

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CRIMINAL
PROCEDURE (RULE 3.113)

CASE NO.: SC13-552

**CRIMINAL COURT STEERING COMMITTEE'S RESPONSE TO
COMMENTS OF THE CRIMINAL PROCEDURE RULES COMMITTEE
AND THE FLORIDA PUBLIC DEFENDER ASSOCIATION**

The Criminal Court Steering Committee (Steering Committee), by and through its chair, files this response to comments from the Criminal Procedure Rules Committee (CPRC) and the Florida Public Defender Association (FPDA).

- A. **Comments of CRPC.** The Steering Committee has considered each of the CPRC's comments, and the Steering Committee's responses (each of which was approved by a unanimous vote) are set forth below:
1. **Comment:** The CPRC indicated a split within their group as to whether a continuing legal education (CLE) requirement is needed.
Response: The Steering Committee remains in agreement with the Florida Innocence Commission that a CLE requirement covering *Brady*, *Giglio*, and Rule 3.220 would be very beneficial to the proper administration of justice in Florida.
 2. **Comment:** The CPRC suggested that if a new rule is adopted, it should be contained within the Rules of Professional Conduct rather than the Rules of Criminal Procedure.
Response: The Steering Committee disagrees for two reasons. First, it is far more likely that criminal law practitioners will become aware of the CLE requirement if it is placed in the rules of criminal procedure rather than the rules of professional conduct. Second, existing rule 3.112 already provides minimum standards (including a CLE requirement) for attorneys handling capital cases, making rule 3.113 a logical place for this newly-proposed rule.
 3. **Comment:** The CPRC mentioned a concern about the impact on small counties and delays that may occur pending completion of the CLE requirement.

Response: The Steering Committee notes that the proposed rule contemplates a 100-minute class that is expected to be provided at no charge and can be completed on the internet. Further, the Steering Committee has recommended delaying the effective date of this requirement for two years from date of adoption, to provide sufficient time for attorneys to comply with the CLE requirement. The Steering Committee therefore anticipates no delays will be needed to meet this two-hour (100-minute) CLE requirement.

4. **Comment:** The CPRC expressed its concern that the proposed rule contains no sanctions component.

Response: The Steering Committee notes that there is no sanction provision in existing rule 3.112. Further, the Steering Committee did not believe a sanction provision was warranted and that trial judges would have the authority and discretion to enforce the rule in the event that an attorney participating in a criminal case is non-compliant with the CLE requirement.

5. **Comment:** The CPRC suggested that there should be a “good cause” exception within the rule, akin to that contained in existing rule 3.112(k).

Response: In its petition, the Steering Committee addressed the necessity of a “good cause” exception, see Petition at 7 n.6, and determined no such exception was necessary. Existing rule 3.112 (which does contain a good cause exception) imposes a number of substantial requirements before an attorney can serve as lead counsel in a capital case (e.g., five years’ criminal law litigation experience; lead counsel in at least nine jury trials, lead counsel in at least three murder cases, twelve-hour CLE course in the defense of a capital case, etc). There may well be circumstances in which no such qualified counsel is available within the circuit, or a defendant may decide he wants a particular attorney to represent him notwithstanding his non-qualified status under rule 3.112.

By contrast, proposed rule 3.113 imposes nothing more than a two-hour CLE requirement that can easily be completed in a single afternoon. Assuming that (as proposed) this CLE course is made available at no cost and over the internet, see Petition at 7, it is difficult to conceive of any need for a “good cause” exception to this rule.

B. Comments of FPDA. The comments from the FPDA were not timely filed and thus the Steering Committee was unable to consider the FPDA comments as extensively as the CPRC comments. Nevertheless, the Steering Committee continues to recommend that the proposed 100-minute course be required of both prosecutors and defense counsel, and that rule 3.113 is the most appropriate place for such a CLE requirement.

The Steering Committee notes that the course is designed to cover not only the principles established in *Brady* and *Giglio*, but the legal and ethical requirements of discovery in a criminal case, including rule 3.220. Given that the FPDA is expected to fully participate with the Florida Prosecuting Attorneys Association in the creation of this course and its content, see Petition at 7, the Steering Committee is confident that the FPDA will ensure the course will provide substantial and meaningful information to prosecutors and defense counsel alike.

Respectfully submitted this 7th day of
October, 2013.

[s/ Kevin Emas](#)

The Honorable Kevin Emas
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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that this Response has been prepared using Times New Roman 14 point font in compliance with Florida Rule of Appellate Procedure 9.210(a)(2) and that a true and correct copy of the foregoing has been sent by e-mail to Melanie L. Casper, Chair, Criminal Procedure Rules Committee, at mcasper@rc-4.com; to John F. Harkness, Jr., Executive Director, The Florida Bar, at JHarkness@flabar.org; to Paul Petillo, Assistant Public Defender, at

PPetillo@pd15.state.fl.us; and to Heather Telfer, Staff Liaison to the Criminal Procedure Rules Committee, at HTelfer@flabar.org; this 7th day of October, 2013.

s/ Bart Schneider

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