

Supreme Court of Florida

No. SC09-2395

IN RE: AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.853.

[September 2, 2010]

LABARGA, J.

This matter is before the Court for consideration of proposed amendments to Florida Rule of Criminal Procedure 3.853 (Motion for Postconviction DNA Testing). We have jurisdiction. See art. V, § 2(a), Fla. Const.

The Florida Bar's Criminal Procedure Rules Committee (Committee) filed an out-of-cycle report on December 21, 2009, proposing amendments to rule 3.853(c)(7), pertaining to the circumstances upon which a trial court may order DNA testing by a laboratory other than one operated by the Florida Department of Law Enforcement or its designee. The Committee's proposal, published by the Court in the February 10, 2010, edition of The Florida Bar News, did not prompt the filing of any comments.

The Committee explains that subdivision (c)(7) of rule 3.853 inaccurately identifies the accrediting organizations that certify private DNA testing

laboratories. Without certification from one of the accrediting bodies named in the rule, however, a laboratory is ineligible to perform DNA testing as an alternative to the Florida Department of Law Enforcement or its designee. The Committee's proposal, accordingly, names the correct organizations in substitution for the named accrediting bodies either misidentified or no longer responsible for private laboratory accreditation.

Upon consideration of the Committee's report, we hereby adopt the proposed amendments to rule 3.853(c)(7), as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective immediately upon release of this opinion.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, and PERRY, JJ.,
concur.

**THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE
EFFECTIVE DATE OF THESE AMENDMENTS.**

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Robert T. Strain, Chair, Florida Criminal Procedure Rules Committee, Tampa,
Florida, John F. Harkness, Executive Director, and Krys Godwin, Staff Liaison,
The Florida Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 3.853. MOTION FOR POSTCONVICTION DNA TESTING

(a) - (b) [No change]

(c) Procedure

(1) - (6) [No change]

(7) The court-ordered DNA testing shall be ordered to be conducted by the Department of Law Enforcement or its designee, as provided by statute. However, the court, upon a showing of good cause, may order testing by another laboratory or agency certified by the American Society of Crime Laboratory Directors ~~or the National Forensic Science Training Center~~/Laboratory Accreditation Board (ASCLD/LAB) or Forensic Quality Services, Inc. (FQS) if requested by a movant who can bear the cost of such testing.

(8) [No change]

(d) - (f) [No change]