant when such other person learned of the communications because they were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.
(3) The privilege may be claimed by:
(a) The client.
(b) A guardian or conservator of the client.
(c) The personal representative of a deceased client.
(d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.
(e) The accountant, but only on behalf of the client. The accountant's authority to claim the privilege is presumed in the absence of contrary evidence.

(4) There is no accountant-client privilege under this section when:
(a) The services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime or fraud.
(b) A communication is relevant to an issue of breach of duty by the accountant to the accountant's client or by the client to his or her accountant.
(c) A communication is relevant to a matter of common interest between two or more clients, if the communication was made by any of them to an accountant retained or consulted in common when offered in a civil action between the clients.
90.506 Privilege with respect to trade secrets.--A person has a privilege to refuse to disclose, and to prevent other persons from disclosing, a trade secret owned by that person if the allowance of the privilege will not conceal fraud or otherwise work injustice. When the court directs disclosure, it shall take the protective measures that the interests of the holder of the privilege, the interests of the parties, and the furtherance of justice require. The privilege may be claimed by the person or the person's agent or employee.
90.507 Waiver of privilege by voluntary disclosure.--A person who has a privilege against the disclosure of a confidential matter or communication waives the privilege if the person, or the person's predecessor while holder of the privilege, voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to disclosure of, any significant part of the matter or communication. This section is not applicable when the disclosure is itself a privileged communication.
90.508 Privileged matter disclosed under compulsion or without opportunity to claim privilege.--Evidence of a statement or other disclosure of privileged matter is inadmissible against the holder of the privilege if the statement or disclosure was compelled erroneously by the court or made without opportunity to claim the privilege.
90.509 Application of privileged communication.--Nothing in this act shall abrogate a privilege for any communication which was made prior to July 1, 1979, if such communication was privileged at the time it was made.
90.510 Privileged communication necessary to adverse party.--In any civil case or proceeding in which a party claims a privilege as to a communication necessary to an adverse party, the court, upon motion, may dismiss the claim for relief or the affirmative defense to which the privileged testimony would relate. In making its determination, the court may engage in an in camera inquiry into the privilege.
90.601 General rule of competency.--Every person is competent to be a witness, except as otherwise provided by statute.
90.602 Testimony of interested persons.--

(1) No person interested in an action or proceeding against the personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person, or against the assignee, committee, or guardian of a mentally incompetent person, shall be examined as a witness regarding any oral communication between the interested person and the person who is deceased or mentally incompetent at the time of the examination.
(2) This section does not apply when:
(a) A personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person, or the assignee, committee, or guardian of a mentally incompetent person, is examined on his or her own behalf regarding the oral communication.
(b) Evidence of the subject matter of the oral communication is offered by the personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person, or the assignee, committee, or guardian of a mentally incompetent person.
(3) For the purpose of this section, a "mentally incompetent person" is one who because of mental illness, mental retardation, senility, excessive use of drugs or alcohol, or other mental incapacity, is incapable of either managing his or her property or caring for himself or herself, or both.

90.603 Disqualification of witness.--A person is disqualified to testify as a witness when the court determines that the person is:
(1) Incapable of expressing himself or herself concerning the matter in such a manner as to be understood, either directly or through interpretation by one who can understand him or her.
(2) Incapable of understanding the duty of a witness to tell the truth.

90.604 Lack of personal knowledge.--Except as otherwise provided in s. 90.702, a witness may not testify to a matter unless evidence is introduced which is sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may be given by the witness's own testimony.

90.605 Oath or affirmation of witness.--
(1) Before testifying, each witness shall declare that he or she will testify truthfully, by taking an oath or affirmation in substantially the following form: "Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?" The witness's answer shall be noted in the record.
(2) In the court's discretion, a child may testify without taking the oath if the court determines the child understands the duty to tell the truth or the duty not to lie.

90.606 Interpreters and translators.--

(1)(a) When a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, an interpreter who is duly qualified to interpret for the witness shall be sworn to do so.
(b) This section is not limited to persons who speak a language other than English, but applies also to the language and descriptions of any person, such as a child or a person who is mentally or developmentally disabled, who cannot be reasonably understood, or who cannot understand questioning, without the aid of an interpreter.
(2) A person who serves in the role of interpreter or translator in any action or proceeding is subject to all the provisions of this chapter relating to witnesses.
(3) An interpreter shall take an oath that he or she will make a true interpretation of the questions asked and the answers given and that the interpreter will make a true translation into English of any writing which he or she is required by his or her duties to decipher or translate.

90.6063 Interpreter services for deaf persons.--

(1) The Legislature finds that it is an important concern that the rights of deaf citizens be protected. It is the intent of the Legislature to ensure that appropriate and effective interpreter services be made available to Florida's deaf citizens.
(2) In all judicial proceedings and in sessions of a grand jury wherein a deaf person is a complainant, defendant, witness, or otherwise a party, or wherein a deaf person is a juror or grand juror, the court or presiding officer shall appoint a qualified interpreter to interpret the proceedings or deliberations to the deaf person and to interpret the deaf person's testimony, statements, or deliberations to the court, jury, or grand jury. A qualified interpreter shall be appointed, or other auxiliary aid provided as appropriate, for the duration of the trial or other proceeding in which a deaf juror or grand juror is seated.
(3)(a) "Deaf person" means any person whose hearing is so seriously impaired as to prohibit the person from understanding oral communications when spoken in a normal, conversational tone.
(b) For the purposes of this section, the term "qualified interpreter" means an interpreter certified by the National Registry of Interpreters for the Deaf or the Florida Registry of Interpreters for the Deaf or an interpreter whose qualifications are otherwise determined by the appointing authority.
(4) Every deaf person whose appearance before a proceeding entitles him or her to an interpreter shall notify the appointing authority of his or her disability not less than 5 days prior to any appearance and shall request at such time the services of an interpreter. Whenever a deaf person receives notification of the time of an appearance before a proceeding less than 5 days prior to the proceeding, the deaf person shall provide his or her notification and request as soon thereafter as

practicable. In any case, nothing in this subsection shall operate to relieve an appointing authority's duty to provide an interpreter for a deaf person so entitled, and failure to strictly comply with the notice requirement will not be deemed a waiver of the right to an interpreter. An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of the person's disability when the appointing authority has reason to believe that the person is not so disabled.

(5) The appointing authority may channel requests for qualified interpreters through:

(a) The Florida Registry of Interpreters for the Deaf;

(b) The Vocational Rehabilitation Program Office of the [1]Department of Health and Rehabilitative Services; or

(c) Any other resource wherein the appointing authority knows that qualified interpreters can be found.

(6) No qualified interpreter shall be appointed unless the appointing authority and the deaf person make a preliminary determination that the interpreter is able to communicate readily with the deaf person and is able to repeat and translate statements to and from the deaf person accurately.

(7) Before a qualified interpreter may participate in any proceedings subsequent to an appointment under the provisions of this act, such interpreter shall make an oath or affirmation that he or she will make a true interpretation in an understandable manner to the deaf person for whom the interpreter is appointed and that he or she will repeat the statements of the deaf person in the English language to the best of his or her skill and judgment. Whenever a deaf person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and the recipient of the communication could not be compelled to testify as to the communication, this privilege shall apply to the interpreter.

(8) An interpreter appointed by the court in a criminal matter or in a civil matter shall be entitled to a reasonable fee for such service, in addition to actual expenses for travel, to be paid out of general county funds.

90.607 Competency of certain persons as witnesses.--

(1)(a) Except as provided in paragraph (b), the judge presiding at the trial of an action is not competent to testify as a witness in that trial. An objection is not necessary to preserve the point.

(b) By agreement of the parties, the trial judge may give evidence on a purely formal matter to facilitate the trial of the action.

(2)(a) A member of the jury is not competent to testify as a witness in a trial when he or she is sitting as a juror. If the juror is called to testify, the opposing party shall be given an opportunity to object out of the presence of the jury.

(b) Upon an inquiry into the validity of a verdict or indictment, a juror is not competent to testify as to any matter which essentially inheres in the verdict or indictment.

90.608 Who may impeach.--Any party, including the party calling the witness, may attack the credibility of a witness by:

(1) Introducing statements of the witness which are inconsistent with the witness's present testimony.

(2) Showing that the witness is biased.

(3) Attacking the character of the witness in accordance with the provisions of s. 90.609 or s. 90.610.

(4) Showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which the witness testified.

(5) Proof by other witnesses that material facts are not as testified to by the witness being impeached.

90.609 Character of witness as impeachment.--A party may attack or support the credibility of a witness, including an accused, by evidence in the form of reputation, except that:

(1) The evidence may refer only to character relating to truthfulness.

(2) Evidence of a truthful character is admissible only after the character of the witness for truthfulness has been attacked by reputation evidence.

90.610 Conviction of certain crimes as impeachment.--

(1) A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which the witness was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:

(a) Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.

(b) Evidence of juvenile adjudications are inadmissible under this subsection.

(2) The pendency of an appeal or the granting of a pardon relating to such crime does not render evidence of the conviction from which the appeal was taken or for which the pardon was granted inadmissible. Evidence of the pendency of the appeal is admissible.

(3) Nothing in this section affects the admissibility of evidence under s. 90.404 or s. 90.608.

90.611 Religious beliefs or opinions.--Evidence of the beliefs or opinions of a witness on matters of religion is inadmissible to show that the witness's credibility is impaired or enhanced thereby.

90.612 Mode and order of interrogation and presentation.--

(1) The judge shall exercise reasonable control over the mode and order of the interrogation of witnesses and the presentation of evidence, so as to:
(a) Facilitate, through effective interrogation and presentation, the discovery of the truth.
(b) Avoid needless consumption of time.
(c) Protect witnesses from harassment or undue embarrassment.
(2) Cross-examination of a witness is limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in its discretion, permit inquiry into additional matters.
(3) Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily, leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

90.613 Refreshing the memory of a witness.--When a witness uses a writing or other item to refresh memory while testifying, an adverse party is entitled to have such writing or other item produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce it, or, in the case of a writing, to introduce those portions which relate to the testimony of the witness, in evidence. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the judge shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objection shall be preserved and made available to the appellate court in the event of an appeal. If a writing or other item is not produced or delivered pursuant to order under this section, the testimony of the witness concerning those matters shall be stricken.

90.614 Prior statements of witnesses.--

(1) When a witness is examined concerning the witness's prior written statement or concerning an oral statement that has been reduced to writing, the court, on motion of the adverse party, shall order the statement to be shown to the witness or its contents disclosed to him or her.
(2) Extrinsic evidence of a prior inconsistent statement by a witness is inadmissible unless the witness is first afforded an opportunity to explain or deny the prior statement and the opposing party is afforded an opportunity to interrogate the witness on it, or the interests of justice otherwise require. If a witness denies making or does not distinctly admit making the prior inconsistent statement, extrinsic evidence of such statement is admissible. This subsection is not applicable to admissions of a party-opponent as defined in s. 90.803(18).

90.615 Calling witnesses by the court.--

(1) The court may call witnesses whom all parties may cross-examine.

(2) When required by the interests of justice, the court may interrogate witnesses, whether called by the court or by a party.

90.616 Exclusion of witnesses.--

(1) At the request of a party the court shall order, or upon its own motion the court may order, witnesses excluded **90.702 Testimony by experts.**--If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

from a proceeding so that they cannot hear the testimony of other witnesses except as provided in subsection (2). **90.703 Opinion on ultimate issue.**--Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it includes an ultimate issue to be decided by the trier of fact.

(2) A witness may not be excluded if the witness is:

(a) A party who is a natural person.

(b) In a civil case, an officer or employee of a party that is not a natural person. The party's attorney shall designate the officer or employee who shall be the party's representative.

(c) A person whose presence is shown by the party's attorney to be essential to the presentation of the party's cause.

(d) In a criminal case, the victim of the crime, the victim's next of kin, the parent or guardian of a minor child victim, or a lawful representative of such person, unless, upon motion, the court determines such person's presence to be prejudicial.

90.701 Opinion testimony of lay witnesses.--If a witness is not testifying as an expert, the witness's testimony about what he or she perceived may be in the form of inference and opinion when:

(1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he or she has perceived to the trier of fact without testifying in terms of inferences or opinions and the witness's use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and

(2) The opinions and inferences do not require a special knowledge, skill, experience, or training.

90.704 Basis of opinion testimony by experts.--The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.

90.705 Disclosure of facts or data underlying expert opinion.--

(1) Unless otherwise required by the court, an expert may testify in terms of opinion or inferences and give reasons without prior disclosure of the underlying facts or data. On cross-examination the expert shall be required to specify the facts or data.
(2) Prior to the witness giving the opinion, a party against whom the opinion or inference is offered may conduct a voir dire examination of the witness directed to the underlying facts or data for the witness's opinion. If the party establishes prima facie evidence that the expert does not have a sufficient basis for the opinion, the opinions and inferences of the expert are inadmissible unless the party offering the testimony establishes the underlying facts or data.

90.706 Authoritativeness of literature for use in cross-examination.--Statements of facts or opinions on a subject of science, art, or specialized knowledge contained in a published treatise, periodical, book, dissertation, pamphlet, or other writing may be used in cross-examination of an expert witness if the expert witness recognizes the author or the treatise, periodical, book, dissertation, pamphlet, or other writing to be authoritative, or, notwithstanding nonrecognition by the expert witness, if the trial court finds the author or the treatise, periodical, book, dissertation, pamphlet, or other writing to be authoritative and relevant to the subject matter.

90.801 Hearsay; definitions; exceptions.--
(1) The following definitions apply under this chapter:
(a) A "statement" is:
1. An oral or written assertion; or
2. Nonverbal conduct of a person if it is intended by the person as an assertion.
(b) A "declarant" is a person who makes a statement.
(c) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
(2) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:
(a) Inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
(b) Consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication; or
(c) One of identification of a person made after perceiving the person.

90.802 Hearsay rule.--Except as provided by statute, hearsay evidence is inadmissible.

90.803 Hearsay exceptions; availability of declarant immaterial.--The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(1) SPONTANEOUS STATEMENT.--A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.
(2) EXCITED UTTERANCE.--A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
(3) THEN-EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION.-
(a) A statement of the declarant's then-existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:
1. Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.
2. Prove or explain acts of subsequent conduct of the declarant.
(b) However, this subsection does not make admissible:
1. An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such statement relates to the execution, revocation, identification, or terms of the declarant's will.
2. A statement made under circumstances that indicate its lack of trustworthiness.
(4) STATEMENTS FOR PURPOSES OF MEDICAL DIAGNOSIS OR TREATMENT.--Statements made for purposes of medical diagnosis or treatment by a person seeking the diagnosis or treatment, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inceptions or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.
(5) RECORDED RECOLLECTION.--A memorandum or record concerning a matter about which a witness once had knowledge, but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.
(6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY.--
(a) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the

sources of information or other circumstances show lack of trustworthiness. The term "business" as used in this paragraph includes a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
(b) No evidence in the form of an opinion or diagnosis is admissible under paragraph (a) unless such opinion or diagnosis would be admissible under ss. 90.701-90.705 if the person whose opinion is recorded were to testify to the opinion directly.
(7) ABSENCE OF ENTRY IN RECORDS OF REGULARLY CONDUCTED ACTIVITY.--Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, of a regularly conducted activity to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances show lack of trustworthiness.
(8) PUBLIC RECORDS AND REPORTS.--Records, reports, statements reduced to writing, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to matters which there was a duty to report, excluding in criminal cases matters observed by a police officer or other law enforcement personnel, unless the sources of information or other circumstances show their lack of trustworthiness. The criminal case exclusion shall not apply to an affidavit otherwise admissible under s. 316.1934 or s. 327.354.
(9) RECORDS OF VITAL STATISTICS.--Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if a report was made to a public office pursuant to requirements of law. However, nothing in this section shall be construed to make admissible any other marriage of any party to any cause of action except for the purpose of impeachment as set forth in s. 90.610.
(10) ABSENCE OF PUBLIC RECORD OR ENTRY.--Evidence, in the form of a certification in accord with s. 90.902, or in the form of testimony, that diligent search failed to disclose a record, report, statement, or data compilation or entry, when offered to prove the absence of the record, report, statement, or data compilation or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation would regularly have been made and preserved by a public office and agency.
(11) RECORDS OF RELIGIOUS ORGANIZATIONS.--Statements of births, marriages, divorces, deaths, parentage, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in a regularly kept record of a religious organization.

(12) MARRIAGE, BAPTISMAL, AND SIMILAR CERTIFICATES.--Statements of facts contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, when such statement was certified by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and when such certificate purports to have been issued at the time of the act or within a reasonable time thereafter.
(13) FAMILY RECORDS.--Statements of fact concerning personal or family history in family Bibles, charts, engravings in rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.
(14) RECORDS OF DOCUMENTS AFFECTING AN INTEREST IN PROPERTY.--The record of a document purporting to establish or affect an interest in property, as proof of the contents of the original recorded or filed document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording or filing of the document in the office.
(15) STATEMENTS IN DOCUMENTS AFFECTING AN INTEREST IN PROPERTY.--A statement contained in a document purporting to establish or affect an interest in property, if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.
(16) STATEMENTS IN ANCIENT DOCUMENTS.--Statements in a document in existence 20 years or more, the authenticity of which is established.
(17) MARKET REPORTS, COMMERCIAL PUBLICATIONS.--Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations if, in the opinion of the court, the sources of information and method of preparation were such as to justify their admission.
(18) ADMISSIONS.--A statement that is offered against a party and is:
(a) The party's own statement in either an individual or a representative capacity;
(b) A statement of which the party has manifested an adoption or belief in its truth;
(c) A statement by a person specifically authorized by the party to make a statement concerning the subject;
(d) A statement by the party's agent or servant concerning a matter within the scope of the agency or employment thereof, made during the existence of the relationship; or
(e) A statement by a person who was a coconspirator of the party during the course, and in furtherance, of the conspiracy. Upon request of counsel, the court shall instruct the jury that the conspiracy itself and each member's participation in

it must be established by independent evidence, either before the introduction of any evidence or before evidence is admitted under this paragraph.
(19) REPUTATION CONCERNING PERSONAL OR FAMILY HISTORY.--Evidence of reputation:
(a) Among members of a person's family by blood, adoption, or marriage;
(b) Among a person's associates; or
(c) In the community,
concerning a person's birth, adoption, marriage, divorce, death, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.
(20) REPUTATION CONCERNING BOUNDARIES OR GENERAL HISTORY.--Evidence of reputation:
(a) In a community, arising before the controversy about the boundaries of, or customs affecting lands in, the community.
(b) About events of general history which are important to the community, state, or nation where located.
(21) REPUTATION AS TO CHARACTER.--Evidence of reputation of a person's character among associates or in the community.
[1](22) FORMER TESTIMONY.--Former testimony given by the declarant which testimony was given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, or a person with a similar interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination; provided, however, the court finds that the testimony is not inadmissible pursuant to s. 90.402 or s. 90.403.
(23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.--
(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:
1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or

offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and
2. The child either:
a. Testifies; or
b. Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1).
(b) In a criminal action, the defendant shall be notified no later than 10 days before trial that a statement which qualifies as a hearsay exception pursuant to this subsection will be offered as evidence at trial. The notice shall include a written statement of the content of the child's statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.
(c) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this subsection.
(24) HEARSAY EXCEPTION; STATEMENT OF ELDERLY PERSON OR DISABLED ADULT.--
(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by an elderly person or disabled adult, as defined in s. 825.101, describing any act of abuse or neglect, any act of exploitation, the offense of battery or aggravated battery or assault or aggravated assault or sexual battery, or any other violent act on the declarant elderly person or disabled adult, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:
1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the elderly person or disabled adult, the nature and duration of the abuse or offense, the relationship of the victim to the offender, the reliability of the assertion, the reliability of the elderly person or disabled adult, and any other factor deemed appropriate; and
2. The elderly person or disabled adult either:
a. Testifies; or
b. Is unavailable as a witness, provided that there is corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the elderly person's or disabled adult's participation in the trial or proceeding would result in a

substantial likelihood of severe emotional, mental, or physical harm, in addition to findings pursuant to s. 90.804(1).
(b) In a criminal action, the defendant shall be notified no later than 10 days before the trial that a statement which qualifies as a hearsay exception pursuant to this subsection will be offered as evidence at trial. The notice shall include a written statement of the content of the elderly person's or disabled adult's statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.
(c) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this subsection
90.804 Hearsay exceptions; declarant unavailable.--
(1) DEFINITION OF UNAVAILABILITY.--"Unavailability as a witness" means that the declarant:
(a) Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;
(b) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
(c) Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;
(d) Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
(e) Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.
However, a declarant is not unavailable as a witness if such exemption, refusal, claim of lack of memory, inability to be present, or absence is due to the procurement or wrongdoing of the party who is the proponent of his or her statement in preventing the witness from attending or testifying.
(2) HEARSAY EXCEPTIONS.--The following are not excluded under s. 90.802, provided that the declarant is unavailable as a witness:
(a) *Former testimony.*--Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
(b) *Statement under belief of impending death.*--In a civil or criminal trial, a statement made by a declarant while reasonably believing that his or her death was

imminent, concerning the physical cause or instrumentalities of what the declarant believed to be impending death or the circumstances surrounding impending death.
(c) *Statement against interest.*--A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or to render invalid a claim by the declarant against another, so that a person in the declarant's position would not have made the statement unless he or she believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is inadmissible, unless corroborating circumstance

90.805 Hearsay within hearsay.--Hearsay within hearsay is not excluded under s. 90.802, provided each part of the combined statements conforms with an exception to the hearsay rule as provided in s. 90.803 or s. 90.804.

90.806 Attacking and supporting credibility of declarant.--
(1) When a hearsay statement has been admitted in evidence, credibility of the declarant may be attacked and, if attacked, may be supported by any evidence that would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time inconsistent with the declarant's hearsay statement is admissible, regardless of whether or not the declarant has been afforded an opportunity to deny or explain it.
(2) If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.
es show the trustworthiness of the statement.
(d) *Statement of personal or family history.*--A statement concerning the declarant's own birth, adoption, marriage, divorce, parentage, ancestry, or other similar fact of personal or family history, including relationship by blood, adoption, or marriage, even though the declarant had no means of acquiring personal knowledge of the matter stated.

90.901 Requirement of authentication or identification.--Authentication or identification of evidence is required as a condition precedent to its admissibility. The requirements of this section are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

90.902 Self-authentication.--Extrinsic evidence of authenticity as a condition precedent to admissibility is not required for:
(1) A document bearing:
(a) A seal purporting to be that of the United States or any state, district, commonwealth, territory, or insular possession thereof; the Panama Canal Zone; the Trust Territory of the Pacific Islands; or a court, political subdivision, department, officer, or agency of any of them; and

(b) A signature by the custodian of the document attesting to the authenticity of the seal.
(2) A document not bearing a seal but purporting to bear a signature of an officer or employee of any entity listed in subsection (1), affixed in the officer's or employee's official capacity.
(3) An official foreign document, record, or entry that is:
(a) Executed or attested to by a person in the person's official capacity authorized by the laws of a foreign country to make the execution or attestation; and
(b) Accompanied by a final certification, as provided herein, of the genuineness of the signature and official position of:
1. The executing person; or
2. Any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.
The final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. When the parties receive reasonable opportunity to investigate the authenticity and accuracy of official foreign documents, the court may order that they be treated as presumptively authentic without final certification or permit them in evidence by an attested summary with or without final certification.
(4) A copy of an official public record, report, or entry, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification by certificate complying with subsection (1), subsection (2), or subsection (3) or complying with any act of the Legislature or rule adopted by the Supreme Court.
(5) Books, pamphlets, or other publications purporting to be issued by a governmental authority.
(6) Printed materials purporting to be newspapers or periodicals.
(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.
(8) Commercial papers and signatures thereon and documents relating to them, to the extent provided in the Uniform Commercial Code.
(9) Any signature, document, or other matter declared by the Legislature to be presumptively or prima facie genuine or authentic.
(10) Any document properly certified under the law of the jurisdiction where the certification is made.

90.903 Testimony of subscribing witness unnecessary.--The testimony of a subscribing witness is not necessary to authenticate a writing unless the statute requiring attestation requires it.

90.91 Photographs of property wrongfully taken; use in prosecution, procedure; return of property to owner.--In any prosecution for a crime involving the wrongful taking of property, a photograph of the property alleged to have been wrongfully taken may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such property were introduced as evidence. Such photograph shall bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer. Such writing shall be made under oath by the investigating law enforcement officer, and the photograph shall be identified by the signature of the photographer. Upon the filing of such photograph and writing with the law enforcement authority or court holding such property as evidence, the property may be returned to the owner from whom the property was taken.

90.951 Definitions.--For purposes of this chapter:

(1) "Writings" and "recordings" include letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, mechanical or electronic recording, or other form of data compilation, upon paper, wood, stone, recording tape, or other materials.

(2) "Photographs" include still photographs, X-ray films, videotapes, and motion pictures.

(3) An "original" of a writing or recording means the writing or recording itself, or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print made from it. If data are stored in a computer or similar device, any printout or other output readable by sight and shown to reflect the data accurately is an "original."

(4) "Duplicate" includes:

(a) A counterpart produced by the same impression as the original, from the same matrix; by means of photography, including enlargements and miniatures; by mechanical or electronic rerecording; by chemical reproduction; or by other equivalent technique that accurately reproduces the original; or

(b) An executed carbon copy not intended by the parties to be an original.

90.952 Requirement of originals.--Except as otherwise provided by statute, an original writing, recording, or photograph is required in order to prove the contents of the writing, recording, or photograph.

90.953 Admissibility of duplicates.--A duplicate is admissible to the same extent as an original, unless:

(1) The document or writing is a negotiable instrument as defined in s. 673.1041, a security as defined in s. 678.102, or any other writing that evidences a right to the payment of money, is not itself a security agreement or lease, and is of a type that is transferred by delivery in the ordinary course of business with any necessary endorsement or assignment.
(2) A genuine question is raised about the authenticity of the original or any other document or writing.
(3) It is unfair, under the circumstance, to admit the duplicate in lieu of the original.

90.954 Admissibility of other evidence of contents.--The original of a writing, recording, or photograph is not required, except as provided in s. 90.953, and other evidence of its contents is admissible when:
(1) All originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith.
(2) An original cannot be obtained in this state by any judicial process or procedure.
(3) An original was under the control of the party against whom offered at a time when that party was put on notice by the pleadings or by written notice from the adverse party that the contents of such original would be subject to proof at the hearing, and such original is not produced at the hearing.
(4) The writing, recording, or photograph is not related to a controlling issue.

90.955 Public records.--
(1) The contents of an official record or of a document authorized to be recorded or filed, and actually recorded or filed, with a governmental agency, either federal, state, county, or municipal, in a place where official records or documents are ordinarily filed, including data compilations in any form, may be proved by a copy authenticated as provided in s. 90.902, if otherwise admissible.
(2) If a party cannot obtain, by the exercise of reasonable diligence, a copy that complies with subsection (1), other evidence of the contents is admissible.

90.956 Summaries.--When it is not convenient to examine in court the contents of voluminous writings, recordings, or photographs, a party may present them in the form of a chart, summary, or calculation by calling a qualified witness. The party intending to use such a summary must give timely written notice of his or her intention to use the summary, proof of which shall be filed with the court, and shall make the summary and the originals or duplicates of the data from which the summary is compiled available for examination or copying, or both, by other parties at a reasonable time and place. A judge may order that they be produced in court.

90.957 Testimony or written admissions of a party.--A party may prove the contents of writings, recordings, or photographs by the testimony or deposition of

the party against whom they are offered or by that party's written admission, without accounting for the nonproduction of the original.

90.958 Functions of court and jury.--

(1) Except as provided in subsection (2), when the admissibility under this chapter of other evidence of the contents of writings, recordings, or photographs depends upon the existence of a preliminary fact, the question as to whether the preliminary fact exists is for the court to determine.

(2) The trier of fact shall determine whether:

(a) The asserted writing ever existed.

(b) Another writing, recording, or photograph produced at the trial is the original.

(c) Other evidence of the contents correctly reflects the contents.

WITNESSES, RECORDS, AND DOCUMENTS
(Chapter 92)

92.05 Final judgments and decrees of courts of record.--All final judgments and decrees heretofore or hereafter rendered and entered in courts of record of this state, and certified copies thereof, shall be admissible as prima facie evidence in the several courts of this state of the entry and validity of such judgments and decrees. For the purposes of this section, a court of record shall be taken and construed to mean any court other than a municipal court or the Metropolitan Court of Dade County.

92.06 Judgments and decrees of United States District Courts.--All final judgments and decrees heretofore or hereafter to be rendered and entered in the United States District Courts of this state and certified copies thereof are declared to be admissible as prima facie evidence in the several courts of this state of the entry and validity of such judgments and decrees.

92.07 Judgments and decrees of this state.--The recitals in all judgments and decrees of the Supreme Court and of the several circuit courts of this state, when such judgment or decree appears regular and has been recorded as provided by law for more than 20 years, shall be admissible in evidence as prima facie proof of the truth of the facts so recited. Either party to any suit at law or equity may offer a properly certified copy of such judgment or decree entered and recorded more than 20 years prior to the institution of the suit in which the same is offered, and such copy shall be admissible in evidence as prima facie proof of the facts in said judgment or decree set forth; provided, however, the party offering the same shall at least 10 days before the trial of the suit in which this copy is offered in evidence give notice to the opposite side of the intention to offer such copy in evidence and the purpose for which the same will be offered, and deliver with such notice a copy of the judgment or decree; provided, that nothing in this law shall render admissible in evidence any instrument of writing based on any judgment, deed of conveyance or power of attorney included in this law where any such instrument of writing has heretofore been brought in question in any action at law or in equity in any suit now pending or heretofore decided.

92.08 Deeds and powers of attorney of record for 20 years or more.--The recitals in any deed of conveyance or power of attorney shall be admissible in evidence when offered in evidence by either party to any suit at law or in equity as prima facie proof of the truth of the facts therein recited, provided such deed of conveyance or power of attorney appears regular on its face and is a muniment in the chain of title under which the party offering the deed claims, and has been

recorded as provided by law for more than 20 years prior to the institution of the suit in which it is offered; and provided further, that the party offering the deed of conveyance or power of attorney for such purposes shall at least 10 days before the trial of the suit in which the said copy is offered in evidence give notice to the opposite side of the intention to offer such copy in evidence and the purpose for which the same will be offered, and deliver with such notice a copy of the deed or power of attorney. The original deed or power of attorney shall be offered unless the party offering the certified copy shall show that the original is not within the custody or control of the party offering the copy.

92.09 Effect of reversal, etc., of judgment or successful attack on deed.--No copy of a judgment or decree shall be admitted in evidence as aforesaid when it shall be made to appear that such decree has been reversed, annulled, vacated, or set aside, or that the same in collateral proceedings has been successfully attacked. No deed shall be admitted in evidence as hereinbefore provided if it shall appear that the execution or validity of said deed has been successfully attacked in any proceedings to which the grantee therein named or those or any of them holding under such grantee has been a party or parties.

92.13 Certified copies of records of certified copies.--Certified copies of the record of certified copies of deeds, mortgages, powers of attorney and other instruments referred to in s. 695.19 shall have the same effect as to notice and all other purposes whatsoever as the record of the original has or can have; and certified copies of the record of such certified copies shall be admissible and may be used in evidence in the same manner and with like effect and under the same conditions as certified copies of the record of the original instrument.

92.14 United States deeds and patents and copies thereof.--Deeds and patents issued by the United States Government and photographic copies made by authority of said government from its records thereof in the General Land Office, embracing lands in this state, and certified copies of the record thereof made in this state may be used in evidence in the courts of this state subject to the same rules that are applicable to the admission in evidence of other deeds and certified copies of the record thereof.

92.141 Law enforcement employees; travel expenses; compensation as witness.--Any employee of a law enforcement agency of a municipality or county or the state who appears as an official witness to testify at any hearing or law action in any court of this state as a direct result of his or her employment in the law enforcement agency is entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, except that if the employee travels by privately owned vehicle he or she is entitled to such travel expenses for the actual distance traveled to and from court. In addition thereto, such employee is entitled to receive the daily witness pay, exclusive of the mileage allowance,

provided by s. 92.142, except when the employee is appearing as a witness during time compensated as a part of his or her normal duties.

92.142 Witnesses; pay.--

(1) Witnesses in all cases, civil and criminal, in all courts, now or hereafter created, and witnesses summoned before any arbitrator or master in chancery shall receive for each day's actual attendance $5 and also 6 cents per mile for actual distance traveled to and from the courts. A witness in a criminal case required to appear in a county other than the county of his or her residence and residing more than 50 miles from the location of the trial shall be entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, in lieu of any other witness fee at the discretion of the court.

(2) An employee of the state who is required, as a direct result of employment, to appear as an official witness to testify in the course of any action in any court of this state, or before an administrative law judge, a hearing officer, hearing examiner, or any board or commission of the state or of its agencies, instrumentalities, or political subdivisions, shall be considered to be on duty during such appearance and shall be entitled to per diem and travel expenses as provided in s. 112.061. Except as provided in s. 92.141 and as provided in this subsection, such employee shall be required to tender to the employing agency any witness fee and other expense reimbursement received by the employee for such appearance.

(3) Any witness subpoenaed to testify on behalf of the state in any action brought pursuant to s. 895.05 or chapter 542 who is required to travel outside his or her county of residence and more than 50 miles from his or her residence, or who is required to travel from out of state, shall be entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061 in lieu of any state witness fee.

92.15 Receipts in cases involving title from United States.--A receipt of a receiver of a United States Land Office shall in all cases be prima facie evidence that the title to the land covered by said receipt has passed from the United States to the person named in the receipt as having paid for the said land.

92.151 Witness compensation; payment; overcharges.--Compensation shall be paid to the witness by the party in whose behalf the witness is summoned, and the prevailing party may tax the same as costs against the prevailing party's adversary; but no person shall be compelled to attend court as a witness in any civil cause unless the party in whose behalf the person is summoned shall first pay the person the amount of compensation to which he or she would be entitled for mileage and per diem for 1 day, or the same is deposited with the executive officer of said court, and the person shall not be compelled to attend thereafter unless paid in advance. But if any witness should serve without payment in advance, at the completion of his or her services the witness may exhibit his or her account for

compensation, and when the same shall have been taxed and approved by the court wherein the services have been rendered, such bill shall have the force and effect of judgment and execution against the party in whose behalf the witness was summoned, and be collected by the sheriff as in other cases of execution. Any witness who shall charge and receive more than is really due shall forfeit and pay to the party injured 4 times the amount so unjustly claimed; and if the witness shall willfully make out the account for more than is lawfully due, the witness shall forfeit the compensation.

92.153 Production of documents by witnesses; reimbursement of costs.--

(1) DEFINITIONS.--As used in this section:

(a) "Disinterested witness" means a person to whom a summons is issued with respect to documents involving or relating to transactions of others and who has not initiated a proceeding, is not a party to a proceeding, and is not the subject of investigation in a proceeding and who, at the time the summons is issued, is not an officer, employee, accountant, or attorney, or acting as such, for a person who has initiated, is a party to, or is the subject of investigation in a proceeding.

(b) "Document" means any book, paper, record, or other data, or a reproduction thereof.

(c) "Proceeding" means any civil or criminal action before a court; any investigation, inquiry, or proceeding before a grand jury, a state attorney, or a state, county, municipal, or other governmental department, division, bureau, commission or other body, or any officer thereof; any action before an officer or person authorized to issue a summons; or any administrative action authorized by law.

(d) "Summons" means any subpoena, subpoena duces tecum, order, or other legal process which requires the production of documents.

(2) REIMBURSEMENT OF A DISINTERESTED WITNESS.--

(a) In any proceeding, a disinterested witness shall be paid for any costs the witness reasonably incurs either directly or indirectly in producing, searching for, reproducing, or transporting documents pursuant to a summons.

(b) In a proceeding before a court or an administrative agency or officer, which is not an investigation or inquiry and which by law or rule includes the right to a public trial or hearing in the same proceeding and which involves adversary parties, responsibility for payment to the disinterested witness shall be fixed by the court, agency, or officer before which the proceeding is pending. Payment shall be enforced by the court, agency, or officer upon motion by the disinterested witness.

(c) In all other proceedings, payment to the disinterested witness shall be made by the person or governmental authority requesting the summons. Any disinterested witness who desires reimbursement of such costs shall submit a request for reimbursement, supported by an affidavit, to the person or governmental authority

responsible for payment. Payment shall be made within 30 days from the date the request is submitted. If payment is not made within such time, the witness may enforce payment by bringing a separate action in a court which has jurisdiction of the total amount of such costs and which is located in the judicial circuit where the witness resides.

92.16 Certificates of Board of Trustees of the Internal Improvement Trust Fund respecting the ownership, conveyance of, and other facts in connection with public lands.--A certificate of the Board of Trustees of the Internal Improvement Trust Fund under its official seal, with respect to the present or past ownership by the state or by the school, seminary or internal improvement funds of any lands in this state, or of the conveyance or transfer of any such lands by said Board of Trustees of the Internal Improvement Trust Fund or of the State Board of Education or other officers or boards of the state having power to convey any such lands, or any facts shown by the public records of his or her office with respect to any of such lands, or the transfer, ownership, or conveyance of the same, shall be prima facie evidence of the facts therein certified, and every such certificate shall be admissible in evidence in all of the courts of this state. All such certificates shall, without other or further proof, be admitted to record and recorded in the deed books of the respective counties of this state where the lands mentioned in such certificates lie, and the record of every such certificate shall have the same force and effect for all purposes as the record of deeds.

92.17 Effect of seal of Board of Trustees of the Internal Improvement Trust Fund.--The impression of the seal of the Board of Trustees of the Internal Improvement Trust Fund upon any deed, agreement or contract, purporting to have been made by the Board of Trustees of the Internal Improvement Trust Fund, or by the members of the State Board of Education, shall entitle the same to be received in evidence in all courts and in all proceedings in this state.

92.18 Certificate of state officer.--The certificate of any state officer, under seal of office, as to any official act occurring in the course of the official business of the office in which the state officer presides, shall be prima facie evidence of such fact.

92.19 Portions of records.--In all cases where any certified copy of any record, pleading, document, deed, conveyance, paper or instrument in writing, involving the title to real estate shall be lawfully admissible in evidence in any of the courts of this state, a certified copy of such portions of such instrument as shall contain the essential **92.23 Rule of evidence in suits on fire policies for loss or damage to building.**--In all suits or proceedings brought upon policies of insurance on buildings against loss or damage by fire, hereafter issued or renewed, the insurer shall not be permitted to deny that the property insured was worth, at the time of insuring it by the policy, the full sum insured therein on such property.

parts thereof and only such portion of the descriptive matter thereof as shall be involved in the case on trial **92.21 Certificate as to sanitary condition of buildings.**--Every owner, agent, or lessee of any building or buildings used for the purpose of providing board and lodgings for the entertainment of guests, containing 10 rooms or more, who shall have obtained and posted a certificate as provided by law, may present the same as evidence in the owner's, agent's, or lessee's defense in any suit in any of the courts in this state in which damages are claimed for injuries from alleged unsanitary conditions of said buildings and premises.
, shall likewise be admissible in evidence; and in no case shall it be necessary to include in such certified copies descriptive matter not involved in the case in which such copy is offered in evidence.
92.20 Certificates issued under authority of Congress.--Every certificate issued under authority of the Congress and every duly certified copy thereof under the seal of the United States governmental department having the authority to issue such certified copy, relating to the grade, classification, quality or condition of agricultural products shall be accepted in any court of this state as prima facie evidence of the true grade, classification, condition or quality of such agricultural product at the time of its inspection.
92.231 Expert witnesses; fee.--
(1) The term "expert witness" as used herein shall apply to any witness who offers himself or herself in the trial of any civil action as an expert witness or who is subpoenaed to testify in such capacity before a state attorney in the investigation of a criminal matter, or before a grand jury, and who is permitted by the court to qualify and testify as such, upon any matter pending before any court.
(2) Any expert or skilled witness who shall have testified in any cause shall be allowed a witness fee including the cost of any exhibits used by such witness in the amount of $10 per hour or such amount as the trial judge may deem reasonable, and the same shall be taxed as costs.
92.24 Certain tax deeds prima facie evidence of title.--All tax deeds issued under and pursuant to the provisions and in the form prescribed in and by the following acts and statutes of this state, to wit: s. 10, chapter 4888, Acts, 1901 and said section as amended by s. 1, chapter 5152, Acts, 1903; s. 577 of the General Statutes of Florida, 1906; s. 779 of the Revised General Statutes of Florida, 1920, and said section as amended by s. 12, chapter 14572, Acts, 1929; are declared to be prima facie evidence of the regularity of the proceedings from the valuation of the land described in such deeds respectively, by the assessors, to the date of the deed or deeds inclusive, and shall be so received in evidence in any and all the courts of this state, without regard to date of execution.

92.25 Records destroyed by fire; use of abstracts.--Whenever in the trial of any suit, or in any proceeding in any court of this state, it shall be made to appear that the original of any deed or other instrument of writing, or of any record of any court relating to any land, the title thereof or any interest therein being in controversy in such suit or proceeding, is lost or destroyed, or not within the power of the party to produce the same, and that the record thereof has been heretofore destroyed by fire, and that no certified copy of such record is in the possession or control of such party, it is lawful for such party, and the court shall receive as evidence, any abstract of title, or letter-press copy thereof made in the ordinary course of business prior to such loss or destruction; and it is also lawful for any such party to offer, and the court shall receive as evidence, any copy, extract or minutes from such destroyed records, or from the original thereof, which were at the date of such destruction in the possession of any person or persons then engaged in the business of making abstracts of titles for others for hire.

92.251 Uniform Foreign Depositions Law.-- 92.27 Records destroyed by fire; effect of abstracts in evidence.--In all cases in which any destroyed abstracts, copies, minutes, extracts, maps or plats, or copies thereof, purchased and placed in the clerk's office, as provided by law, or which are made admissible in evidence under any of the provisions of this revision, whether purchased or placed in such office or not, shall be received in evidence under this law, all deeds or other instruments of writing appearing thereby to have been executed by any person or persons, or in which they appear to have joined, shall (except as against any person or persons in actual possession of the land or lot described therein at the time of the destruction of the record of such county, claiming title thereto, otherwise than under sale for taxes or special assessments) be presumed to have been executed and acknowledged according to law; and all sales under powers, and all judgments, decrees and legal proceedings, and all sales thereunder (sale for taxes and assessments, and judgments and proceedings for the enforcement of taxes and assessments excepted) shall be presumed to be regular and correct, except as against the person or persons in this section above-mentioned and excepted.

(1) This section may be cited as the "Uniform Foreign Depositions Law."

(2) Whenever any mandate, writ or commission is issued out of any court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

(3) This section shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it

92.26 Records destroyed by fire; use of sworn copies.--A sworn copy of any writing admissible under s. 92.25 made by the person or persons having possession of such writing shall be admissible in evidence; provided, the party desiring to use such sworn copy, as aforesaid, shall have given the opposite party a reasonable opportunity to verify the correctness of such copy; and provided, that no abstract of title or letter-press copy thereof, extract or minutes or copy made admissible in evidence by this section, shall be so admitted by virtue hereof unless a copy thereof shall have been served on the opposite party, or the opposite party's attorney or counsel, at least 10 days before the same is offered in evidence. Nothing herein shall be construed to prevent the impeachment of such evidence, or its exclusion by the court for good and sufficient cause.

92.27 Records destroyed by fire; effect of abstracts in evidence.--In all cases in which any destroyed abstracts, copies, minutes, extracts, maps or plats, or copies thereof, purchased and placed in the clerk's office, as provided by law, or which are made admissible in evidence under any of the provisions of this revision, whether purchased or placed in such office or not, shall be received in evidence under this law, all deeds or other instruments of writing appearing thereby to have been executed by any person or persons, or in which they appear to have joined, shall (except as against any person or persons in actual possession of the land or lot described therein at the time of the destruction of the record of such county, claiming title thereto, otherwise than under sale for taxes or special assessments) be presumed to have been executed and acknowledged according to law; and all sales under powers, and all judgments, decrees and legal proceedings, and all sales thereunder (sale for taxes and assessments, and judgments and proceedings for the enforcement of taxes and assessments excepted) shall be presumed to be regular and correct, except as against the person or persons in this section above-mentioned and excepted.

92.28 Records destroyed by fire; land title suits; what may be received in evidence.--In all suits or proceedings concerning any land, or any estate, interest or right in, or any lien or encumbrance upon the same, when it shall be made to appear that the original of any deed, conveyance, map, plat or other written or record evidence has been lost or destroyed, or is not in the power, custody or control of the party wishing to use it on the trial to produce same, and the record thereof has been heretofore destroyed by fire, the court shall receive all such evidence as may have a bearing on the case to establish the execution or contents of any deed, conveyance, map, plat record, or other written evidence so lost or destroyed; provided, that the testimony of the parties themselves shall be received only in such cases, and subject to all the qualifications in respect to such testimony as now provided by law; and provided further, that any writing in the hands of any person or persons, which may become admissible in evidence under the provisions

of this section, or any part of this law, shall be rejected and not admitted as evidence, unless the same appear upon the face thereof without erasure, blemish, alteration, interlineation or interpolation in any material part, unless the same shall be explained to the satisfaction of the court, and appear fairly and honestly made in the ordinary course of business.

92.29 Photographic or electronic copies.--Photographic reproductions or reproductions through electronic recordkeeping systems made by any federal, state, county, or municipal governmental board, department or agency, in the regular course of business, of any original record, document, paper or instrument in writing or in an electronic recordkeeping system, which is, or may be, required or authorized to be made, filed, or recorded with that board, department or agency shall in all cases and in all courts and places be admitted and received as evidence with a like force and effect as the original would be, whether the original record, document, paper, or instrument in writing or in an electronic recordkeeping system is in existence or not.

92.295 Copies of voter registration records.--Any reproduction of an original voter registration record stored pursuant to s. 98.461, whether microfilmed or maintained digitally or on electronic, magnetic, or optic media, which reproduction is certified by the supervisor of elections who is the custodian of the record, is admissible as evidence in any judicial or administrative proceeding in this state with the same effect as the original voter registration record, whether the original voter registration record exists or not. **92.31 Missing persons and persons imprisoned or interned in foreign countries; official reports.**--An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in s. 92.30, or by any other law of the United States to make same, shall be received in any court, office, or other place in this state as evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be

92.30 Presumption of death; official findings.--A written finding of presumed death, made by the Secretary of the Army, the Secretary of the Navy, or other officer or employee of the United States authorized to make such findings, pursuant to the [1]Federal Missing Persons Act (56 Stat. 143, 1092, and Pub. L. No. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office, or other place in this state as evidence of the death of the person therein found to be dead, and the date, circumstances, and place of the person's disappearance.

92.31 Missing persons and persons imprisoned or interned in foreign countries; official reports.--An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in s. 92.30, or by any other law of the United States **92.32 Official findings and reports; presumption of authority to issue or execute.**--For the purposes of this law, any finding, report, or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described above, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of the person's authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of the person's authority so to certify.

to make same, shall be received in any court, office, or other place in this state as evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be.

92.33 Written statement concerning injury to person or property; furnishing copies; admission as evidence.--Every person who shall take a written statement by any injured person with respect to any accident or with respect to any injury to person or property shall, at the time of taking such statement, furnish to the person making such statement a true and complete copy thereof. Any person having taken, or having possession of any written statement or a copy of such statement, by any injured person with respect to any accident or with respect to any injury to person or property shall, at the request of the person who made such statement or his or her personal representative, furnish the person who made such statement or his or her personal representative a true and complete copy thereof. No written statement by an injured person shall be admissible in evidence or otherwise used in any manner in any civil action relating to the subject matter thereof unless it shall be made to appear that a true and complete copy thereof was furnished to the person making such statement at the time of the making thereof, or, if it shall be made to appear that thereafter a person having possession of such statement refused, upon request of the person who made the statement or his or her personal representatives, to furnish him or her a true and complete copy thereof.

92.351 Prohibition against prisoners submitting nondocumentary physical evidence without authorization of court; prisoner mailings to courts.--

(1) No prisoner as defined by s. 57.085 who is a party to a judicial proceeding may submit evidence or any other item that is not in paper document form to a court or

clerk of court without first obtaining authorization from the court. This prohibition includes, but is not limited to, all nondocumentary evidence or items offered in support of a motion, pleading, or other document filed with the court. This prohibition does not preclude a prisoner who is appearing in person or through counsel before a court at a trial or hearing from submitting physical evidence to the court at the appropriate time.

(2) A corrections or detention facility for prisoners may conduct a cursory examination of the outside of any package or other mailing from a prisoner to a court or clerk of court of this state to determine whether the package or mailing contains materials other than paper documents. If such package or mailing appears to contain materials other than paper documents, the facility shall refuse to forward it until the sender presents a court order authorizing the mailing of such nondocumentary items or demonstrates that the contents are not prohibited by this section.

92.38 Comparison of disputed writings.--Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by the witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the jury, or to the court in case of a trial by the court, as evidence of the genuineness, or otherwise, of the writing in dispute.

92.39 Evidence of individual's claim against the state in suits between them.--In suits between the state and individuals, no claim for a credit shall be allowed upon trial, but such as shall appear to have been presented to the Comptroller for the Comptroller's examination, and by him or her disallowed in whole or in part, unless it shall be proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in the defendant's power to procure, and that the defendant was prevented from exhibiting a claim for such credit at the Comptroller's office by unavoidable accident.

92.40 Reports of building, housing, or health code violations; admissibility.--A copy of a report, notice, or citation of a violation of any building, housing, or health code by a governmental agency charged with the enforcement of such codes, certified by the agency, if otherwise material shall be admissible as evidence.

92.50 Oaths, affidavits, and acknowledgments; who may take or administer; requirements.--

(1) IN THIS STATE.--Oaths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record

within this state, including federal courts, or before any United States commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.
(2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE UNITED STATES.--Oaths, affidavits, and acknowledgments required or authorized under the laws of this state, may be taken or administered in any other state, territory, or district of the United States, before any judge, clerk or deputy clerk of any court of record, within such state, territory, or district, having a seal, or before any notary public or justice of the peace, having a seal, in such state, territory, or district; provided, however, such officer or person is authorized under the laws of such state, territory, or district to take or administer oaths, affidavits and acknowledgments. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; provided, however, when taken or administered by or before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.
(3) IN FOREIGN COUNTRIES.--Oaths, affidavits, and acknowledgments, required or authorized by the laws of this state, may be taken or administered in any foreign country, by or before any judge or justice of a court of last resort, any notary public of such foreign country, any minister, consul general, charge d'affaires, or consul of the United States resident in such country. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of the officer or person taking or administering the same; provided, however, when taken or administered by or before any judge or justice of a court of last resort, the seal of such court may be affixed as the seal of such judge or justice.

92.51 Oaths, affidavits, and acknowledgments; taken or administered by commissioned officer of United States Armed Forces.--

(1) Oaths, affidavits, and acknowledgments required or authorized by the laws of this state may be taken or administered within or without the United States by or before any commissioned officer in active service of the Armed Forces of the United States with the rank of second lieutenant or higher in the Army, Air Force or Marine Corps or ensign or higher in the Navy or Coast Guard when the person required or authorized to make and execute the oath, affidavit, or acknowledgment is a member of the Armed Forces of the United States, the spouse of such member or a person whose duties require the person's presence with the Armed Forces of the United States.

(2) A certificate endorsed upon the instrument which shows the date of the oath, affidavit, or acknowledgment and which states in substance that the person appearing before the officer acknowledged the instrument as the person's act or made or signed the instrument under oath shall be sufficient for all intents and purposes. The instrument shall not be rendered invalid by the failure to state the place of execution or acknowledgment.
(3) If the signature, rank, and branch of service or subdivision thereof of any commissioned officer appears upon such instrument, document or certificate no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath, affidavit or acknowledgment is within the purview of this act.
92.52 Affirmation equivalent to oath.--Whenever an oath shall be required by any law of this state in any proceeding, an affirmation may be substituted therefor.
92.525 Verification of documents; perjury by false written declaration, penalty.--
(1) When it is authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:
(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths; or
(b) By the signing of the written declaration prescribed in subsection (2).
(2) A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.
(3) A person who knowingly makes a false declaration under subsection (2) is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
(4) As used in this section:
(a) The term "administrative agency" means any department or agency of the state or any county, municipality, special district, or other political subdivision.
(b) The term "document" means any writing including, without limitation, any form, application, claim, notice, tax return, inventory, affidavit, pleading, or paper.
(c) The requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath or affirm

that the facts or matters stated or recited in the document are true, or words of that import or effect.

92.53 Videotaping of testimony of victim or witness under age 16 or person with mental retardation.--

(1) On motion and hearing in camera and a finding that there is a substantial likelihood that a victim or witness who is under the age of 16 or who is a person with mental retardation as defined in [1]s. 393.063(41) would suffer at least moderate emotional or mental harm due to the presence of the defendant if the child or person with mental retardation is required to testify in open court, or that such victim or witness is otherwise unavailable as defined in s. 90.804(1), the trial court may order the videotaping of the testimony of the victim or witness in a case, whether civil or criminal in nature, in which videotaped testimony is to be utilized at trial in lieu of trial testimony in open court.

(2) The motion may be filed by:

(a) The victim or witness, or the victim's or witness's attorney, parent, legal guardian, or guardian ad litem;

(b) A trial judge on his or her own motion;

(c) Any party in a civil proceeding; or

(d) The prosecuting attorney or the defendant, or the defendant's counsel.

(3) The judge shall preside, or shall appoint a special master to preside, at the videotaping unless the following conditions are met:

(a) The child or person with mental retardation is represented by a guardian ad litem or counsel;

(b) The representative of the victim or witness and the counsel for each party stipulate that the requirement for the presence of the judge or special master may be waived; and

(c) The court finds at a hearing on the motion that the presence of a judge or special master is not necessary to protect the victim or witness.

(4) The defendant and the defendant's counsel shall be present at the videotaping, unless the defendant has waived this right. The court may require the defendant to view the testimony from outside the presence of the child or person with mental retardation by means of a two-way mirror or another similar method that will ensure that the defendant can observe and hear the testimony of the victim or witness in person, but that the victim or witness cannot hear or see the defendant. The defendant and the attorney for the defendant may communicate by any appropriate private method.

(5) Any party, or the court on its own motion, may request the aid of an interpreter, as provided in s. 90.606, to aid the parties in formulating methods of questioning the child or person with mental retardation and in interpreting the answers of the

child or person with mental retardation throughout proceedings conducted under this section.
(6) The motion referred to in subsection (1) may be made at any time with reasonable notice to each party to the cause, and videotaping of testimony may be made any time after the court grants the motion. The videotaped testimony shall be admissible as evidence in the trial of the cause; however, such testimony shall not be admissible in any trial or proceeding in which such witness testifies by use of closed circuit television pursuant to s. 92.54.
(7) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

92.54 Use of closed circuit television in proceedings involving victims or witnesses under the age of 16 or persons with mental retardation.--

(1) Upon motion and hearing in camera and upon a finding that there is a substantial likelihood that the child or person with mental retardation will suffer at least moderate emotional or mental harm due to the presence of the defendant if the child or person with mental retardation is required to testify in open court, or that such victim or witness is unavailable as defined in s. 90.804(1), the trial court may order that the testimony of a child under the age of 16 or person with mental retardation who is a victim or witness be taken outside of the courtroom and shown by means of closed circuit television.
(2) The motion may be filed by the victim or witness; the attorney, parent, legal guardian, or guardian ad litem of the victim or witness; the prosecutor; the defendant or the defendant's counsel; or the trial judge on his or her own motion.
(3) Only the judge, the prosecutor, the defendant, the attorney for the defendant, the operators of the videotape equipment, an interpreter, and some other person who, in the opinion of the court, contributes to the well-being of the child or person with mental retardation and who will not be a witness in the case may be in the room during the recording of the testimony.
(4) During the child's or person's with mental retardation testimony by closed circuit television, the court may require the defendant to view the testimony from the courtroom. In such a case, the court shall permit the defendant to observe and hear the testimony of the child or person with mental retardation, but shall ensure that the child or person with mental retardation cannot hear or see the defendant. The defendant's right to assistance of counsel, which includes the right to immediate and direct communication with counsel conducting cross-examination, must be protected and, upon the defendant's request, such communication shall be provided by any appropriate electronic method.
(5) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

92.55 Judicial or other proceedings involving victim or witness under the age of 16 or person with mental retardation; special protections.--

(1) The Legislature finds that Rule 3.220, Rules of Criminal Procedure, Rule 1.280, Rules of Civil Procedure, and Rule 8.070, Rules of Juvenile Procedure, as such rules pertain to protective orders, are not adequate in protecting the interests of children or persons with mental retardation as witnesses in criminal, civil, or juvenile proceedings. Accordingly, the Legislature requests the Supreme Court, pursuant to the authority vested in the court by s. 2(a), Art. V of the State Constitution, to adopt rules amending the Rules of Criminal Procedure, the Rules of Civil Procedure, and the Rules of Juvenile Procedure as necessary to comply with this section.

(2) Upon motion of any party, upon motion of a parent, guardian, attorney, or guardian ad litem for a child under the age of 16 or person with mental retardation, or upon its own motion, the court may enter any order necessary to protect a child under the age of 16 or person with mental retardation who is a victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the child or person with mental retardation is required to testify in open court. Such orders shall relate to the taking of testimony and shall include, but not be limited to:

(a) Interviewing or the taking of depositions as part of a civil or criminal proceeding.

(b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.

(c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

(3) In ruling upon the motion, the court shall take into consideration:

(a) The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant's presence, and any other fact that the court deems relevant; or

(b) The age of the person with mental retardation, the functional capacity of the person with mental retardation, the nature of the offenses or act, the relationship of the person with mental retardation to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person with mental retardation as a consequence of the defendant's presence, and any other fact that the court deems relevant.

(4) In addition to such other relief as is provided by law, the court may enter orders limiting the number of times that a child or person with mental retardation may be interviewed, prohibiting depositions of a child or person with mental retardation, requiring the submission of questions prior to examination of a child or person

with mental retardation, setting the place and conditions for interviewing a child or person with mental retardation or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.

92.56 Judicial proceedings and court records involving sexual offenses.--

(1) All court records, including testimony from witnesses, that reveal the photograph, name, or address of the victim of an alleged offense described in chapter 794 or chapter 800, or act of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, are confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and may not be made public if, upon a showing to the trial court with jurisdiction over the alleged offense, the state or the victim demonstrates that:

(a) The identity of the victim is not already known in the community;

(b) The victim has not voluntarily called public attention to the offense;

(c) The identity of the victim has not otherwise become a reasonable subject of public concern;

(d) The disclosure of the victim's identity would be offensive to a reasonable person; and

(e) The disclosure of the victim's identity would:

1. Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;

2. Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;

3. Cause severe emotional or mental harm to the victim;

4. Make the victim unwilling to testify as a witness; or

5. Be inappropriate for other good cause shown.

(2) If the court, pursuant to subsection (1), declares that all court records or other information that reveals the photograph, name, or address of the victim are confidential and exempt from s. 24(a), Art. I of the State Constitution, the defendant charged with the crime described in chapter 794 or chapter 800, or with child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, may apply to the trial court for an order of disclosure of identifying information concerning the victim in order to prepare the defense. This paragraph may not be construed to prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, in all court records and records of court proceedings.
(4) The protection of this section may be waived by the victim of the alleged offense in a writing filed with the court, in which the victim consents to the use or release of identifying information during court proceedings and in the records of court proceedings.
(5) This section does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for an offense described in chapter 794 or chapter 800, or a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in chapter 827, but the publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has consented in writing to the publication and filed such consent with the court or unless the court has declared such records not confidential and exempt as provided for in subsection (1).
(6) A willful and knowing violation of this section or a willful and knowing failure to obey any court order issued under this section constitutes contempt.
92.57 Termination of employment of witness prohibited.--A person who testifies in a judicial proceeding in response to a subpoena may not be dismissed from employment because of the nature of the person's testimony or because of absences from employment resulting from compliance with the subpoena. In any civil action arising out of a violation of this section, the court may award attorney's fees and punitive damages to the person unlawfully dismissed, in addition to actual damages suffered by such person.
92.60 Foreign records of regularly conducted business activity.--
(1) For the purposes of this section:
(a) "Foreign record of regularly conducted business activity" means a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country.
(b) "Foreign certification" means a written declaration made and signed in a foreign country by the custodian of a foreign record of regularly conducted business activity or another qualified person that, if falsely made, would subject the maker to criminal penalty under the laws of that country.
(c) "Business" means any business, institution, association, profession, occupation, or calling of any kind, whether or not conducted for profit.
(2) In a criminal or civil proceeding in a court of the State of Florida, a foreign record of regularly conducted business activity, or a copy of such record, shall not be excluded as evidence by the hearsay rule if a foreign certification attests that:

(a) Such record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
(b) Such record was kept in the course of a regularly conducted business activity;
(c) The business activity made such a record as a regular practice; and
(d) If such record is not the original, it is a duplicate of the original;
unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.
(3) A foreign certification under this section shall authenticate such record or duplicate.
(4) No evidence in such records in the form of opinion or diagnosis is admissible under subsection (2) unless such opinion or diagnosis would be admissible under ss. 90.701-90.705 if the person whose opinion is recorded were to testify to the opinion directly.
(5) At the arraignment or as soon after the arraignment as practicable, or 60 days prior to a civil trial, a party intending to offer in evidence under this section a foreign record of regularly conducted business activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such motion before trial shall constitute a waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

IX. DISCOVERY VIOLATIONS

DISCOVERY VIOLATIONS
(Quick Reference)

DISCOVERY VIOLATIONS

(Quick Reference)

A. Improper to call an unlisted expert witness in rebuttal or to impeach opposing sides expert. Binger v. King Pest Control, 501 So.2d 1310 (Fla. 1981); Gustafson v. Jensen, 515 So.2d 1298 (Fla. 3d DCA 1987). Before excluding the witness, the court should consider:

1) whether there is actual surprise on the part of the objecting party;

2) the objecting party's ability to cure the (prejudice) surprise;

3) whether calling party acted in bad faith or intentionally failed to comply with the pre-trial order;

4) the possible disruption of the orderly and efficient trial of the case;

5) whether or not the use of the witness will substantially endanger the fairness of the proceeding.

B. Expert forming opinion as to causation of accident only after being deposed (but before trial) – court may exclude the testimony as to causation but not the entire testimony of expert. Keller Industries v. Volk, 657 So.2d 1200 (Fla. 4th DCA 1995), rev. denied, 666 So.2d 146 (Fla. 1995).

C. Treating physician reexamining plaintiff during course of trial and having new findings – court should allow defendant opportunity to review the doctor's new finding or reexamine plaintiff even if continuance is required. Semmer v. Johnson, 634 So.2d 1123 (Fla. 2d DCA 1994).]

D. Plaintiff examined by two experts during trial when court specifically finds "tactics were intentional tricks" – testimony should be excluded. Grau v. Branham, 626 So.2d 1059 (Fla. 4th DCA 1993).

E. Late listed experts, failure to list the address of expert, listing witness in a misleading manner – court may strike the witness ("unfair advantage" should not be allowed). Florida Marine Enterprises v. Bailey, 632 So.2d 649, (Fla. 4th DCA 1996), Sayad v. Alley, 508 So.2d 485 (Fla. 3d DCA 1987).

X. TRIAL MOTIONS

DISMISSAL OF ACTIONS
(Civil Rule 1.420)

DIRECTED VERDICT
(Civil Rule 1.480)

MISTRIAL
(Quick Reference)

JUROR MISCONDUCT
(Quick Reference)

AMENDMENTS TO CONFORM WITH THE EVIDENCE
(Civil Rule 1.190(b))

MOTION FOR SANCTIONS FOR SPOLIATION OF THE EVIDENCE
(Quick Reference)
(Jury Instruction)

DISMISSAL OF ACTIONS
(Civil Rule 1.420)

(a) **Voluntary Dismissal.**

(1) *By Parties.* Except in actions in which property has been seized or is in the custody of the court, an action may be dismissed by plaintiff without order of court (A) before trial by serving, or during trial by stating on the record, a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if the motion is denied, before retirement of the jury in a case tried before a jury or before submission of a nonjury case to the court for decision, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in this action. Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim.

(2) *By Order Of Court; If Counterclaim.* Except as provided in subdivision (a)(1) of this rule, an action shall not be dismissed at a party's instance except on order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been served by a defendant prior to the service upon the defendant of the plaintiffs notice of dismissal, the action shall not be dismissed against defendant's objections unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) **Involuntary Dismissal.** Any party may move for dismissal of an action or of any claim against that party for failure of an adverse party to comply with these rules or any order of court. Notice of hearing on the motion shall be served as required under rule 1.090(d). After a party seeking affirmative relief in an action tried by the court without a jury has completed the presentation of evidence, any other party may move for a dismissal on the ground that on the facts and the law the party seeking affirmative relief has shown no right to relief, without waiving the right to offer evidence if the motion is not granted. The court as trier of the facts may then determine them and render judgment against the party seeking affirmative relief or may decline to render judgment until the close of all the evidence. Unless the court is its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication on the merits.

(c) **Dismissal of Counterclaim, Crossclaim or Third Party Claim.** The

provisions of this rule apply to the dismissal of any counterclaim, crossclaim or third-party claim.

(d) **Costs.** Costs in any action dismissed under this rule shall be assessed and judgment for costs entered in that action. If a party who has once dismissed a claim in any court of this state commences an action based upon or including the same claim against the same adverse party, the court shall make such order for the payment of costs of the claim previously dismissed as it may deem proper and shall stay the proceedings in the action until the party seeking affirmative relief has complied with the order .

(e) **Failure to Prosecute**. All actions in which it appears on the face of the record that no activity by filing of pleadings, order of court, or otherwise has occurred for a period of 1 year shall be dismissed by the court on its own motion or on the motion of any interested person, whether a party to the action or not, after reasonable notice to the parties unless a stipulation staying the action is approved by the court or a stay order has been filed or a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending. Mere inaction for a period of less than 1 year shall not be sufficient cause for dismissal for failure to prosecute.

(f) **Effect on Lis Pendens.** If a notice of lis pendens has been filed in connection with a claim for affirmative relief that is dismissed under this rule, the notice of lis pendens connected with the dismissed claim is automatically dissolved at the same time. The notice, stipulation, or order shall be recorded.

MOTION FOR A DIRECTED VERDICT
(Civil Rule 1.480)

(a) **Effect**. A party who moves for a directed verdict at the close of the evidence offered by the adverse party may offer evidence in the event the motion is denied without having reserved the right to do so and to the same extent as if the motion has not been made. The denial of the motion for a directed verdict shall not operate to discharge the jury. A motion for a directed verdict shall state the specific grounds therefor. The order directing a verdict is effective without any assent of the jury.

(b) **Reservation of Decision on Motion**. When a motion for a directed verdict made at the close of all of the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Within 10 days after the return of a verdict, a party who has timely moved for a directed verdict may serve a motion to set aside the verdict and any judgment entered thereon and to enter judgment in accordance with the motion for a directed verdict. If a verdict was not returned, a party who has timely moved for a directed verdict may serve a motion for judgment in accordance with the motion for a directed verdict within 10 days after discharge of the jury.

© **Joined With Motion for New Trial.** A motion for a new trial may be joined with this motion or a new trial may be requested in the alternative. If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

MISTRIAL
(Quick Reference)

There appears to be no rule, no statute, and almost no case law with respect to granting a mistrial in a civil case; however, in Walton v. Robert E. Haas Const. Corp., 259 So.2d 731, (Fla. 3rd DCA 1972), the 3rd DCA reversed the court for failing to grant a motion for mistrial after a prejudicial remark by an attorney. Hagan v. Sun Bank. N.A., 666 So.2d 580(Fla.2d DCA 1996) indicates that the motion for mistrial must be made before the jury retires to deliberate.

Most cases which discuss mistrial do so in terms of what results flow from a party's failure to make a mistrial motion.

JUROR MISCONDUCT
(Quick Reference)

Frequently, attorneys or others advise the court of perceived misconduct by jurors during the course of a trial. It is essential that parties raise these matters as soon as they are aware of them to preserve the issue. Nissan Motor Corp. in U.S.A. v. Padilla, 545 So. 2d 274, (Fla. 3rd DCA 1989), Al's Trucking v. Kennard. 633 So. 2d 535, (Fla. 2d DCA 1994).

Although there is no rule or statute to control this situation, the general practice is for the judge, on the record and in the presence of the attorneys and parties, to voir dire the jurors separately to determine if anything has occurred which would influence their decision in the case. This procedure has been recognized without criticism by the appellate courts. Policari v. Cerbasi, 625 So. 2d 998, (Fla. 5th DCA 1993), Local 675 v. Kinder, 573 So. 2d 385, (Fla. 4th DCA 1991). And in at least one case, a judge was reversed for failing to conduct such a jury interview. Henderson v. Dade County School Board, 24 FLW D1312 (3rd DCA June 2, 1999).

The voir dire of the jurors may, under certain circumstances, be closed to the public. Sentinel Star Co. v. Edwards, 387 So. 2d 367, (Fla. 5th DCA 1980). However, if the court is considering closing the hearing, it should consider Times Publishing Co. v. Penick, 433 So. 2d 1281, (Fla. 2d DCA 1983), which required that at least one representative of the news media be noticed and given an opportunity to be heard on whether there should be a closure of the proceedings. There is a stronger argument for closure of the proceeding when it occurs during the course of the trial than when a post-judgment interview of jurors is held. Sentinel Communications Company v. Watson, 615 So. 2d 768, (Fla. 5th DCA 1993).

Certain misconduct, if it is proven, may require that a juror be dismissed or a mistrial declared whether or not the jurors maintain that their verdict will not be influenced. These include racist remarks made by a juror to other jurors, Powell v. Allstate Insurance Company, 652 So. 2d 354, (Fla. SC 1995) or derogatory remarks about an ethnic group of which one party is a member . Sanchez v. International Park Condominium Association. Inc., 563 So. 2d 197, (Fla. 3rd DCA 1990), Wright v. CTL Distribution, Inc. 679 So.2d 1233 (2nd DCA 1996). They may also include cases in which jurors conduct their own investigation or

experiment. Bickel v. State Farm Automobile Insurance Company, 557 So. 2d 674, (Fla. 2d DCA 1990). Concealing or denying a previous litigation history during voir dire will also, probably, require the removal of the juror. Wilcox v.Dulcom 690 So.2d 1365,22 (Fla. 3rd DCA 1997) (required new trial when discovered latter).

AMENDMENTS TO CONFORM WITH THE EVIDENCE
(Civil Rule 1.190 (b))

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after Judgment, but failure so to amend shall not affect the result of the trial of these issues. If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended to conform with the evidence and shall do so freely when the merits of the cause are more effectually presented thereby and the objecting party fails to satisfy the court that the admission of such evidence will prejudice the objecting party in maintaining an action or defence upon the merits.

MOTION FOR SANCTIONS FOR SPOLIATION OF EVIDENCE

(Quick Reference)

If it is proven that one of the parties or its agents either intentionally or unintentionally lost, destroyed or altered evidence, Florida law offers (in addition to separate cause of action) a choice of sanctions including:

A. Precluding testimony by the expert who lost the evidence. Federal Insurance Co. v. Allister Manufacturing Co., 622 So.2d 1348, (Fla. 4th DCA 1993). However, this may not be appropriate if the opposing party's expert had some chance to see the evidence and there is no showing that the party is unable to present a case.

B. Striking a defendant's answer and entering a default. DePuy, Inc. v. Eskes, 427 So.2d 306, (Fla. 3rd DCA 1983) *also* U. S. Fire Ins. Co. v. C & C Beauty Sales, Inc. 674 So.2d 169, (Fla. 3rd DCA 1996) (withholding accountant's report despite six court orders)

C. Entry of default. Sponco Manufacturing, Inc. v. Alcover, 656 So.2d 629, (Fla. 3d DCA 1995); Rockwell International Corporation v. Manzis, 561 So.2d 677, (Fla. 3d DCA 1990).

D. Striking a defense or excluding witness. Metropolitan Dade County v. Bermudez, 648 So.2d 197, (Fla. 1st DCA 1994).

E. Imposing a rebutable presumption that shifts the burden of proof (per F.S. 90.302(2)) – and giving an appropriate jury instruction. Public Health Trust of Dade County v. Valcin, 507 So.2d 596 (Fla. 1981) *but see* Kina v. Nat'l Sec. Fire & Casualty Co., 656 So.2d 1335, (Fla. 4th DCA 1995)

F. Excluding testimony of defendant's expert who examined defendant's vehicle which was then sold before plaintiff could examine it. Metropolitian Dade County v. Bermudez, 648 So.2d 197, (Fla. 1st DCA 1994)

(Jury Instruction)

During the course of this trial, you heard evidence concerning certain _____ (records, documents, physical objects, etc.) that were (lost, destroyed, etc.) by (party).

When considering such evidence while reaching your verdict, you shall presume that the (lost/destroyed) (records, documents, physical objects, etc.) would have revealed information (or evidence) positive for the (opposing party)'s (claim/) against (party) and negative as to (party)'s (defense/claim).

[This instruction has been used but has not yet been approved by any appellate court.]

XI. CHARGE CONFERENCE

INSTRUCTIONS TO JURY
(Civil Rule 1.4 70(b))

STANDARD JURY INSTRUCTIONS
(RCP Form 1.985)

VERDICTS (PUNITIVE DAMAGES)
(Civil Rule 1.481)

JURY INSTRUCTIONS
(Quick Reference)

INSTRUCTIONS TO JURY
(Civil Rule 1.470(b))

Not later than at the close of the evidence, the parties shall file written requests that the court charge the jury on the law set forth in such requests. The court shall then require counsel to appear before it to settle the charges to be given. At such conference all objections shall be made and ruled upon and the court shall inform counsel of such charges as it will give. No party may assign as error the giving of any charge unless that party objects thereto at such time, or the failure to give any charge unless that party requested the same. The court shall orally charge the jury after the arguments are completed and, when practicable, shall furnish a copy of its charges to the jury.

STANDARD JURY INSTRUCTIONS
(RCP Form 1.985)

The forms of Florida Standard Jury Instructions published by The Florida Bar pursuant to authority of the supreme court 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 made 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.

VERDICTS (PUNITIVE DAMAGES)
(Civil Rule 1.481)

In all actions when punitive damages are sought, the verdict shall state the amount of punitive damages separately from the amounts of other damages awarded

JURY INSTRUCTIONS
(Quick Reference)

1. Language in a court opinion or statute may be modified for clarity and used for jury instruction if the modifications do not distort the original meaning. Lithgow Funeral Centers v. Loftin, 60 So.2d 745, (Fla. 1952); Van Engers v. Hickory House Inc., 118 So.2d 657, (Fla. 3d DCA 1960).

2. Instructions must be accurate and complete statements of the law that applies to the evidence received and should not be argumentative, misleading, confusing or tending to unduly emphasize issues or theories in favor of particular party. Swartz v. Billington, 528 So.2d 1371, (Fla. 3d DCA 1988); Florida East Coast Railway Co. v. Welch, 44 So. 250 (Fla. 1907).

XII. ATTORNEY CONDUCT

JURY INSTRUCTION AFTER ADMONITION OF COUNSEL

CODE OF JUDICIAL CONDUCT
(Canon 3)

FLORIDA BAR LAWYERS' GUIDELINES FOR PROFESSIONAL CONDUCT
(M. Trial Conduct & Courtroom Decorum)

JURY INSTRUCTION AFTER ADMONITION OF COUNSEL

THE COURT HAS THE DUTY OF MAINTAINING ORDER AND REPRIMANDING COUNSEL FOR ANY IMPROPER CONDUCT. IN THE HEAT OF ADVOCACY, COUNSEL MAY BE CARRIED AWAY. THE ACTION OF THE COURT SHOULD NOT BE INTERPRETED AS FAVORING OR DISFAVORING EITHER PARTY.

CODE OF JUDICIAL CONDUCT
(Canon 3)

B. Adjudicative Responsibilities.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers,and of staff, court officials, and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.

(6)A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words, gestures, or other conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors are issues in the proceeding.

FLORIDA BAR TRIAL LAWYERS GUIDELINES FOR PROFESSIONAL CONDUCT

M. Trial Conduct and Courtroom Decorum

1. A lawyer should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility and avoid undignified or discourteous conduct which is degrading to the court.

2. Be punctual and prepared for any court appearance.

3. Stand as court is opened, recessed or adjourned; when the jury enters or retires from the courtroom; and when addressing, or being addressed by, the court.

4. Examination of jurors and witnesses should be conducted from a suitable distance. A lawyer should not crowd or lean over the witness or jury and during interrogation should avoid blocking opposing counsel's view of the witness.

5. Counsel should address all public remarks to the court, not to opposing

6. A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel.

7. Counsel should refer to all adult persons, including witnesses, other counsel, and the parties by their surnames and not by their first or given names.

8. Only one attorney for each party shall examine, or cross examine each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross examination.

9. Counsel should request permission before approaching the bench. Any documents counsel wish to have the court examine should be handed to the clerk.

10. Have the clerk pre-mark the potential exhibits.

11. Any paper or exhibit not previously marked for identification should first be handed to the clerk to be marked before it is tendered to a witness for examination. Any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel.

12. In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the court.

13. Generally, in examining a witness, counsel shall not repeat or echo the answer given by the witness.

14. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury, unless the offeror knows or has reason to believe the opposing lawyer will accept it.

15. In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue.

16. Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

17. During trials and evidentiary hearings the lawyers should mutually agree to disclose the identities, and duration of witnesses anticipated to be called that day and the following day, including depositions to be read, and should cooperate in sharing with opposing counsel all visual-aid equipment.

18. A lawyer should not mark or alter exhibits, charts, graphs, and diagrams without opposing counsel's permission or leave of court.

19. A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

20. A lawyer's word should be his or her bond. The lawyer should not knowingly misstate, distort, or improperly exaggerate any fact or opinion and should not improperly permit the lawyer's silence or inaction to mislead anyone.

21. A charge of impropriety by one lawyer against another in the course of litigation should never be made except when relevant to the issues of the case.

22. A lawyer should not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. A lawyer, however, may advance, guarantee or acquiesce in the payment of:

(a) expenses reasonably incurred by a witness in attending or testifying;

(b) reasonable compensation to a witness for his lost time in attending or testifying;

(c) a reasonable fee for the professional services of an expert witness.

23. In appearing in his or her professional capacity before a tribunal, a lawyer should not:

(a) state or allude to any matter that he or she has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence;

(b) ask any question that he or she has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person ;

(c) assert one's personal knowledge of the facts in issue, except when testifying as a witness;

(d) assert one's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or

innocence of an accused; but may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

24. A question should not be interrupted by an objection unless the question is patently objectionable or there is reasonable ground to believe that matter is being included which cannot properly be disclosed to the jury.

25. A lawyer should address objections, requests and observations to the court and not engage in undignified or discourteous conduct which is degrading to court procedure.

26. Where a judge has already made a ruling in regard to the inadmissibility of certain evidence, a lawyer should not seek to circumvent the effect of that ruling and get the evidence before the jury by repeated questions relating to the evidence in question, although he is at liberty to make a record for later proceedings of his ground for urging the admissibility of the evidence in question. This does not preclude the evidence being properly admitted through other means.

27. A lawyer should not attempt to get before the jury evidence which is improper .

28. A lawyer should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, by fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience or the like.

29. A lawyer should never attempt to place before a tribunal, or jury, evidence ,:. known to be clearly inadmissible, nor make any remarks or statements which are
intended to improperly influence the outcome of any case.

30. A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.

31. Attorneys should not knowingly misstate, misrepresent or distort any fact or legal authority to the court or to opposing counsel and shall not mislead by inaction or silence. Further, if this occurs unintentionally and it later discover, it should immediately be disclosed or otherwise corrected.

XIII. CONTEMPT

DIRECT CONTEMPT PROCEDURES
(Checklist)

INDIRECT CONTEMPT PROCEDURES
(Checklist)

DIRECT CONTEMPT PROCEDURES
(Checklist)

(occurring within "presence" of judge)

Criminal

(To punish for offensive conduct against the court, its judgments, orders or process [Criminal Rule 3.830])

1. Initiated by order of the court which is based upon personal knowledge or upon motion directed to court; proceedings may be invoked forthwith upon occurrence of contemptuous conduct

2. Summary procedure is appropriate and written charges or affidavits are not necessary

3. Inform defendant of accusation

4. Inquire of defendant whether any cause can be shown why defendant should not be adjudged guilty of contempt and sentenced therefor

5. Allow defendant found guilty to present evidence of excuse or mitigating circumstances

6. Sentencing

a. must be pronounced in open court in presence of defendant
b. may be confinement, fine, or both
c. sentence based on non-jury verdict shall not exceed six months
d. confinement must be to county jail exclusively for fixed period not to exceed one year, Section 775.02, Florida Statutes
e. fine may not exceed $500.00, Section 775.02, Florida Statutes.

7. Judgment must

a. be in writing
b. be signed by judge
c. recite facts upon which findings are based

Civil

(To compel obedience to orders made by court for benefit of parties, or to preserve or enforce rights of parties)

1. Initiated by court or on motion of party or person having standing; proceedings may be invoked forthwith upon occurrence of contemptuous conduct

2. Summary procedure is appropriate

3. Inform respondent of accusation

4. Inquire of respondent whether cause can be shown why respondent should not be adjudged guilty of contempt and sentenced therefor

5. Sanctions
    a. may be confinement, fine or both
    b. sentence based on non-jury verdict shall not exceed six months
    c. confinement must be to county jail exclusively
    d. sentence of confinement should be for indefinite period
    e. sentence to confinement must contain a meaningful purge provision
    f. attorney's fees and costs may be assessed

6. Judgment must
    a. be in writing
    b. be signed by judge
    c. recite facts upon which findings are based
    d. specifically find the ability of respondent to comply with the order

INDIRECT CONTEMPT PROCEDURES
(Checklist)

(occurring outside the "presence" of judge)

Criminal

(To punish for offensive conduct against the court, its judgments, orders or process [Criminal Rule 3.830])

1. Initiated on order of the court which is based on affidavit of any person having knowledge of the facts

2. Order to show cause shall
   a. allege essential facts constituting the contempt
   b. direct defendant to appear and show cause why defendant should not be held in criminal contempt
   c. specify time and place of hearing, allowing reasonable time for preparation of defense

3. Defendant may file an answer, one of the following defensive pleadings, or do nothing, failure to plead is not an admission of guilt :
   a. motion to dismiss order to show cause
   b. motion for statement of particulars
   c. answer by denial, explanation, or defense

4. Court may order arrest of defendant if necessary to ensure appearance; defendant has right to bail

5. Arraignment on Order: at time of hearing or prior thereto upon request

6. Hearing on merits of order
   a. all issues of law and fact shall be tried by the judge
   b. judge may conduct hearing with or without assistance of prosecuting attorney or specially appointed attorney
   c. defendant's due process rights must be honored, including right to counsel, right to compulsory process, and right to testify or refuse to testify

7. Sentencing

a. inform defendant of charge and judgment and inquire of defendant whether any cause can be shown why sentence ought not be imposed

b. allow defendant to present evidence of excuse or mitigating circumstances
c. must be pronounced in open court in presence of defendant
d. may be confinement, fine, or both
e. sentence based on non-jury verdict shall not exceed six months
f. confinement to county jail exclusively for fixed period not to exceed one year Section 775.02, Florida Statutes

8. Judgment must
a. be in writing
b. be signed by judge
c. recite facts upon which findings are based; failure to do so may invalidate judgment

Civil

1. Initiated on motion of party or person with standing

2. Service of motion and notice of hearing
    a. must be made on respondent or his counsel
    b. motion must specify acts claimed to be contemptuous
    c. notice of hearing must specify time and place

3. Hearing on merits
    a. inform respondent of accusation
    b. initial burden of proof is on moving party
    c. one non-compliance with order is admitted or established, burden shifts to respondent to show excuse or inability to perform

4. Judgment must
    a. be in writing
    b. be signed by judge
    c. recite facts upon which findings are based
    d. specifically find the ability of respondent to comply with the order

5. Sanctions
    a. may be confinement, fine, or both
    b. sentence based on non-jury verdict shall not exceed six months
    c. confinement must be to county jail exclusively
    d. sentence of confinement should be indefinite period
    e. sentence to confinement must contain a meaningful purge provision
    f. attorney's fees and costs may be assessed

    b. allow defendant to present evidence of excuse or mitigating circumstances
    c. must be pronounced in open court in presence of defendant
    d. may be confinement, fine, or both
    e. sentence based on non-jury verdict shall not exceed six months
    f. confinement to county jail exclusively for fixed period not to exceed one year Section 775.02, Florida Statutes

8. Judgment must

a. be in writing
b. be signed by judge
c. recite facts upon which findings are based; failure to do so may invalidate judgment

XIV. FINAL ARGUMENT

FINAL ARGUMENT INSTRUCTION

BOTH THE PLAINTIFF AND THE DEFENDANT HAVE NOW RESTED THEIR CASE. THE LAWYERS NOW WILL PRESENT THEIR FINAL ARGUMENTS. PLEASE REMEMBER THAT WHAT THE LAWYERS SAY IS NOT EVIDENCE. HOWEVER, DO LISTEN CLOSELY TO THEIR ARGUMENTS AS THEY ARE INTENDED TO AID YOU IN UNDERSTANDING THE CASE. EACH SIDE WILL HAVE EQUAL TIME, BUT COUNSEL FOR THE PLAINTIFF IS ENTITLED TO DIVIDE THIS TIME BETWEEN AN OPENING ARGUMENT AND A REBUTTAL ARGUMENT AFTER COUNSEL FOR THE DEFENDANT HAS SPOKEN.

FINAL ARGUMENT INSTRUCTION
(Alternate)

THE ATTORNEYS WILL NOW HAVE AN OPPORTUNITY TO ADDRESS YOU AND MAKE THEIR FINAL ARGUMENTS. THE ARGUMENTS ARE NOT TO BE CONSIDERED BY YOU AS EITHER EVIDENCE IN THE CASE OR AS YOUR INSTRUCTION ON THE LAW. NEVERTHELESS, THESE ARGUMENTS ARE INTENDED TO HELP YOU PROPERLY UNDERSTAND THE ISSUES, THE EVIDENCE, AND THE APPLICABLE LAW, AND SO YOU SHOULD GIVE THEM YOUR CLOSE ATTENTION.

THE ATTORNEYS, IN MAKING THEIR ARGUMENT, WILL BE REFERRING TO THE TESTIMONY AS THEY RECALL IT. THEY WILL NOT KNOWINGLY MISSTATE THE TESTIMONY, BUT IF THEIR RECOLLECTION DIFFERS FROM YOURS, YOU SHOULD RELY UPON YOUR OWN RECOLLECTION OF THE TESTIMONY.

COUNSEL FOR THE PLAINTIFF WILL SPEAK FIRST, FOLLOWED BY COUNSEL FOR THE DEFENSE. COUNSEL FOR THE PLAINTIFF WILL THEN HAVE AN OPPORTUNITY TO ADDRESS YOU AGAIN TO REBUT THE ARGUMENTS OF THE DEFENSE. THE COURT HAS GIVEN THE

LAWYERS AN EQUAL AMOUNT OF TIME. THE TIME IS ADEQUATE, BUT IT IS LIMITED. THEREFORE, THE LAWYERS WILL BE ATTEMPTING TO MAKE THE BEST USE POSSIBLE OF IT AND WILL REQUIRE YOUR UNDIVIDED ATTENTION.

SENDING THE JURY TO DELIBERATE
(Dialogue)

(At the close of instructions, but before the jury retires, call counsel to the bench and inquire.)

HAS THE COURT GIVEN THE INSTRUCTIONS IT ADVISED COUNSEL IT WOULD GIVE?

ARE THERE ANY OBJECTIONS TO THE INSTRUCTIONS AS GIVEN BY THE COURT WHICH ARE NOT ALREADY OF RECORD?

THANK YOU, YOU MAY STEP BACK.

(To jury.)

AT THIS TIME, MR./MS. {alternate), IT IS THE DUTY OF THE COURT TO RELEASE YOU FROM FURTHER SERVICE ON THIS JURY. BECAUSE OF THE ORDER IN WHICH YOUR NAMES WERE DRAWN, YOU HAVE BEEN SEATED AS AN ALTERNATE JUROR. IT WAS NECESSARY THAT WE HAVE YOU SERVE IN CASE ONE OF THE OTHER JURORS WAS UNABLE TO COMPLETE HIS SERVICE. FORTUNATELY, THEY HAVE ALL BEEN ABLE TO COMPLETE THE TRIAL, AND IT WILL NOT BE NECESSARY FOR YOU TO SERVE WITH US ANY LONGER. ALTHOUGH I CANNOT LET YOU GO INTO THE JURY ROOM WITH THE JURY, YOU ARE WELCOME TO REMAIN HERE IN THE COURTROOM, IF YOU

WISH, TO HEAR THE VERDICT. IF NOT, YOU MAY RETURN TO THE JURY POOL ROOM AND TELL THE DEPUTY CLERK YOU HAVE BEEN RELEASED. ON BEHALF OF ALL OF US, I THANK YOU FOR YOUR SERVICE.

THE DEPUTY CLERK WILL BE SURE THAT ALL OF THE ITEMS IN EVIDENCE ARE TOGETHER ALONG WITH THE VERDICT FORM AND THE BAILIFF WILL DELIVER THOSE TO THE JURY ROOM AS SOON AS THEY ARE ASSEMBLED.

AS SOON AS THE VERDICT FORM IS SIGNED, KNOCK ON THE DOOR AND ADVISE THE BAILIFF THAT YOU HAVE A VERDICT. HE WILL SEE TO IT THAT ALL COURT PERSONNEL ARE PRESENT BEFORE HE RETURNS YOU TO THE COURTROOM.

THE JURY MAY NOW RETIRE TO DELIBERATE.

(After the jury retires.)

ARE THERE ANY OTHER MATTERS WHICH REQUIRE OUR ATTENTION AT THIS TIME? IF NOT, WE WILL STAND IN RECESS AND AWAIT THE CALL OF THE JURY.

IMPROPER ARGUMENT
(Quick Reference)

Rules Regulating the Florida Bar - Rule 4-3.4

(e) A lawyer shall not: in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of fact in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused.

Courts have ruled that it is improper for a lawyer to argue the following:

A. **Sympathy for a party**

1. verdict should in some part be motivated by effect a finding of liability might have on doctor's professional reputation. Klose v. Choy, 673 So.2d 81D21 FLW (Fla. 4th DCA 1996).

2. plaintiffs lack of ability to compete monetarily with defendant. Pierce v. Smith, 301 So.2d 805 (Fla. 2d DCA 1974).

3. the financial burden a verdict for the plaintiff would have on the defendant. Padrine v. Resnick, 615 So. 2d 698 (Fla. 3d DCA 1992).

4. economic impact of verdict on a defendant. Hickling v. Moore, 529 So. 2d 1270 (Fla. 4th DCA 1983).

5. "the new American dream." Fowler v. N. Goldring Corp., 582 So. 2d 802 (Fla. 1st DCA 1991).

B. **Prejudice against a party**

1. “you are going to say. ‘Borden you know with all your resources and all of your assets and everything that you got - you have tried to destroy this family, you have put resources behind him in cases that are slightly unreal. They have done things that you can't possibly imagine and Eddie is supposed to be able to go in and counteract this type of resources. It's absolutely and totally impossible.’ " Borden. Inc. v. Young, 479 So. 2d 850 (Fla. 3d DCA 1985).

2. The railroad hired "not one, but three brilliant lawyers...to try to keep from paying any money." Railroad had complete disregard for human life in its pursuit of the almighty dollar. Tyus v. Apalachicola Northern Railroad, 130 So. 2d 580 (Fla. S.Ct. 1961).

3. comparing the defendant to "some nickel and dime carnival" throwing "pixie dust" to delude the jurors. Walt Disney World Co. v. Blalock, 640 So.2d 1156 (Fla. 5th DCA 1994).

4. defendants are despicable and they and their lawyers are liars. Kendall Skating Center v. Martin, 448 So. 2d 1137 (Fla. 3d DCA 1984).

5. Corporate America. You know, the folks that brought you the gas tank that explodes, and agent orange and silicone breast implants. Bellsouth Human Resources Administration. Inc. v. Colatarci, 641 So. 2d 427 (Fla. 4th DCA 1994).

C. Prejudice against opposing counsel

1. referring to attorney as "the man from Tampa" who was playing "hide-the-ball" and objected to every item of evidence. Rvan v. State, 457 So.2d 1084 (Fla. 4th DCA 1984).

2. counsel for the defendant "lied to the jury" and "committed a fraud." Sun Supermarkets. Inc. v. Fields, 568 So. 2d 480 (Fla. 3d DCA 1990).

3. accusing opposing counsel of "fraud," hiding evidence, putting up roadblocks to the discovery of evidence to be produced in response to discovery demands. Emerson Electric Co. v. Garcia, 623 So. 2d 523 (Fla. 3d DCA 1993).

4. "Remember as you sit in the jury room that [plaintiffs attorney] wants to try to keep these pictures out" - (photos had been objected to). Sanchez v. Benagchea, 573 So. 2d 992 (Fla. 3d DCA 1991).

5. plaintiffs attorneys routinely ask eight to ten times what a case is worth. Laberge v. Vancleave, 534 So. 2d 1176 (Fla. 5th DCA 1988).

6. the defense attorney was there to tell the jury the truth and the plaintiffs attorney would do anything to advance his cause. Schubert v. Allstate Insurance Co., 603 So. 2d 554 (Fla. 5th DCA 1992).

7. all claimant's lawyers ask for more than they expect to receive (or defense lawyers always claim their clients are innocent or the damages are minor.) Hartford Accident and Indemnity Co. v. Ocha, 472 So. 2d 1338 (Fla. 4th DCA 1985).

8. speaking objections during defendant's closing - claiming that defense counsel's arguments were a complete fabrication and a total misrepresentation of the evidence. Owens Corning Fiberglas Corp. v. Naomi Crane, 683 So.2d 552 (Fla. 3rd DCA 1996).

D. Unfounded attacks on credibility of party/witness (or bolstering credibility)

1. chiropractors are more ready to give permanent impairment ratings than other physicians. Silva v. Nightingale, 619 So. 2d 4 (Fla. 5th DCA 1993).

2. plaintiffs doctor found permanent injury "as he usually does." Schubert v. Allstate Insurance Co., 603 So. 2d 554 (Fla. 5th DCA 1992).

3. defendants are "liars." Pier 66 v. Poulos, 542 So.2d 377, (Fla. 4th DCA 1989).

4. medical expert "nothing more than an unqualified doctor who prostitutes himself for the benefit of lawyers" giving "magic testimony" because of "special relationship" with lawyer that allowed lawyer to present "a work of fiction." Venning v. Roe, 616 So. 2d 604 (Fla. 2d DCA 1993).

5. the plaintiffs injury is "lawsuit pain", plaintiff is perpetuating a fraud on court. George v. Mann, 622 So. 2d 151 (Fla. 3d DCA 1993).

6. suggestions of perjury and collusion on the part of parties or witness (without evidence). Griffith v. Shamrock Village Inc., 94 So. 2d584 (Fla 1957), State v. Castillo, 486 So. 2d 565 (Fla 1986), Venning v. Roe, 616 So. 2d
604 (Fla. 2d DCA 1993).

7. call witness a liar (with no factual basis). Kaas v. Atlas Chemical Co., 623 So. 2d 525 (Fla. 3d DCA 1993), King v. National Security Fire andCasualty Co.; 656 So. 2d 1338 (Fla. 4th DCA 1995).

8. *but,* okay to call party a liar if there is ample evidentiary basis to dispute credibility. Forman v. Wallshein, 671 So.872 (Fla. 3d DCA 1996), Brown v. State, 678 So.2d 910 (4th DCA 1996).

9. police officer was "not the type of man to come" into a courtroom and violate a "sacred oath." Cisneros v. State of Florida, 678 So,2d 888(Fla. 4th DCA 1996).

E. Golden Rule

1. jury should place themselves in plaintiffs position and award an amount of money they would desire if they had been the victims. Gables Hospital Inc. v. Zabala, 520 So. 2d 653 (Fla. 3d DCA 1988), Magid v. Mozo, 135 So.2d 772 (Fla. 1st DCA 1962).

2. jurors should imagine the injured party's anguish and frustration. Cohen v. Pollack, 674 So.805 (Fla. 3d DCA 1996).

3. "If the shoe is on the other food, would you wear it?" National Car Re!Jtal Svstem v. Bostic, 423 So. 2d 915 (Fla. 3d DCA 1982).

4. "Now, I ask you, if you had been the unfortunate person who had slid into the rear-end of that car, how would you want to be judged" All I ask you to do is bring back your verdict as you would want some jury to bring back a verdict for you." Miku v. Olmen, 193 So. 2nd 17 (Fla. 4th DCA 1966), cert. denied, 201 So. 2d 232 (Fla. 1967). *(but see)* Cleveland Clinic Florida v.Wilson 685 So.2d 15 (Fla. 4th DCA 1996) harmless error

5. (in nuisance suit) - "envision yourselves pulling rats out of your pools, bails of pine straw starting fires in your yard, and thousands of mosquitos and other vermin flying in your neighborhood." Tremblay v. Santa Rosa County 688 So. 2d 985 (Fla. 1st DCA 1997).

F. **Attorney's opinion**

1. attorney's personal belief in the justness of the cause, the credibility of witnesses or his personal knowledge of the facts in issue. Hillson v. Deeson, 383 So. 2d 732 (Fla. 3d DCA 1980).

2. personal belief in his client or in the justice of the client's cause. Miami Coin-O-Wash. Inc. v. McGough, 195 So. 2d 227 (Fla. 5th DCA 1980), Albertson's v. Brady, 475 So. 2d 986 (Fla. 2d DCA 1989), Sequin v. Hauser Motor Company, 350 So.2d 1089 (Fla 4th DCA 1977).

3. attorney's personal feelings as to how events really happened and the veracity of witnesses. Riley v. Willis, 585 So. 2d 1024 (Fla. 5th DCA 1991).

4. personal opinion - hospitals decision "the most ridiculous decision that anybody has ever made in history." Baptist Hospital Inc. v. Rawson, 674 So.2d 777 (Fla. 1st DCA 1996).

5. defense's theory of fault was "ridiculous", defendant presented testimony that was "ridiculous" and truck driver did an exceptional job in avoiding fatalities. Sacred Heart Hosoital of Pensacola v. Stone, 650 So. 2d 676 (Fla. 1 DCA 1995).

G. Facts outside record

1. suggesting driver has or has not been charged with a traffic violation. Moore v. Tavlor Concrete & Supplv Company. Inc., 553 So. 2d 787 (Fla. 1st DCA 1989).

2. say that his client was not charged with causing the auto accident (When he was, and an order in limine had entered). Elsass v. Hankey, 662 So. 2d 392 (Fla. 5th DCA 1995).

3. the plaintiffs mother is so attractive that he will inevitably have a new

father at sometime in the future. Tito v. Potashnick, 488 So. 2d 100 (Fla. 4th DCA 1986).

4. defendant would have apologized for being at fault except "his lawyers are keeping him from it." Riley v. Wills, 585 So. 2d 1024 (Fla. 5th DCA 1991)

5. "walking out of court yesterday, Billy [plaintiff] wants to know what are they going to do to Mr. Wiggins [defense expert]. For what? Well, he didn't tell the truth." Sacreded Heart Hospital of Pensacola v. Stone, 650 So. 2d 676 (Fla. 1 DCA 1995).

6. testifying (in guise of argument) as to the substance of telephone conversation attorney had with opponent's expert witness. Block v. Addis, 493 So. 2d 539 (Fla. 3d DCA 1986).

7. any statement which will reflect the amount of the insured's policy limit. Auto-Owners Insurance Co. v. Denberry, 383 So. 2d 1109 (Fla. 1st DCA 1980).

8. challenge an opponent to explain matters in closing argument which are outside the evidence and the issues. Riggins v. Mariner Boat Works. Inc, 545 So. 2d 430 (Fla. 2d DCA 1989).

9. "not to worry whether the defendant will contribute a dime of money" (as reference to insurance). Nicaise v. Gagnon, 597 So. 2d 305 (Fla. 4th DCA 1992).

10. to suggest insurance coverage is available to pay the judgment. Stecher v. Pomeroy, 253 So. 2d 421 (Fla. 1971), Peppe v. Clos, 307 So. 2d 886 (Fla. 3d DCA 1975).

11. "challenged" plaintiff's attorney to explain in his closing why he used depositions of 3 eye witnesses and didn't bring witnesses to the trial so that they could be subjected to cross examination. Riggins v. Mariner Boat Works. Inc., 545 So. 2d 430 (Fla. 2d DCA 1989).

12. place a monetary value on the life of the decedent just as a monetary value is placed on an $18 million Boeing 747 or an $8 million SCUD missile. Public Health Trust of Dade Countv v. Geter, 613 So. 2d 126 (Fla.

3d DCA 1993).

13. comment on exluded evidence. Maercks v. Birchansky, 549 So. 2d 199 (Fla. 3d DCA 1989).

14. comment on what a missing witness would have said. Carnival Cruise Lines v. Rosalia, 546 So. 2d 736 (Fla. 3d DCA 1984).

15. future medical treatment will be free at the V.A. hospital. Goff v. 392208 Ontario. Ltd., 539 So. 2d 1158 (Fla. 3rd DCA 1989).

H. Effect on the community

1. a verdict for plaintiff would bring an immediate halt to hog hunting in Okeechobee. Norman v. Gloria Farms. Inc., 668 So. 2d 1016 (Fla. 4th DCA 1996).

2. the opportunity that you have is to speak with a voice so loud and so strong and so firm that it will be heard from here to Miami. S. H. Inv. and Development Corp. v. Kincaid, 495 So. 2d 768 (Fla. 5th DCA 1986).

3. "if you let them get away with irresponsible medicine, then you breed irresponsible medicine." Baptist Hospital v. Rawson, 674 So.2d 777 (Fla. 1st DCA 1996).

4. as the, "conscience of the community" - "send a message" with this verdict. Maercks v. Birchansky, 549 So.2d 199 (Fla. 3rd DCA 1989).

5. you are "the conscience of the community" (without an invitation to punish the defendant). Florida Crushed Stone v. Johnson, 546 So.2d 1102 (Fla. 5th DCA 1989), Superior Industries International. Inc. v. Faulk, 695 So.2d 376 (Fla. 5th DCA 1997) rev. denied 700 So. 685 (Fla. 1997).

6. "...its going to happen to other people. You've got to stop it [medical malpractice] right here and now." Brumage v. Plummer, 502 So. 2d 966 (Fla. 3d DCA 1987).

7. suggesting that bringing frivolous lawsuits is one of the major ills of society. Bell South Human Resources Administration. Inc. v. Colatarc, 19 FLW D1637.

8. "it is absolutely ridiculous. This is why we're here. This is why our courtrooms are crowded and this is why we read articles in the newspaper, because of things like that." Stokes v. Wet 'N Wild. Inc., 523 So. 2d 181 (Fla. 5th DCA 1988).

9. raised the "insurance crisis". Davidoff v. Segert, 551 So. 2d 1274 (Fla. 4th DCA 1989).

10. discuss the relationship between verdicts in auto collision cases and rising insurance premiums. Russell v. Guider, 362 So. 2d 55 (Fla. 4th DCA 1978).

11. the plaintiff and family would become public charges unless a verdict favorable to the plaintiff is returned. Rogers v. Meyers, 240 So. 2d 516 (Fla. 5th DCA 1970).

12. make an example of expert witness by returning verdict against side calling him. Block v. Addis, 493 So. 2d 539 (Fla. 3d DCA 1986).

13. if the jury should find the defendant's defenses not credible, it should deal "very, very harshly" with defendants. Sacred Heart HosPital of Pensacola v. Stone, 650 So. 2d 676 (Fla. 1 DCA 1995).

14. "I want you to send a message to Erie, Pennsylvania." Erie Insurance Company v. Busby, 394 So. 2d 228 (Fla. 5th DCA 1981).

I. Pretrial or post trial procedures

1. don't worry about the amount of damages because if the award is too high, the court can reduce it through remittitur . City Provisioners v. Anderson, 578 So. 2d 855 (Fla. 5th DCA 1991).

2. if the jury makes a mistake in the verdict some other court will correct it. Blackwell v. State, 79 So. 731 (Fla. 1918).

3. defendant should got have defended against action put should have put $6 million on the table to settle. Fayden v. Guerrero, 474 So. 2d 320, (Fla. 3d DCA 1985).

4. opposing counsel hid evidence and put up roadblocks to the discovery of evidence in response to discovery demands. Emerson Electric Co. v. Garcia, 623 So.2d 523 (Fla. 3d DCA 1993).

J. Highly emotional argument

1. (on issue of damages) "I know last night I did not sleep. I know that last night was probably the first time in a long time that I told my wife that I loved her. I know that I was in fear last night, not fear of dying but fear of living if someone I loved died." Metropolitan Dade County v. Cifuentes, 473 So. 2d 297 (Fla. 3rd DCA 1985).

2. comparing plaintiff's experience to - "having his son brought before him and seeing him shot to death" - (when immaterial to the issues of the lawsuit). Eastern Steamship Lines. Inc. v. Martial, 380 So. 2d 1070 (Fla. 3d DCA 1970.)

K. Currying favor with jury

1. calling jurors by their first names. Cummings Alabama v. Allbritton, 548 So. 2d 258 (Fla. 1st DCA 1989).

2. telling jurors that he "liked the jury when he picked them and...continued to like them." Kelly v. Mutnich, 481 So. 2d 999, (Fla. DCA 1986).

XV. JURY INSTRUCTIONS

WRITTEN JURY INSTRUCTIONS
(Monologue)

TO ASSIST YOU IN FOLLOWING THE LAW AS I INSTRUCT YOU, THE INSTRUCTIONS HAVE BEEN REDUCED TO WRITING. WE HAVE A COPY OF THE WRITTEN INSTRUCTIONS FOR EACH OF YOU. ALSO, YOU MAY TAKE THESE INSTRUCTIONS WITH YOU TO THE JURY ROOM FOR USE DURING YOUR DELIBERATIONS. AFTER YOU DELIBERATE AND RETURN YOUR VERDICT, I WILL NEED ALL 6 (12) OF YOUR JURY INSTRUCTION PACKETS BACK.

.

SENDING JURY TO DELIBERATE
(Monologue)

(At close of instructions, but before jury retires, call counsel to the bench and inquire.)

HAS THE COURT OMITTED ANY INSTRUCTIONS THAT THE COURT ADVISED COUNSEL IN THE INSTRUCTION CONFERENCE IT WOULD GIVE IN THIS CASE?

ARE THERE ANY OBJECTIONS TO THE INSTRUCTIONS AS GIVEN BY THE COURT?

(To jury)

WHEN YOU HAVE REACHED A VERDICT, KNOCK ON THE DOOR AND INFORM THE BAILIFF.

YOU MAY RETIRE NOW TO DELIBERATE YOUR VERDICT.

INSTRUCTIONS TO JURY

(Civil Rule 1.470(b) excerpt)

….. The court shall orally charge the jury after the arguments are completed and, when practicable, shall furnish a copy of its charges to the jury.

SUMMING UP AND COMMENT BY JUDGE
(Florida Statutes 90.106)

A judge may not sum up the evidence or comment to the jury upon the weight of the evidence, the credibility of the witnesses, or the guilt of the accused.

XVI. JURY DELIBERATIONS

JURY QUESTIONS
(Quick Reference)

JURY DEADLOCKED INSTRUCTION
(Civil Instruction 7.3)

UNANIMOUS VERDICT NOT POSSIBLE
(Monologue)

JURY QUESTIONS
(Quick Reference)

A jury has a right to ask questions calculated to shed light on the controversy or which will assist the jury in arriving at a just result. Sutton v. State, 515 So. 2d 725, (Fla. 1951).

When a question from a deliberating jury indicates its confusion about the law, a trial court abuses its discretion when its response fails to ameliorate the confusion. Morgan Int'l Realty. Inc. v. Dade Underwriter's Ins. Ageny. Inc., 571 So. 2d 52, (Fla. 3d DCA 1990).

If the court responds to a jury question in an unrecorded ex parte communication without providing the parties an opportunity to be heard on the suggested response, prejudice is presumed and the burden is on the party seeking to uphold the jury's verdict to demonstrate the ex parte communication was actually harmless. Hatin v. Mitjans, 578 So. 2d 289, (Fla. 3d DCA 1991). Ex parte communication between the court and a deliberating jury or between the bailiff and a deliberating jury are strongly disapproved. Sears Roebuck & Co. v. Polchinski, 636 So. 2d 1369, (Fla. 4th DCA 1994), Blender v. Malecki, 606 So. 2d 498, (Fla. 4th DCA 1992).

If a jury question is responded to by sending the jury a written copy of one of the instructions previously read by the court, all of the instructions must be sent in the same form. All Bank Repos. Inc. v. Underwriters of Llovds of London, 582 So. 2d 692, (Fla. 4th DCA 1991).

JURY DEADLOCKED INSTRUCTION
(Civil Instruction 7.3)

MEMBERS OF THE JURY, IT IS YOUR DUTY TO AGREE ON [A VERDICT] [VERDICTS] IF YOU CAN DO SO WITHOUT VIOLATING CONSCIENTIOUSLY HELD CONVICTIONS THAT ARE BASED ON THE EVIDENCE. NO JUROR, FROM MERE PRIDE OF OPINION HASTILY FORMED OR EXPRESSED, SHOULD REFUSE TO AGREE. YET, NO JUROR, SIMPLY FOR THE PURPOSE OF TERMINATING THE CASE, SHOULD ACQUIESCE IN A CONCLUSION THAT IS CONTRARY TO HIS OWN CONSCIENTIOUSLY HELD VIEW OF THE EVIDENCE. YOU SHOULD LISTEN TO EACH OTHER'S VIEWS, TALK OVER YOUR DIFFERENCES OF OPINION IN A SPIRIT OF FAIRNESS AND CANDOR AND, IF POSSIBLE, RESOLVE YOUR DIFFERENCES AND COME TO A COMMON CONCLUSION, SO THAT [A VERDICT] [VERDICTS] MAY BE REACHED AND THIS CASE MAY BE DISPOSED OF.

YOU MAY RETIRE TO THE JURY ROOM FOR FURTHER DELIBERATIONS.

UNANIMOUS VERDICT NOT POSSIBLE
(Monologue)

IT BEING APPARENT THAT YOU ARE UNABLE TO REACH A VERDICT, THIS COURT HAS NO ALTERNATIVE BUT TO DECLARE A MISTRIAL OF THIS CAUSE.

THIS CASE SHALL BE RESET FOR TRIAL BY WRITTEN ORDER OF THE COURT.

XVII. RECEIVING THE VERDICT

RECEIVING THE VERDICT

(Dialogue)

HAS THE JURY SELECTED A FOREMAN (FOREPERSON)?

MR./MS._____ ,HAS THE JURY REACHED VERDICT?

PLEASE HAND YOUR VERDICT TO THE BAILIFF.

(Examine verdict - if no obvious problems exist, hand to deputy clerk. If problems appear, call counsel to the bench.)

MADAM (MR.) CLERK, PLEASE PUBLISH THE VERDICT.

(After verdict published.)

DOES COUNSEL FOR EITHER PARTY WISH TO HAVE THE JURY POLLED?

POLLING THE JURY
(Monologue)

LADIES AND GENTLEMEN, AT THIS TIME THE DEPUTY CLERK WILL POLL THE JURY. THAT SIMPLY MEANS SHE WILL ASK EACH OF YOU INDIVIDUALLY IF THE VERDICT SHE/HE HAS READ IS YOUR VERDICT. IF IT IS, YOU NEED ONLY ANSWER "YES", IF IT IS NOT, OF COURSE, YOU SHOULD ANSWER "NO."

MADAM (MR.) CLERK, PLEASE POLL THE JURY.

[NOTE: If one juror answers "NO", stop the polling at once and direct the jury to continue their deliberations. (But see) Horvath v. Anderson, Parks and Sherouse, P.A., 728 So.2d 315 (Fla. 3rd DCA 1999).]

POLLED JUROR ANSWERS IN THE NEGATIVE

(Quick Reference)

If one juror answers "NO" stop the polling at once and direct the jury to continue their deliberations. Horvath v. Anderson, Moss, Parks & Sherouse, P.A., (3rd DCA 1999), 24 Fla. L. Weekly D5096.

There appears to be no approved standard instruction for this situation but giving a definition of "unanimous verdict" has been sustained. Alicot v. Dade County, 132 So.2d 302 (Fla. 3rd DCA 1961). Some modified version of the Jury Deadlocked instruction would probably be approved

XVIII. DISCHARGE OF JURY

INSTRUCTION ON DISCHARGE
(Criminal Instruction 3.07)

RELEASE OF JURY
(Monologue)

COURT NOT TO COMMENT ON VERDICT
(Canon 3(10))

INSTRUCTION UPON DISCHARGE OF JURY

(Criminal Instruction 3.07)

LADIES AND GENTLEMEN, I WISH TO THANK YOU FOR YOUR TIME AND CONSIDERATION OF THIS CASE.

I ALSO WISH TO ADVISE YOU OF SOME VERY SPECIAL PRIVILEGES ENJOYED BY JURORS.

NO JUROR CAN EVER BE REQUIRED TO TALK ABOUT THE DISCUSSIONS THAT OCCURRED IN THE JURY ROOM, EXCEPT BY COURT ORDER. FOR MANY CENTURIES, OUR SOCIETY HAS RELIED UPON JURIES FOR CONSIDERATION OF DIFFICULT CASES. WE HAVE RECOGNIZED FOR HUNDREDS OF YEARS THAT A JURY'S DELIBERATIONS, DISCUSSIONS AND VOTES SHOULD REMAIN THEIR PRIVATE AFFAIR AS LONG AS THEY WISH IT. THEREFORE, THE LAW GIVES YOU A UNIQUE PRIVILEGE NOT TO SPEAK ABOUT THE JURY'S WORK.

ALTHOUGH YOU ARE AT LIBERTY TO SPEAK WITH ANYONE ABOUT YOUR DELIBERATIONS IF YOU WISH, YOU ARE ALSO AT LIBERTY TO REFUSE TO SPEAK TO ANYONE. A REQUEST MAY COME FROM THOSE WHO ARE SIMPLY CURIOUS, OR FROM THOSE WHO

MIGHT SEEK TO FIND FAULT WITH YOU. IT WILL BE UP TO YOU TO DECIDE WHETHER TO PRESERVE YOUR PRIVACY AS A JUROR.

RELEASE OF JURY

(Monologue)

ON BEHALF OF THE STATE OF FLORIDA, THE CITIZENS OF THIS COUNTY, THE PARTIES IN THIS CASE, THE ATTORNEYS, AND MYSELF, I THANK YOU FOR YOUR SERVICE IN THIS CASE. FOR OUR LEGAL SYSTEM TO WORK, IT IS ESSENTIAL THAT CITIZENS SUCH AS YOU BE WILLING TO SACRIFICE THEIR TIME AND PERFORM THE SERVICE YOU HAVE JUST RENDERED. I HOPE YOU HAVE NOT FOUND THIS DUTY TO BE BURDENSOME OR UNPLEASANT AND THAT YOU WILL BE WILLING TO SERVE AGAIN IF THE CALL COMES.

AT THIS TIME I AM GOING TO RELEASE YOU. YOU DO NEED TO RETURN TO THE JURY POOL ROOM AND ADVISE THE CLERK THAT YOU HAVE COMPLETED YOUR SERVICE IN THIS TRIAL.

AGAIN, THANK YOU. YOU MAY STEP DOWN.

COURT NOT TO COMMENT ON VERDICT
(Canon 3(10))

A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

XIX. CLOSE OF COURT

ENTERING JUDGMENT
(Dialogue)

ADJOURNMENT
(Monologue)

ENTERING JUDGMENT
(Dialogue)

ARE THERE ANY OTHER MATTERS WHICH NEED TO BE DETERMINED BEFORE JUDGMENT IS ENTERED?

(If not.)

COUNSEL FOR (prevailing party) SHOULD PREPARE A JUDGMENT BASED ON THE VERDICT AND FORWARD IT TO THE COURT WITH A COPY TO OPPOSING COUNSEL.

(If yes.)

YOU MAY SET THOSE MATTERS ON THE COURT'S CALENDAR.

ADJOURNMENT
(Monologue)

IS THERE ANY OTHER BUSINESS TO COME BEFORE THE COURT AT THIS TIME?

IF NOT, THIS COURT WILL BE IN RECESS UNTIL FURTHER ORDER.

APPENDIX

OATHS

OATH TO PROSPECTIVE JURORS

DO YOU SOLEMNLY SWEAR TO TRUTHFULLY ANSWER ALL QUESTIONS PUT TO YOU TOUCHING ON YOUR QUALIFICATIONS TO SERVE ON THE JURY IN THE CASE OF:

_____
(PLAINTIFF)

v.

_____
(DEFENDANT)

CASE NUMBER_____ ?

(Give the complete style of the case the first time the oath is given. For jurors who replace those that were challenged, the style may be abbreviated.)

OATH TO JURY

DO YOU AND EACH OF YOU SOLEMNLY SWEAR THAT YOU WILL WELL AND TRULY TRY THE ISSUE WHEREIN _____ IS (ARE) PLAINTIFF(S) AND _____ IS (ARE) DEFENDANT(S) AND GIVE A VERDICT ACCORDING TO THE LAW AND THE EVIDENCE?

OATH TO JURY IN EMINENT DOMAIN

(Condemnation)

DO YOU AND EACH OF YOU SOLEMNLY SWEAR THAT YOU WILL WELL AND TRULY TRY THIS ISSUE WHEREIN _____ IS PETITIONER AND _____ AND OTHERS ARE DEFENDANTS AND WILL DETERMINE WHAT COMPENSATION SHALL BE MADE TO THE DEFENDANTS FOR THE PROPERTY WHICH HAS BEEN APPROPRIATED, WHICH AMOUNT SHALL BE A FULL COMPENSATION THEREFORE OF CONDEMNATION, OR APPROPRIATION?

WITNESS OATH

DO YOU SWEAR OR AFFIRM THAT THE EVIDENCE YOU ARE ABOUT TO GIVE WILL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?

OATH TO INTERPRETER

DO YOU SOLEMNLY SWEAR THAT YOU SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE AND THE _____LANGUAGE, AND THAT YOU WILL INTERPRET TRULY, FAITHFULLY AND FULLY ALL OF THE MATTERS AND THINGS WHICH MAY BE STATED TO THE (PLAINTIFF, DEFENDANT, WITNESS) AND ALL OF THE MATTERS AND THINGS WHICH MAY BE STATED BY THE (PLAINTIFF, DEFENDANT, WITNESS) IN RESPONSE THERETO IN THE MATTER NOW PENDING BEFORE THIS COURT?

OATH TO COURT REPORTER

DO YOU SOLEMNLY SWEAR THAT YOU WILL MAKE A TRUE AND ACCURATE RECORD OF ALL PROCEEDINGS AND TESTIMONY IN THIS CASE, TRANSCRIBE INTO WRITING SUCH RECORD, IF NECESSARY, AND OTHERWISE PERFORM THE DUTIES OF A COURT REPORTER AS REQUIRED BY LAW?

Divider Labels

Meeting with Counsel

Greeting Jury

Voir Dire

Preliminary Instructions

Opening Statements

Special Instructions

Witnesses

Evidence

Discovery Violations

Trial Motions

Charge Conference

Attorney Conduct

Final Argument

Jury Instructions

Jury Deliberations

Receiving the Verdict

Discharge of Jury

Close of Court

Oaths