

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CRIMINAL
PROCEDURE**

CASE NUMBER:

**TWO (2) YEAR CYCLE REPORT OF
THE FLORIDA BAR CRIMINAL PROCEDURE RULES COMMITTEE**

John F. Harkness, Jr., Executive Director of The Florida Bar, and Raymond J. Rafool, II, Chair of The Florida Bar Criminal Procedure Rules Committee, file this 2 year cycle report pursuant to *Fla. R. App. P. 2.130(c)*.

The committee proposes amendments to the rules and forms as shown on the attached table of contents, attached hereto as Attachment "A," which includes the voting record of the committee for each proposal. As required by *Fla. R. App. P. 2.130(c)(2)*, the Florida Bar Board of Governors approved the proposed amendments on November 30, 2001, by a vote of 33 in favor and 0 opposed. The proposed amendments are attached as Attachment "B." Since its last report, the committee approved creation of or amendments to 4 rules and a form. The committee believes that the adoption of these rules and form will significantly improve the Florida Rules of Criminal Procedure and facilitate the correction of various issues arising under the current rules and case law.

Certain rule amendments are editorial in nature with no substantive effect. For example, the amendment to *Fla. R. Crim. P. 3.170* amends the reference to *Fla. R. App. P. 9.140* by correctly identifying the rule as amended, and *Fla. R. Crim. P. 3.361* corrects typographical errors and eliminates legalese, simplifies the rule, and provides for a single contempt provision and clarification.

Significant modification to the rules proposed by the committee seek to implement recent Florida Supreme Court decisions and requests. *Fla. R. Crim. P. 3.111* addresses the issue of orders of no imprisonment and provides for the use of a form order (Form 3.994-newly created) and a Committee Note for *Fla. R. Crim. P. 3.190* addresses the considerations of *State v. Gaines*, 770 So. 2d 1221 (Fla. 2000).

II

The recommended amendments and rationale are as follows:

1. Rule 3.111 - Providing Counsel to Indigents

The committee found that an amendment was necessary to address the general concerns relative to discharging court appointed counsel when announced that incarceration will not be sought in a case. The issues specifically addressed and considered and the comments relative to same include:

1. The state attorneys' practice of stating it does not seek incarceration of a defendant in custody, and the court discharges the public defender/court appointed counsel and continues the case for a later date.
2. The state attorneys' practice of passing out plea agreement forms just prior to arraignment, thereby precluding indigent defendants from receiving legal advice, notably in legally challenged cases.
3. The practice in some courts of placing a defendant on probation after the state announces its intention not to incarcerate the defendant, and then sentencing the defendant to jail for a violation of probation.
4. The issue of whether the public defender/court appointed counsel should be discharged merely upon notification that there shall be no incarceration.

Further, in creating subdivisions to the rule and a Committee Note, the committee felt it appropriate to provide guidance to the trial court regarding the discharge of court appointed counsel and what the trial court should consider when discharging counsel.

The amended rule references a new form order of no imprisonment (Form 3.994).

2. Rule 3.170 - Pleas

The change to this rule is editorial and technical in nature and effects no substantive rights. The rule amendment merely corrects the cross reference to the rule of Florida Rules of Appellate Procedure.

3. Rule 3.190 - Pretrial Motions

On November 6, 2000, the Supreme Court of Florida requested the committee consider a rule amendment based on *State v. Gaines*, 770 So. 2d 1221 (Fla. 2000). The committee considered whether a rule amendment was necessary to “provide the State with the immediate right to appeal an adverse ruling on a motion to suppress entered after the jury has been sworn.” *Id.* at 1228-1229. Considering the present rule and existing law, the committee felt that a rule amendment was not needed. However, to provide sufficient clarification and guidance, a Committee Note was created. The Committee Note relates the current law.

4. Rule 3.361 - Witness Attendance and Subpoenas

Upon request of an Assistant Public Defender for the Thirteenth Judicial Circuit, the committee amended the current *Fla. R. Crim. P.* 3.361 to correct a typographical error in former subsection (b) changing “attorney or record” to “attorney of record.” Further, the committee amended the rule to eliminate legalese and simplify the rule, form, and its application. In creating a new subsection (d) and eliminating the prior subsection (a), the committee clarified and simplified the rule, providing for a single contempt provision and addressing the attendance requirement for subpoenas as being applicable to the production of evidence as well as testimony.

5. Form 3.994 - Order of No Imprisonment

The committee created a form Order of No Imprisonment to be utilized in conjunction with *Fla. R. Crim. P.* 3.111 as it exists and was amended and noted herein. A form was previously advanced to this court in a 4 year cycle report of this committee, dated March 10, 2000. By a letter dated September 12, 2000, to the Honorable Charles T. Wells, the Honorable O.H. Eaton, as former Chair of the Committee, requested this court postpone consideration of the Order of No Imprisonment Form then proposed. The request was based on comments to Judge Eaton which led him to believe that the form needed further study and that a rule amendment would be necessary. Since that time, and accordingly, both have been accomplished.

The committee respectfully requests that the court adopt these proposed amendments to the Florida Rules of Criminal Procedure.

