Supreme Court of Florida

COPY

No. 79,773

AMENDMENT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.191

[April 8, 1993]

PER **CURIAM.**

The **State Attorneys** for **the Eleventh and Seventeenth Judicial Circuits** filed an emergency **petition** to **amend** Florida Rule **of** Criminal Procedure **3,191.**[1] **We have jurisdiction** pursuant to article **V,** section 2(a) **of the Florida Constitution.**

[1] All references to **Florida** Rule of **Criminal** Procedure 3.191 are **to** the **rule** as **recently amended in** In re: **Amendments** to the **Florida Rules** of **Criminal** Procedure, 606 So. 2d 227 (Fla. 1992).

The State Attorneys propose that subdivision (b) of Rule of Criminal Procedure 3.191 be amended to require all demands for speedy trial be specifically entitled "Demand for Speedy Trial." They also propose that subdivision (b)(1) of the rule be amended to make the defendant who files such demand, rather than the court, responsible for insuring that a calendar call be held to schedule the trial date.

The proposed amendments were forwarded to the Criminal Rules Procedure Committee for special consideration and recommendation pursuant to Rule of Judicial Administration 2.130(f). The rules committee recommends that rule 3.191(b) be amended to require the pleading to be entitled "Demand for Speedy Trial." The rules committee rejected the proposed change to subdivision (b)(1), and the Board of Governors unanimously concurred with the committee's conclusion.

After consideration of the petition to amend rule 3.191 and the recommendation of the rules committee, we reject the proposed amendment to subdivision (b)(1) but amend subdivision (b) of rule 3.191 to read as follows:

> **(b) Speedy Trial upon Demand.** Except as otherwise provided by this rule and subject to the limitations imposed under subdivisions (e) and *(g)*, every person charged with a crime by indictment or information shall have the right to demand a trial within 60 days, by filing with the court having jurisdiction and serving on the state attorney a pleading entitled "D~~d~~emand for ~~s~~Speedy ~~t~~Trial."

New language is indicated by underscoring; deletions are indicated by struck-through type. The amendment shall become effective July 1, 1993, at 12:01 a.m.

It is so ordered.

BARKETT, C.J., and McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.
OVERTON, J., dissents with an opinion.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS RULE.

OVERTON, J., dissenting.

I dissent. I see no justifiable reason why a defendant who is seeking a speedy trial should not at least be **required** to **notify** the assigned judge or responsible administrative judge that a demand for speedy trial has been filed and assure that the motion is calendared for **appropriate hearing in** accordance with the time periods **we** have set **forth** very specifically **in** the rules. In my view, this is not a major administrative requirement **to** place on a defendant. Further, such a requirement would **clearly** help prevent **speedy** trial motions from falling in the cracks and keep defendants from going **free** on technicalities.

We have placed very explicit time periods in the speedy trial rule, but they were not placed **there to** give **a** defendant a technical advantage, While I am a strong advocate of our **speedy trial** rule, **it was** not intended to be an **administrative** trap **for** the prosecutor that could, because of an administrative mistake by the court, result in a criminal defendant's walking out of the courthouse without being tried on the merits. **Accordingly, I** would **approve** the **state** attorney's request. **It is not an** unreasonable amendment to our rules,

Original Proceeding - **Florida Rules of Criminal.** Procedure

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for **Petitioner**

John F. Harkness, Jr., Executive Director, **The Florida** Bar, **Tallahassee, Florida; and** *Amy* **Steele-Donner,** Circuit **Judge, Chair, Criminal Procedure Rules Committee, Miami,** Florida,

Responding