

IN THE
SUPREME COURT OF FLORIDA

IN RE: FLORIDA RULES OF CRIMINAL PROCEDURE 3.131 AND 3.132	Case No. 05-739
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**COMMENTS OF
THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS**

The Florida Association of Criminal Defense Lawyers (FACDL) submits the following comments and urges the Court to refrain from amending Florida Rules of Criminal Procedure 3.131 and 3.132 for the following reasons.

The Court asked interested parties to submit comments regarding whether rules 3.131 and 3.132 should be amended to reflect the Legislature's intent as demonstrated in section 907.041(4)(b), Florida Statutes (2000). Section 907.041(4)(b) provides in relevant part that "[n]o person charged with a dangerous crime shall be granted nonmonetary pretrial release at a first appearance hearing." The dangerous crimes are set forth in section 907.041(4)(a).

FACDL submits that an amendment incorporating the language contained in section 907.041(4)(b) is unnecessary and would result in an intrusion on the neutral and independent role of the judicial officer. Rule 3.131 was adopted in 1968 and rule 3.132

was adopted in 1983. Both rules have been in substantially the same form for more than thirty years. A review of the language and structure of both rules reveals an intent to allow the judicial officer to make the determination concerning the appropriate conditions, if any, of pretrial release. For example, subsection (b)(2) of rule 3.131 specifically provides:

The judge shall at the defendant's first appearance consider all available and relevant factors to determine what form of release is necessary to assure the defendant's appearance. If a monetary bail is required, the judge shall determine the amount.

Subsection (b)(3) lists the factors to be considered by the judicial officer when making the determination regarding pretrial release, such as the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the defendant's ties to the community, and the nature and probability of danger that the defendant's release poses to the community. Clearly, it is the judicial officer, examining the facts of each particular case based on the considerations set forth in rule 3.131(b)(3), who is in the best position to determine whether a particular crime is dangerous and whether nonmonetary pretrial release is appropriate. Rule 3.131 already takes into account all of the concerns expressed by the Legislature in section 907.041. But unlike section 907.041, which creates a one size fits all rule for alleged dangerous crimes, rule 3.131 grants discretion to the judicial officer to make the appropriate decision based on the nature and circumstances of the particular offense as well as all other relevant

considerations.¹ This stop-gap measure is consistent with the role of the judiciary in our form of government.² Certainly one can imagine a scenario in which a defendant is charged with an alleged dangerous crime contained in section 907.041(4)(a) (i.e., domestic battery, as in *State v. Raymond*, 30 Fla. L. Weekly S500 (Fla. June 30, 2005)), but where the weight of the evidence supporting the charge is slight and all other factors regarding the defendant's background demonstrate that nonmonetary pretrial release is appropriate. In this situation, the judicial officer presiding over the first appearance hearing should be afforded the discretion to grant nonmonetary pretrial release.

Second, to the extent that the Court adopts an amendment incorporating the language contained in section 907.041(4)(b), FACDL submits that all misdemeanors should be excluded from the list of dangerous crimes. Currently, section 907.041(4)(a) includes misdemeanor stalking³ (section 907.041(4)(a)17) and misdemeanor domestic battery⁴ (section 907.041(4)(a)18). FACDL asserts that a misdemeanor charge is, by its

¹ Florida Rule of Criminal Procedure 3.130(d) grants exclusive authority to the judicial officer presiding over the first appearance hearing to determine the proper conditions of pretrial release: "The judicial officer *shall* proceed to determine conditions of release pursuant to rule 3.131." (emphasis added).

² FACDL is also concerned that the practical implication of adopting a provision similar to section 907.041(4)(b) is that indigent defendants will ultimately be the ones who will suffer the most.

³ § 784.048(2), Fla. Stat.

⁴ § 741.28, Fla. Stat. & § 784.03(1)(b), Fla. Stat.

very nature, separate and distinct from the other alleged dangerous crimes set forth in section 907.041(4)(a). *See, e.g., Swanson v. Allison*, 617 So. 2d 1100, 1101 (Fla. 5th DCA 1993) (distinguishing between misdemeanor battery and aggravated felony battery and holding that any policy authorizing the denial of pre-trial release for those charged with simple battery based on a finding of potential harm is unconstitutional).

For all of the reasons set forth above, FACDL urges the Court to refrain from amending Florida Rules of Criminal Procedure 3.131 and 3.132.

Respectfully submitted this 29th day of August, 2005,

/s/ Paula S. Saunders

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