

IN THE SUPREME COURT OF FLORIDA

CASE NUMBERS: SC04-100

IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CRIMINAL
PROCEDURE

CONSOLIDATED RESPONSE TO COMMENTS

Pursuant to the Court's April 13, 2004, order, the Florida Criminal Procedure Rules Committee ("committee") files this response to the comments filed in case number SC04-100. The Court received only two comments to the Two Year Cycle Report of the Florida Bar Criminal Procedure Rules Committee, filed January 28, 2004. The amended comment filed by the Attorney General simply included an appendix that was mentioned in their original comment but left out of their filing. The comments received by the Court pertain only to the proposed changes to Rule 3.180 and Rule 3.710, and to the proposed addition of Rule 3.575.

RULE 3.180

The Court received only one comment in opposition to the committee's proposed amendment to Rule 3.180. The comment, filed by Mr. Blaise Trettis, Assistant Public Defender, was virtually identical to the comment filed by Mr. Trettis when the two year cycle report was pending before The Florida Bar Board of Governors. Mr. Trettis added two citations; however, substantively his argument is essentially the same as his previous comment. Accordingly, the committee makes only limited additional comments and refers the Court to Appendix F of the Two Year Cycle Report of the Florida Bar Criminal Rules Committee.

On October 20, 2003, the Court sent a memorandum to the chief judges of the circuits and trial court administrators regarding containment of petit juror per diem expenditures. A copy is attached as exhibit A. The Chief Justice noted: "we will run out of money before the end of this fiscal year if we continue to compensate our citizens for their service as juror at current levels of expenditures."

An effective case management tool utilized by some trial judges is the jury trial status conference conducted one or two working days before jury trial week begins. Many, if not most, cases set for trial are resolved on this date by plea, referral to a diversionary program, dismissal, etc.... This gives the trial court and

jury manager a truer picture of the actual number of cases that will go to trial and the number of jurors that will be needed. However, for this conference to be effective, the defendant must be present. Under the current rule it is questionable whether the trial judge can require the defendant's presence. To accomplish the Court's request for containment of petit juror per diem expenditures, the trial judge should have the option to utilize the jury trial status conference and require the presence of the defendant at said conference.

RULE 3.710

The Court received only one comment regarding the proposed amendment to Rule 3.710. The comment, filed by the Attorney General, is concerned with state and federal privacy protections and the ability of the Department of Corrections to obtain requested information. The Attorney General points out that the amendment as proposed requests inclusion of information that may be protected by state or federal law, thereby requiring the defendant's consent to obtain the information. Given that possibility, and the likelihood that the defendant will not consent to the release of protected information, the Attorney General proposes adding to the amendment proposed by the committee the additional language: "to the extent such records are reasonably available." Additionally, the

Attorney General requests that the Court “reconsider the propriety of requiring a presentence investigation in all capital cases.”

In response to the Attorney General’s comments, the chair of the committee surveyed the committee; the committee recommends that the language not be added. The committee suggests: (1) the additional language would be superfluous; (2) the new rule gives the Department of Corrections no more or no less authority to seek or to obtain information and records than the current rule, and (3) the proposed amendment is in response to Muhammad v. State, 782 So.2d 343 (Fla. 2001). The committee’s initial referral did not address the issue of whether a presentence investigation report should be ordered.

RULE 3.575

The Attorney General’s comment also addresses the committee’s recommendation of proposed new Rule 3.575. The following issues were raised by the Attorney General:

1. that pursuant to current law, any motion for juror interviews must be sworn to or include supporting sworn affidavit(s);
2. that the proposed rule should provide that it is the exclusive vehicle for juror contact and that no contact can be attempted without approval of the court; and

3. that the proposed rule should expressly prohibit the filing of a motion to interview jurors after a defendant's conviction has been finalized on appeal.

These issues were included in the survey of the committee by the chair.

Again, the committee does not recommend any change to the committee's proposal. The committee has no disagreement that the case law cited by the Attorney General regarding the requirement for sworn motions is correct.

Accordingly, the committee and The Florida Bar respectfully request that the Court adopt the new rule and the amendments proposed by the committee.

Respectfully submitted on the _____ day of April, 2004.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the below listed parties on this _____ day of April, 2004:

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