

Jury Requests for Readback of Testimony: Florida Supreme Court Approves New Rule 1.453

April 13, 2023

On March 30, 2023, the Florida Supreme Court [approved a new rule of civil procedure](#) that addresses jury requests to review testimony. New rule 1.453 sets forth the procedures for trial courts to follow when a juror in a civil case asks for trial testimony to be read back or asks for trial transcripts to review. It is within the trial court's discretion to allow a juror's request for trial testimony to be read back. Under the new rule, however, the trial court must give notice to counsel for the parties before granting such a request. The testimony must then be read (or played) back in open court. In the alternative, the trial court may respond to such a request in writing, as long as the parties are afforded an opportunity to place objections on the record. If a juror asks for trial transcripts, however, the trial court must notify the jury that transcripts are unavailable but that the juror may request that testimony be read back. The new rule reads as follows:

RULE 1.453. JURY REQUEST TO REVIEW TESTIMONY (a) Request for Readback or Playback of Testimony. If, after retiring to consider their verdict, any juror requests a readback or playback of testimony, the jury may be conducted into the courtroom and the court may order the readback or playback of testimony. The testimony may be read or played back only after notice to counsel for the parties. Any readback or playback of testimony must be in open court in the presence of all parties. In its discretion, the court may respond in writing to a request for readback or playback of testimony without having the jury brought before the court, provided that the parties have received the opportunity to place objections on the record and both the request and response are made part of the record. (b) Request for Transcripts. If any juror requests to have a transcript of trial testimony, the court must inform the jury that transcripts are not available but that they can request a readback or playback of testimony, which request may or may not be granted at the court's discretion. If a juror makes only a general request for transcripts, as opposed to identifying any particular witness's testimony that they wish to review, the court must also instruct the jury that, if they request a readback or playback, they must specify the particular trial testimony they

wish to have read or played back. If, after being properly instructed in accordance with this subdivision, the jury requests a readback or playback of any trial testimony, the court must follow the procedures set forth in subdivision (a).

These kinds of juror requests often occur at trial and can raise some tricky tactical decisions for counsel. **Tips:**

- Counsel should be alert to the fact that reading testimony back to the jury may distort the trial by placing too much emphasis on one portion of the testimony. In appropriate circumstances, counsel might object on this basis and say that it would require reading too much again to avoid that undue prejudice. Counsel might also ask for an instruction to the jury that the testimony that is read back should not be considered in isolation but must be considered in the context of all the evidence presented.
- Counsel might also consider asking for an instruction to the jury that explains that testimony that is read back cannot reflect matters of demeanor, tone of voice, and other aspects of the live testimony and that the jury's recollection and understanding of the original testimony in those respects should control.

Authored By



Joseph H. Lang Jr.

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