



THE JURY CHARGE CONFERENCE: TIPS FOR TRIAL COUNSEL

by Cristina Alonso, B.C.S.
Board Certified in Appellate Practice
Alonso | Appeals

Jury instructions and the verdict form are the keys a jury needs to unlock the proper analysis of the evidence and argument at trial, rendering the jury charge conference a critical aspect of any successful trial strategy.

With that in mind, it is critical to ensure the jury charge conference is transcribed. If you conference with counsel for other parties in an informal effort to reach agreement on instructions, go on the record thereafter to memorialize all of the objections and agreements. If there are other parties with aligned positions on legal issues, you may want to join in their objections or requested instructions.

Be as detailed as possible at the change conference with any objections to other parties' or the court's proposed instructions. Written objections are a best practice, as objections are hard to make on the fly. But even a general oral objection – "confusing, incomplete" – is better than nothing.



CHRISTINA ALONSO

If an objected-to instruction is altered in an attempt to "cure" an objection, don't just acquiesce – either by silence or affirmative agreement – unless it clearly does cure the objection. Expressly stand by your objection or risk waiving it. *See Beatty v. Michael Bus. Mach. Corp.*, 172 F.3d 117, 121 (1st Cir. 1999) ("Silence after jury instructions 'typically constitutes a waiver

of any objections' for purposes of appeal."). Some potential objections include:

- the instruction fails to provide the relevant criteria for the jury's determination of the issue; *Bollenbach v. U.S.*, 326 U.S. 607, 612 (1946) (jury should be given "the required guidance by a lucid statement of the relevant criteria");
- the instruction assumes the answer to an issue of fact and thereby takes the issue away from the jury; *U.S. v. Adamson*, 665

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MESSAGE FROM THE CHAIR

by Jennifer Kuyrkendall Griffin
2018-2019 Solo & Small Firm Chair

I am proud to report that our section membership has exceeded the membership in the last five years. The Section is constantly evolving to meet the needs of the more than sixty percent¹ of Florida Bar members who identify themselves as a solo or small-firm practitioner. Since the section is not tied to any substantive area of law, we are uniquely qualified to help the largest segment of The Florida Bar – solo and small firm-practitioners. The following demonstrates how the section has adapted to meet the needs of its members:

CLE. Respondents who indicated that they prefer 24/7, on-demand CLE increased from forty-six percent in the 2015 Florida Bar Membership Opinion Survey to sixty-three percent in the 2017 survey.² In response, the Solo & Small Firm Section increased its number of audio webcasts so participants can listen to the CLEs live or stream them on-demand.

The Solo & Small Firm Section started its new Wednesday Wisdom program during the 2018-19 Bar year. Each month, the Section hosts a free Zoom webinar in which our members



JENNIFER KUYRKENDALL GRIFFIN

can network with other members throughout the state, ask questions and get answers on various topics of interest. Webinars have included How to Use a Virtual Assistant, Apps to Boost Productivity and Perils of Judicial and Attorney Disqualifications: How to Spot Conflicts of Interest. To accommodate schedules, the Wednesday Wisdom series is available live on the fourth Wednesday of the month or may be viewed on-demand in our members only Facebook group. As another example of how the Section evolves to meet membership needs,

Wednesday Wisdom attendees asked if they could obtain CLE credit for the programs. While that was not the initial intent, our Section heard the request and answered – we are now obtaining CLE credit for the Wednesday Wisdom series and the series will remain free to section members.

While the method of delivery of CLE has changed over the years, one cannot overlook the need to still offer in-person CLE programming. That is something that the Solo & Small Firm Section delivers to our membership. Every year, the Section hosts a technology/practice management CLE during the Winter Meeting of The Florida Bar. The Section also hosts the Annual Ethics Update every year at The Florida Bar Annual Convention. Every other year, the Section hosts an Agricultural Law CLE.

Publications and Social Media. Communication with members is key. The Section maintains traditional methods of communication through the publication of The Link magazine, which is published three times a year.³ Articles range from substantive

See "Chair's Message," next page

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CHAIR'S MESSAGE

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legal topics and practice management to marketing to anything that is pertinent for the practice of a solo or small firm practitioner. The Section further communicates with members through publication of the QuickLink, which is a bi-weekly e-mail publication.⁴ The QuickLink is intended to convey information in a *quick* manner. The Section member can quickly scan the publication for the headlines and then only click to read the full articles that are relevant to the individual. The QuickLink is our most effective tool in publishing upcoming events.

The section also maintains active profiles on Facebook, Twitter and LinkedIn to meet our goals of providing timely information and networking vehicles for our membership.

Pro Bono. The Solo & Small Firm Section also recognizes the importance in promoting Pro Bono work. Each year, the Section awards \$8,000.00 in grants to state legal aid societies as part of the L. Michael Roffino Pro Bono Awards program. The winner receives \$4,000.00 and two finalists each receive \$2,000.00.

Awards. The Section annually honors outstanding members of the legal community. The Tradition of

Excellence Award honors one lawyer for exceptional contributions to, or an exemplary career in general, solo and/or small firm practice, and is reserved for a lawyer who has practiced law in Florida for at least 10 years. The Walter S. Crumbley award honors one lawyer who has made a significant contribution to practice management in the State of Florida. The Mentor of the Year Award recognizes an outstanding Florida-licensed attorney who has shown remarkable achievements and professionalism in mentorship to younger attorneys and/or law students in Florida. The Section also honors a Paralegal of the Year. Nominations for each category are accepted each spring.

Committees. Solo practitioner respondents in the 2017 Membership Opinion Survey also rated high stress, lack of business and balancing family and work as the top three most significant challenges/concerns personally faced.⁵ To address this, the Section developed a Health and Wellness Committee during the 2018-19 Bar year. The committee strives to communicate tips to help practitioners in their daily lives, which in turn may help reduce stress and balance family and work life. The health and wellness committee is also starting a book club, which may be accessed in the Section's closed Facebook group available only to Section

members. The Section's goal is to create an environment where members may network and discuss relevant legal topics in a non-pressure setting. The section also offers numerous other committees—from Transition to Solo to Continuing Legal Education—and annually encourages section members to get involved.

In summary, the challenges faced by solo and small firm members will continue to change over the years. As the 2018-19 Chair, I have made it my personal goal to enhance the programming offered by the Section to meet the needs of section members and will continue to do so. Even though our section membership has exceeded the membership in the last five years, there is even more room to grow. Let us help you. If you have any suggestions or requests, please contact me at jennifer.kuyrkendall@gmail.com.

Endnotes:

1 <https://www-media.floridabar.org/uploads/2018/01/2017-Membership-Opinion-Survey-Results.pdf>

2 <https://www-media.floridabar.org/uploads/2018/01/2017-Membership-Opinion-Survey-Results.pdf>

3 <https://www.flsolosmallfirm.org/publications/#the-link>

4 <https://www.flsolosmallfirm.org/quick-link/>

5 <https://www-media.floridabar.org/uploads/2018/01/2017-Membership-Opinion-Survey-Results.pdf>



UPCOMING CLE OPPORTUNITIES:

April 24 Zoom Webinar—12:00 p.m. to 1:00 p.m. "Wednesday Wisdom: Spread Your Sunshine: Building Your Brand Through Effective Networking & Growth of Authentic Relations" with Jennifer Kuyrkendall Griffin.

May 14 Audio Webcast—11:30 a.m. to 12:30 p.m. "My Case is Going Down! When Can I Take It Up? When You Can Appeal a Nonfinal Order" by Kristin Norse.

May 21 Audio Webcast—11:30 a.m. to 12:30 p.m. "Health & Wellness" by Jamie Billotte Moses.

June 27 Live and Audio Webcast—8:00 a.m. to 4:25 p.m. "Florida Law Update 2019" during The Florida Bar Annual Convention, Boca Raton.

2019 FOCUS: MENTAL HEALTH & HAPPINESS, ESSENTIAL FOR THE SOLO & SMALL FIRM LAWYER

by Melanie S. Griffin, Esq., Founder
Spread Your Sunshine, LLC

At the beginning of the year, I went to the gym. Not exactly a novel January 1st idea. The workout was noteworthy, however, because I did not go to start losing the ever-elusive “10 pounds,” a past go-to New Year’s resolution. I went for mental health and happiness, one of my 2019 focuses.

Last fall was exceedingly busy. The packed schedule from September through November is always a challenge. In 2018, though, the addition of awesome professional opportunities and a baby tipped the scales. To save time, I quit the workouts enjoyed since middle school to exclusively focus on the workload of my then three-person law office.

What was then unknown to me, however, is that I did not create additional time, I worsened my situation. Although physical benefits are most often associated with exercise, physical activity has significant mental health benefits, including stress reduction. Since I unwittingly eliminated a major stress-relief outlet, stress had no where to go, bottling-up inside me and manifesting in physical health issues.

The first month or so, nausea was a frequent symptom. Then chronic “ear infections” ensued. By late October, the pain radiated from my ear down my jaw, making it difficult to talk and chew.

About every two weeks, I visited the doctor. Prescriptions included antibiotics, nasal sprays, new techniques for using them, pain relievers, heating pads, liquid diets, and a flying ban to avoid bursting an eardrum. Eventually, I was referred to a specialist.



MELANIE GRIFFIN

Two days before my appointment, I read an article about a woman under extreme stress. She visited her doctor complaining of ear and jaw pain, each time sent home with a diagnosis that “nothing was wrong.” I immediately instinctively knew that I shared this woman’s fate. The specialist confirmed my intuition 48-hours later when he concluded that although it *felt* like I had an ear infection and inner-ear fluid, they were mental ailments that did not physically exist. Leaving that doctor’s office, I knew the key to improved wellness rested with me.

5 Suggestions That Improved My Health & Happiness to Better Serve My Clients, My Family & Me

Self-Education: In 2018, I insatiably listened to audiobooks and podcasts focused on entrepreneurship and empowerment. For the first time, it was realized that although I have zero time to read, I have tons of time to listen. Hearing stories about additional entrepreneurs who overcame physical

ailments caused by mental stress led to my epiphany when reading the above-referenced article that I had traveled down the same path. It’s unlikely that my health would have soon improved without such self-realization and subsequent implementation of techniques learned this past year. Audiobooks that were especially helpful to me included: *Drop the Ball* by Tiffany Dufu, *Girl Wash Your Face* by Rachel Hollis, *Option B* by Sheryl Sandberg & Adam Grant, and *Shoe Dog* by Phil Knight. Podcasts included: *How I Built This* with Guy Raz, *Rise* with Rachel Hollis, and *Skimm’d from the Couch* by theSkimm.

Ask for Help: Additional tasks meant learning to ask others for help completing projects that I previously did and did well. For example, instead of planning our son’s first birthday party by myself as would have been my usual mode of operation, I asked my husband if he would create and mail the invitation, handle RSVP’s, and oversee additional aspects of the festivities. Working together was a lot more fun than working in isolation and balanced the work between us so that it was manageable, not overwhelming. Brainstorming with colleagues, regarding, for example, best practices for tackling your email inbox, will also equip you with tools not thought of alone in your office. One additional tip here – when possible, identify when assistance with tasks and/or mentorship is needed and proactively ask for it. As much as we may wish or think differently, others are not mind

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SPREAD YOUR SUNSHINE

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readers. To best allow them to assist you, verbalize your request and the anticipated amount of time necessary to complete it so that they can plan for such task and schedule adequate time to help you.

Use Mindfulness Apps: A significant hurdle last fall was an inability to divert my mind away from the stressor, such as challenging conversations with clients or overly aggressive opposing counsel. Although the thoughts expressed here had not yet come full circle, I was aware that stress triggered at least some of my symptoms. Yet, without a game plan, the stressful event remained on auto-loop with no relief in sight. Use of a mindfulness app is one resource that changed that and equipped me with tangible tools, including meditation guides, breathing techniques, and visualization maps, useful in successfully navigating recent stressful situations. Free, top-ranked apps that may assist in your

mindfulness journey include: *Aura*, *Breethr*, *Buddhify*, *Calm* and *Headspace*.

Engage in Release & Transition

Techniques: Additional techniques can also reduce stress during the day. For example, substantial research evidences that the most efficient employees work for increments of approximately fifty minutes followed by a short break. Intentionally following such a schedule by setting an alarm on your phone can maintain energy throughout the day, prevent burnout, and facilitate longer productive work hours. To illustrate, although it may be tempting to power through motion drafting for four hours, the research is steadfast that forcing yourself to stop every fifty or so minutes, say for a glass of water and a quick walk around the block, will improve the quantity and quality of your work.

Similarly, your productivity can increase by properly transitioning from one task to the next, such as by: (1) closing your eyes; (2) quickly repeating the word “release” several times with the intent to release tension

from your body; and (3) visualizing your intent for the next project on which you will work or experience to which you will transition. A time that this approach is particularly helpful to me is the transition between the office and home. Briefly visualizing the experience I want my family to have when we’re together instead of immediately rushing through the door has made me a better wife and mom upon arriving home. One resource for learning such technique is Brendon Burchard, who details strategies for maximizing performance in all aspects of life through his *The Brendon Show* podcast, *High Performance Habits* book, and *The High Performance* planner.

Make Time for What Brings You Joy

What ever that may be!! This article is not intended to promote exercise if you despise physical activity. The point is that you must intentionally live life in a way that fosters well-being; you cannot practice law 24-hours a day. For me, Orangetheory Fitness classes are a part of being joyful; for you, a different tool may be best. What ever you choose, choose something! No

matter how heavy the workload, attempting to work around-the-clock will not make you more productive, especially not over what is hoped is the long-haul of your solo or small firm career. Additionally, remember to scale the activity to fit your current season. Whereas I completed a full workout most days of the week when I had more time, I now give myself grace to workout less often and for shorter periods. What is most important is weekly engaging in at least one activity that in some way minimizes your stress, increases your happiness, and maximizes your productivity.

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MEMBER SPOTLIGHT

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SPREAD YOUR SUNSHINE

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So, here's to intentionally living your best 2019, friends - continue to #ShineItForward and #SpreadYourSunshine!

For additional helpful information like this:

Connect with Melanie

FB & LI: Melanie S. Griffin
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melanie@spreadyoursunshine.com

Connect with Spread Your Sunshine

FB: Spread Your Sunshine
Twitter: @sunshine_women
IG: @spreadyoursunshine
www.spreadyoursunshine.com

Melanie Griffin is a triple-graduate of The Florida State University (Business Finance, 2003; MBA, 2006; JD, 2006). Post-graduation, Melanie's entrepreneurial skills were honed for thirteen years at

the Dean Mead corporate law firm where she served as a law clerk and then attorney from 2006 – 2019, the last five years of which she was an Equity Shareholder and the Managing Partner of Dean Mead's Tampa Office. During her legal career, Melanie was recognized as Florida's Most Productive Young Lawyer (2009), Super Lawyers Rising Star (Business Litigation 2010-19), Florida Trend Legal Elite (Up & Comer 2010-14, Commercial Litigation 2014-18), TBBJ Business Woman of the Year Legal Services Finalist (2016), FSU Notable Nole (2016), Tampa Bay Metro Inspiring Woman in Business (2016-17), FSU College of Business Recent Alumni Achievement Award (2017), and Best Lawyers in America (Commercial Litigation 2017-19).

Despite the forgoing achievements, like many women, for several years, Melanie struggled with the fear of failure, inability to believe in herself, perfectionism, and additional issues related to what is often referred to as "impostor syndrome." Thankfully, as a result of significant mentorship and the desire to learn to be her

best self, Melanie proactively changed her negative behavior and became determined to help others do the same. In 2017, she created Spread Your Sunshine, her then passion project committed to empowering others with the confidence to break the glass ceiling and achieve their dreams. After two years of experiencing the excitement over and need for the #ShineItForward movement, Melanie dedicated herself to Spread Your Sunshine full-time in 2019. Today, she is intentionally focused on inspiration of joy in and encouragement of others.

Melanie's success shining others through the glass ceiling to their most audacious dreams was celebrated through her receipt of the TBBJ Business Woman of the Year Angie's Award (2016), GSWCF Woman of Promise Award (2017), FSU Inspire Award (2017), Florida Bar YLD Outstanding Woman Lawyer of Achievement Award (2018), KNOW Tampa feature (2018), and The Best of KNOW feature (2019). Melanie is happiest when she is building up all those around her, including her husband Mike, son Maverick, and Golden Lab Molly.



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FIVE STEPS TO HANDLE AN ADMINISTRATIVE COMPLAINT OR NOTICE OF PROPOSED ACTION FROM A FLORIDA AGENCY

by Gigi Rollini and Bridget Smitha, Esqs.

If your client receives an administrative complaint or notice of proposed action from a Florida Agency, you have entered the realm of Florida Administrative Law, governed by Chapter 120, Florida Statutes, the Administrative Procedure Act (APA), and the Florida Administrative Code.

While the APA covers many subjects, one area likely relevant to your clients is Agency Licensure. Florida Agencies are responsible for issuing and disciplining business, professional and occupational licenses.

If an Agency decides to take action against a licensee (for example, to revoke, suspend or assess a penalty against the license), the Agency will send the licensee some form of notice. This article discusses the steps an attorney should take.

Agency Licensure is a complicated process with many potential pitfalls. All attorneys should be familiar with the basics to be able to spot issues and to know when to consult an experienced administrative attorney.

Step One: Look to the Agency's "Notice of Rights" for timing and action needed.

When an Agency proposes action against a licensee, a "Notice of Rights" will typically be provided with some form of written notice informing licensees of their rights and deadlines to exercise those rights.

Strictly follow those timeframes. If rights are not timely exercised, the



GIGI ROLLINI



BRIDGET SMITHA

proposed Agency Action will likely become final, and failure to act can result in waiver of rights.

Where the timeframes are statutory, the Agency may be powerless to extend the deadline. Do not assume an extension can be granted simply by the Agency lawyer's consent.

Step Two: Understand each Agency's unique filing/timing requirements before the deadline to respond.

Each Agency has its own statutory authority, rules, practices, policies, filing methods and timing, lawyers and Agency clerks. Not all Agency action requires the same response.

Generally, some form of written response must be received by the Agency, usually within 21 days of the date of the notice or receipt of the notice, depending on the Agency.

Typically, the written response must be hand-delivered or faxed to the Agency that issued the notice by close of business for the specific Agency, often 5:00 pm EST. Filings received after close of business are typically docketed as filed the following day. Some Agencies have e-filing portals, but they may require advance registration to make the filing. While some Agencies accept filings by e-mail, most do not.

Bottom line: Know the specific Agency's filing requirements in advance.

Step Three: Use a Petition over the Election of Rights form.

Draft a detailed Petition and include all disputed issues, factual and legal, to challenge the Agency's notice. Use your Petition to respond instead of any Election of Rights form attached to the Agency's notice.

If a client submits the form before hiring you, file an "Amended Petition" that replaces the Election of Rights form. If the case is pending with the Agency, file with the Agency. If the

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FIVE STEPS

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case has been referred to DOAH, file with DOAH.

Take care: Petitions failing to meet statutory and rule content requirements will be dismissed.

Step Four: Determine what administrative proceeding to initiate.

Administrative proceedings may include “section 120.57” informal or formal hearings to challenge the facts alleged or law applied by the Agency. An “informal hearing” is held when the facts alleged are undisputed and are heard by an Agency attorney. Absent a strategic reason, a formal hearing is typically preferable.

A “formal hearing” may only be sought if there are disputed facts and are heard by an Administrative Law Judge (ALJ) at the Division of Administrative Hearings (DOAH).

A “rule challenge” is appropriate where a rule deviates from or expands the statute it implements. An “un-adopted rule challenge” is appropriate to challenge an unwritten rule the Agency was required to adopt formally through public rulemaking.

Critical questions in determining the preferred proceeding include:

- Does your client need to defend against the Agency Action or challenge the rule or policy on which that Agency Action was based?
- Is the Agency Action a one-time issue for your client, or one with potential lasting or cyclical impact?
- Does your client disagree with the facts alleged, the law applied, or both?
- Is the problem that the Agency has no written rule or guiding standards?
- Is it best for the client that the ALJ or the Agency have final order authority?

Step Five: Be prepared to move fast!

Administrative cases can move extremely fast. For cases referred to DOAH, an ALJ may be assigned and an initial order issued within days. Many administrative proceedings go to hearing within 30 to 90 days, with expedited discovery and expert testimony needed. Before filing your Petition, know your statutory timeframes and be prepared to move quickly!

Gigi Rollini is a Shareholder at Stearns Weaver Miller, in Tallahassee, Florida, and leads its statewide Administrative Law Group. Her practice encompasses all aspects of Florida administrative law, including regulatory compliance, licensure, administrative complaints and disciplinary proceedings, government contracts, procurement and bid protests, rulemaking and rule challenges, state and local taxation, and non-profit incorporation, management and compliance. Gigi holds both her J.D. and Master of Public Administration from Florida State University, and serves on The Florida Bar Administrative Law Section's Executive Council. She is AV-Rated in appellate, administrative and civil litigation, is routinely recognized by Florida Super Lawyers and Florida Trend magazines in administrative law.

Bridget Smitha is a Shareholder at Stearns Weaver Miller, in Tallahassee, Florida. She focuses her practice on administrative and civil litigation, including preventing and defending against adverse agency action. Bridget frequently assists businesses in obtaining a broad range of licensure as well, and handles all aspects of alcohol licenses. In recognition of her achievements, Bridget has been named a “Top Litigator under 40” by Benchmark Litigation, “Top 40 under 40” of Florida litigation lawyers by the American Society of Legal Advocates, and a Florida Super Lawyers “Rising Star.”



FLORIDA SMALL-FIRM PRACTICE TOOLS

1st Edition

BY STEVEN F. SAMILOW

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PARALEGAL CORNER

News for Paralegals to Use...

by Priscilla Horn Warren, CP, FRP

Welcome to the Paralegal Corner, where you can find breaking news and other useful items (including website link information) pertaining to our profession.

Effective January 2019, the state chapter, Paralegal Association of Florida, Inc., implemented several changes. The fiscal year end for the state chapter and all individual PAF chapters will now be December 31st of each year to coordinate all membership dues and officer/election terms. Many other exciting developments are in the works for PAF, and Beatrice Levine, CP, FRP, current PAF President, outlines each of them in her President's Message on the website. Please take a look: www.pafinc.org. One special mention: Kaila Glaros, CP, FRP, ACP, is the new Executive Director for PAF, bringing impressive expertise in the marketing and management of this organization.

The Solo and Small Firm Section supports and endorses PAF, and the SSF Section will continue to participate through coordinating CLE credits and exhibitor tables at each annual PAF seminar and the SSF technology workshop.

OTHER GOOD NEWS: NALA is offering CLE credits for paralegals who submit articles for publication. The submission requirements can be found at the NALA website: www.nala.org.

If you are not an affiliate member of the Solo and Small Firm Section, what are you waiting for? Just download the online form today and send it in. Affiliate memberships are only \$35



PRISCILLA HORN WARREN

per year. Multiple benefits are available to our members and affiliate members, as detailed in our new website: www.FLSoloSmallFirm.org. Becoming an affiliate member of the SSF Section might be one of the best personal and professional decisions you will make for your paralegal career to flourish and prosper.

For more information on attaining the FRP designation with The Florida Bar, please go to their main website: www.floridabar.org, and click on the Florida Registered Paralegal tab. **The Florida Bar listed some important updates to Chapter 20 regarding FRPs, effective March 5, 2019:**

RULE 20-3.1 REQUIREMENTS FOR REGISTRATION - Creates new subdivision (a)(6), which expands the registration requirement for lawyers licensed in other states to lawyers who are licensed and members in good standing in other states can be registered paralegals without meeting the

minimum paralegal work experience requirement.

RULE 20-5.2 DUTY TO UPDATE - Adds notification by The Florida Bar to employing or supervising lawyer of any changes to a Florida Registered Paralegal's registration status.

RULE 20-6.1 GENERALLY - Increases continuing education requirement from 30 to 33 hours within a 3-year cycle and adds that 3 of the 33 hours must be in technology to match the lawyers' new technology CE requirement. *****Please note this change will apply to your NEXT CE cycle. For example, if your CE cycle ends January 28, 2020, then you will be required to complete the 33 hour requirement during your next cycle from January 29, 2020 to January 28, 2023.*****

RULE 20-8.3 COMPLAINT PROCESSING - Within subdivision (e), adds the requirement for Florida Registered Paralegals to notify their supervising lawyer if a complaint has been filed against them.

RULE 20-8.6 DISPOSITION OF COMPLAINTS - Within subdivision (g), adds "letter of advice."

Finally, the Solo and Small Firm Section will commence consideration of nominees for its annual Paralegal of the Year award, to be presented at the Annual Florida Bar Meeting in June. Please click on the nomination form on the SSF website for more information. All nominations must be received by May 15th.

As always, please do not hesitate to contact me with any questions or concerns. My direct email is: pris2323@yahoo.com.





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TIPS

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F.2d 649, 652 (5th Cir. 1982) (instruction reduced prosecution's burden of proving the requisite state of mind for the offense);

- the instructions are contradictory -- this often happens when trial court is trying to give each party something, but the instructions may not work together; *Penry v. Johnson*, 532 U.S. 782, 789 (2001) (instruction stating jury could answer "no" to special issue only if it found reasonable doubt to answer "yes," failed to give effect to mitigating circumstances);
- the instruction effectively grants a directed verdict on a claim or defense; *Cf. Hardin v. Ski Venture*, 50 F.3d 1291, 1294 (4th Cir. 1995) ("A set of legally accurate instructions that does not effectively direct a verdict for one side or the other is generally adequate");
- the instruction is not neutral and balanced, but rather is argumentative or tends to endorse a particular theory of the case or argument; *W.T. Rogers Co., Inc. v. Keene*, 778 F.2d 334, 346 (7th Cir. 1985) ("A jury should so far as possible not be instructed in a way that makes it much easier to decide in favor of one party than in favor of the other.");
- the instruction is confusing or misleading (explain why); *Japan Airlines Co. v. Port Auth. of New York & New Jersey*, 178 F.3d 103, 110 (2d Cir. 1999) ("A jury instruction is erroneous if it misleads the jury or does not adequately inform the jury on the law.");
- the instruction incorrectly states the law or is not supported by the evidence; *Jaffee v. Redmond*, 51 F.3d 1346, 1353 (7th Cir. 1995) ("Jury instructions must be correct statements of the law that are supported by the evidence.");

Goldschmidt v. Holman, 571 So. 2d 422 (Fla. 1990) (same);

- the instruction varies from the standard or pattern instruction in your jurisdiction; *U.S. v. Hunt*, 794 F.2d 1095, 1099 (5th Cir. 1986) (while trial courts are not mandated to follow Fifth Circuit Pattern Jury Instructions, it is good practice to do so); *Reyes v. State*, 783 So. 2d 1129, 1136-37 (Fla. 3d DCA 2001) (instructions were material departure from standard jury instructions and the statutory elements of the charged offense);
- the instruction addresses an issue not pled or included in the pre-trial stipulation or not proven at trial; *Thrift v. Estate of Hubbard*, 44 F.3d 348, 355 (5th Cir. 1995) ("district court erred in instructing the jury on the issue because the [plaintiff] failed to plead that cause of action"); *E.I. DuPont De Nemours v. Desarrollo Industrial Bioacuatico*, 857 So. 2d 925 (Fla. 4th DCA 2003) (improper for jury to consider a claim that was not in complaint);
- the instruction "indulges and even encourages speculations." *U.S. v. Branch*, 91 F.3d 699, 712 (5th Cir. 1996);
- the instructions as given fail to instruct the jury on your theory of the case. *Ryan v. Atlantic Fertilizer & Chemical Co.*, 515 So. 2d 324, 327 (Fla. 3d DCA 1987) (litigant is entitled to have jury instructed on theories of defense when supported by the evidence); and,
- the instruction improperly resolves or affects other issues in the case.

At the end of the charge conference, renew any objections to the instructions as given, for the reasons stated before, and to the failure to give any instructions you requested. Ask the court to confirm that these objections are preserved through the end of trial and need not be repeated after the

charges are given to the jury. Absent such a ruling, approach the bench after the charges are given (and before the jury begins deliberating) and again state your objections on the record.

Finally, make sure you keep a copy of your requested jury instructions, every other party's requested instructions and any proposed by the court, and make sure all are actually in the court file. If written instructions are given to the jury, make sure they are in the court file, as well. This is critical for purposes of any appeal.

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