

APPENDIX C

**Florida Supreme Court's Criminal Court Steering Committee
The Honorable Kevin Emas, Chair
March 28, 2013**

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March 6, 2013

The Honorable Kevin Emas
Judge, Third District Court of Appeal
2001 S.W. 117 Avenue
Miami, FL 33175

Via e-mail emask@flcourts.org

Re: Criminal Court Steering Committee's request for comment by Appellate
Court Rules Committee on proposed Florida Rule of Criminal Procedure
3.113

Dear Judge Emas:

In your role as Chair of the Criminal Court Steering Committee, you recently wrote the Appellate Court Rules Committee and requested comment on a proposed rule of criminal procedure, Rule 3.113, regarding minimum standards for attorneys in felony cases. Specifically, the CCSC asked the ACRC to comment as to whether such a rule should be equally applied to appellate counsel as it would be to trial counsel in felony cases. As a liaison for the ACRC, and on behalf of our Chair, Michael Ufferman, I am writing to inform you of the ACRC's response.

The proposed rule was presented first to our Criminal Practice Subcommittee, which is chaired by Michael Greenberg. Mr. Greenberg distributed the proposed rule to all members of the subcommittee for comment. All of the members of the subcommittee who responded opined that the rule should *not* be applied to attorneys who are handling a criminal appeal. The subcommittee then reported to the full ACRC at its February 22 meeting. Like the subcommittee, the full committee recommended against applying this rule to attorneys handling criminal appeals. The two primary reasons given for this position included:

- The *Brady* and *Giglio* issues meant to be addressed by the proposed rule are rarely raised in criminal appeals.
- In the normal course of appellate practice, appellate practitioners who may be faced with these issues would be expected to thoroughly and independently review the current law

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applied to these issues to insure they have the most up-to-date law regarding the issue on appeal.

The ACRC echoed one concern that was mentioned in your request. Your committee has noted that the broad language of the proposed rule might suggest that all attorneys—appellate attorneys included—would have to meet its requirements before appearing in a felony criminal case. For that reason, the ACRC would request the CCSC consider including in either the rule or in a comment related to the rule a specific statement that the rule does not apply in criminal appeals.

Thank you again for your hospitality at the meeting and the work of your committee. If you have any further questions, please do not hesitate to call upon us.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Kristin Norse', with a long horizontal flourish extending to the right.

Kristin Norse

KAN:kb

cc: Michael Ufferman, Esq.
Michael Greenberg, Esq.
Heather Telfer