

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA
RULE OF CRIMINAL PROCEDURE 3.790

CASE NO. SC05-2381

**CRIMINAL PROCEDURE RULES COMMITTEE'S REPORT IN
RESPONSE TO COURT'S ORDER DATED APRIL 3, 2007**

On April 3, 2007, the court entered an order requesting that the committee consider proposing further changes to Florida Rule of Criminal Procedure 3.790 in light of the Anti-Murder Act, Chapter 2007-2, Laws of Florida. The court's order includes a suggested amendment to the committee's proposed rule 3.790(b)(2). This report is filed in response to the court's order.

Through its fast track procedure, the committee has considered the April 3, 2007, order and submits the proposed amendments to rule 3.790 that are provided in Appendix A. Appendix B contains a three-column table comparing the rule as tentatively approved by the court with the committee's proposed rule in Appendix A.

Before the Anti-Murder Act was passed, the committee proposed amendments to rule 3.790 to implement amendments to section 948.06, Florida Statutes, contained in the Jessica Lunsford Act (ch. 2005-28, §13, Laws of Fla.). The committee's amendments were initially filed in Case Number SC05-739 but were subsequently transferred to the current case number. The proposed amendments would change the current rule 3.790(b) to subdivision 3.790(b)(1) and would add a new subdivision (b)(2).

In an order dated January 23, 2007, the court tentatively approved the Committee's proposed amendments subject to one revision, to which the committee agreed in its response filed with the court on February 21, 2007.

On March 12, 2007, the Anti-Murder Act became law, and the court then issued its April 3, 2007, order directing the committee to consider whether amendments to rule 3.790 are needed. Specifically, the committee was asked to consider the court's proposed additional language to the committee's new subdivision (b)(2).

The committee was also charged to consider whether additional amendments to

rule 3.790 are needed in light of new section 948.06(8), Florida Statutes, or any other provision of the Anti-Murder Act.

The committee's Fast Track Subcommittee met by conference call on five occasions. Subcommittee Action Reports for those meetings are provided in Appendix C. As these reports demonstrate, several significant concerns were raised about the constitutionality of the act. However, the consensus of the subcommittee was that such challenges should be decided not in "Fast Track," but rather, if at all, by case law. Moreover, the subcommittee acknowledged that the full committee — by its e-mail voting procedure — would be given an opportunity to consider the constitutionality of the act as well.

The subcommittee therefore incorporated as a rule of criminal procedure the provisions of the Anti-Murder Act. Rather than *add* language to the committee's proposed (b)(2), as suggested by the court in its April 3rd order, the subcommittee determined instead that a separate subdivision (b)(3) should be added specifically for Anti-Murder Act cases, leaving subdivision (b)(2) to deal specifically with Lunsford Act cases. Subdivision (b)(2) thus remains basically the same as originally proposed by the committee, with the court's prior modification. In addition, the committee proposal adds an introductory phrase to subdivision (b)(1) and uses the word "defendant" in subdivision (b)(2) rather than the word "offender".

On April 27th, the subcommittee completed its work. By e-mail vote, the committee voted 24 to 1 in favor of the subcommittee's recommendation.

The Executive Committee of The Florida Bar Board of Governors also approved the recommendations of the committee by a vote of 8 to 0.

This response is submitted on behalf of the Florida Criminal Procedure Rules Committee on May , 2007, by

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