

RULE 1.431 | TRIAL JURY**(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 must 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 must 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 must be asked to complete and return the forms. Completed forms may be inspected in the clerk's office and copies must 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 must 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 must be preserved.

(c) Challenge for Cause.

(1) On motion of any party, the court must examine any prospective juror on oath to determine whether that person is related, within the third degree, to (i) any party, (ii) the attorney of any party, or (iii) any other person or entity against whom liability or blame is alleged in the pleadings, 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 any opinion, or is sensible of any bias or prejudice concerning it, or is an employee or has been an employee of any party or any other person or entity against whom liability or blame is alleged in the pleadings, 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 must 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 must be divided equally among them. Any additional peremptory challenges not capable of equal division must be exercised separately or jointly as determined by the court.

(e) Exercise of Challenges. All challenges must 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 more jurors be impaneled to sit as alternate jurors in addition to the regular panel. Alternate jurors in the order in which they are called must replace jurors who have become unable or disqualified to perform their duties before the jury retires to consider its verdict. Alternate jurors must 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 must be discharged when the jury retires to consider the verdict.

(2) If alternate jurors are called, each party is 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 are 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 challenges allowed pursuant to this subdivision may be used only against the alternate jurors. The peremptory challenges allowed pursuant to subdivision (d) of this rule must not be used against the alternate jurors.

(h) Interview of a Juror. A party who believes that grounds for legal challenge to a verdict exist 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 must be served within 15 days after rendition of the verdict unless good cause is shown for the failure to make the motion within that time. The motion must 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 must 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.



(i) Communication with the Jury. This rule governs all communication between the judge or courtroom personnel and jurors.

(1) Communication to be on the Record. The court must notify the parties of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. Except as set forth below, all communications between the court or courtroom personnel and the jury must be on the record in open court or must be in writing and filed in the action. The court or courtroom personnel must note on any written communication to or from the jury the date and time it was delivered.

(2) Exception for Certain Routine Communication. The court must, by pretrial order or by statement on the record with opportunity for objection, set forth the scope of routine ex parte communication to be permitted and the limits imposed by the court with regard to such communication.

(A) Routine ex parte communication between the bailiff or other courtroom personnel and the jurors, limited to juror comfort and safety, may occur off the record.

(B) In no event shall ex parte communication between courtroom personnel and jurors extend to matters that may affect the outcome of the trial, including statements containing any fact or opinion concerning a party, attorney, or procedural matter or relating to any legal issue or lawsuit.

(3) Instructions to Jury. During voir dire, the court must instruct the jurors and courtroom personnel regarding the limitations on communication between the court or courtroom personnel and jurors. On empanelling the jury, the court must instruct the jurors that their questions are to be submitted in writing to the court, which will review them with the parties and counsel before responding.

(4) Notification of Jury Communication. Courtroom personnel must immediately notify the court of any communication to or from a juror or among jurors in



contravention of the court's orders or instructions, including all communication contrary to the requirements of this rule.

Committee Notes

1971 Adoption. Subdivision (a) is new. It is intended to replace section 40.101, Florida Statutes, declared unconstitutional in *Smith v. Portante*, 212 So. 2d 298 (Fla. 1968), after supplying the deficiencies in the statute. It is intended to simplify the task of selecting prospective jurors, both for the venire and for the panel for trial in a particular action. The forms referred to in subdivision (a) are forms 1.983 and 1.984. Subdivisions (b)–(e) are sections 53.031, 53.021, 53.011, and 53.051, Florida Statutes, without substantial change.

1976 Amendment. Subdivision (e) has been added to establish a procedure for challenging jurors without members of the panel knowing the source of the challenge, to avoid prejudice. Subdivision (f) is a renumbering of the previously enacted rule regarding alternate jurors. Subdivision (g) has been added to establish a procedure for interviewing jurors. See also Canons of Professional Responsibility DR 7 108.

1988 Amendment. Subdivision (f) has been added to ensure the right to “back-strike” prospective jurors until the entire panel has been accepted in civil cases. This right to back-strike until the jurors have been sworn has been long recognized in Florida. *Florida Rock Industries, Inc. v. United Building Systems, Inc.*, 408 So. 2d 630 (Fla. 5th DCA 1982). However, in the recent case of *Valdes v. State*, 443 So. 2d 223 (Fla. 1st DCA 1984), the court held that it was not error for a court to swear jurors one at a time as they were accepted and thereby prevent retrospective peremptory challenges. The purpose of this subdivision is to prevent the use of individual swearing of jurors in civil cases. Former subdivisions (f) and (g) have been redesignated as (g) and (h) respectively.

1992 Amendment. Subdivision (g)(2) is amended to minimize the inequity in numbers of peremptory challenges allowed in selecting alternate jurors in actions with multiple parties.

2005 Amendment. Subdivision (c)(1) is amended to ensure that prospective jurors may be challenged for cause based on bias in favor of or against nonparties against whom liability or blame may be alleged in accordance with the decisions in *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993), or *Nash v. Wells Fargo Guard Services, Inc.*, 678 So. 2d 1262 (Fla. 1996).

2013 Amendment. Subdivision (i) governs the responsibility of the court for ensuring that parties and their counsel are aware of all contact with the jury that could affect the outcome of the case. Trial judges may have differing views on what constitutes harmless or routine ex parte communication with jurors. Reasonable variations are therefore permitted, provided the judge adequately advises counsel, before the trial begins, of the specific circumstances under which the court has determined that jury communications will not be reported to the parties. The rule does not prevent the bailiff or other courtroom personnel from discussing such routine matters as juror parking, location of break areas, how and when to assemble for duty, dress, and which items of a juror's personal property may be brought into the courthouse or jury room. However, for example, questions or remarks from a juror about such matters as the length of a witness's testimony, when



court will adjourn on a given day, or how long the trial may take to complete should be reported to the judge, as these matters may be of interest to the parties. Any doubt as to whether a communication may or may not be of interest to the parties should be resolved in favor of promptly informing the court, the parties, and counsel, even if it is after the fact. This will best ensure that the parties have the opportunity to object to any improper communication and give the court an opportunity to cure any prejudice, if an objection is made.

