

## IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA  
RULES OF CRIMINAL PROCEDURE –  
RULE 3.112**

**CASE NO.:**

### **REPORT OF THE CRIMINAL COURT STEERING COMMITTEE**

The Criminal Court Steering Committee, by and through the undersigned Chair of the Committee, the Honorable O. H. Eaton, Jr., Circuit Judge, Eighteenth Judicial Circuit, files this report pursuant to a letter from the Supreme Court to the Chair of the Criminal Court Steering Committee. The Court has asked the committee to consider submitting proposed amendments to Florida Rule of Criminal Procedure 3.112 (Minimum Standards for Attorneys in Capital Cases). The proposed amendments have not been published in *The Florida Bar News* for comment. A legislative format of the proposed amendments is attached as Appendix A, and a two-column chart that includes the reasons for the changes to the rule is attached as Appendix B. The letter from the Court is attached as Appendix C.

The Court wrote to the committee on March 18, 2008, requesting that the committee consider amending Rule 3.112 in light of the creation of the five Offices of the Criminal Conflict and Civil Regional Counsel (OCCRC). These offices were created by the Florida Legislature in Chapter 2007-62, Laws of Florida. The Court asked the committee to file a report with any recommended amendments to Rule 3.112 with the Clerk of the Court no later than July 1, 2008.

Upon receipt by the chair of the Steering Committee of the letter from the Court, a subcommittee consisting of three committee members was formed on March 20, 2008, to draft proposed changes to Rule 3.112. The subcommittee met via telephone conference on April 4, 2008. Based on this conference call, proposed amendments to Rule 3.112 were distributed among subcommittee members. The subcommittee met again on April 15, 2008, to discuss recommended changes to the rule. A final draft setting forth proposed amendments to the rule was submitted to the chair of the committee on April 18, 2008. The chair, in consultation with the subcommittee, further revised the proposed amendments to the rule. The proposed amendments attached as Appendix A were approved by the full Criminal Court Steering Committee by a unanimous vote. The amendments to the rule are shown below.

Neither subdivision (a) nor subdivision (b) of Rule 3.112 has been amended by the committee.

Subdivision (c) has been amended by the committee. It currently reads:

**(c) Applicability.** This rule applies to all lawyers handling capital trials and capital appeals, who are appointed or retained on or after July 1, 2002. Subject to more specific provisions in the rule, the standards established by the rule apply to Public Defenders and their assistants.

The committee amended subdivision (c) of the rule to read:

**(c) Applicability.** This rule applies to all ~~lawyers~~ defense counsel handling capital trials and capital appeals, who are appointed or retained on or after July 1, 2002. ~~Subject to more specific provisions in the rule, the standards established by the rule apply to Public Defenders and their assistants.~~

The committee has amended the subdivision by deleting the term “lawyers” and adding the term “defense counsel.” This amendment automatically incorporates regional conflict counsel into the subdivision. The last sentence of the subdivision has been stricken by the committee. The provisions of the rule apply to both court appointed and retained counsel.

Subdivision (d) of the rule has been amended. The current section of the rule reads as follows.

**(d) List of Qualified Conflict Counsel.**

(1) Every circuit shall maintain a list of conflict counsel qualified for appointment in capital cases in each of three categories:

- (A) lead trial counsel;
- (B) trial cocounsel; and
- (C) appellate counsel.

No attorney may be appointed to handle a capital trial or appeal unless duly qualified on the appropriate list.

(2) The conflict committee for each circuit is responsible for approving and removing attorneys from the list pursuant to section 925.037, Florida Statutes. Each circuit committee is encouraged to obtain additional input from experienced capital defense counsel.

This subsection has been amended by the committee as follows.

**(d) List of Qualified Conflict Counsel.**

(1) Every circuit shall maintain a list of conflict counsel qualified for appointment in capital cases in each of three categories:

- (A) lead trial counsel;
- (B) trial cocounsel; and
- (C) appellate counsel.

~~No attorney may be appointed to handle a capital trial or appeal unless duly qualified on the appropriate list.~~

~~(2) The conflict committee chief judge for each circuit is responsible for approving and removing attorneys from the list shall maintain a list of qualified counsel pursuant to section ~~925.037~~ 27.40(3)(a), Florida Statutes. ~~Each circuit committee is encouraged to obtain additional input from experienced capital defense counsel.~~~~

The committee amended this subdivision to conform the rule to section 27.40(3)(a), Florida Statutes (2008). Section 925.037, Florida Statutes, was repealed by the Florida Legislature. The last sentence of subdivision **(d)**(2) was stricken by the committee since circuit committees no longer exist.

Subdivision **(e)** of the rule has been amended by the committee. It currently reads as follows.

**(e) Appointment of Counsel.** A court must appoint lead counsel and, upon written application and a showing of need by lead counsel, should appoint cocounsel to handle every capital trial in which the defendant is not represented by retained counsel, or the Public Defender. Lead counsel shall have the right to select cocounsel from attorneys on the lead counsel or cocounsel list. Both

attorneys shall be reasonably compensated for the trial and sentencing phase. Except under extraordinary circumstances, only one attorney may be compensated for other proceedings. In capital cases in which the Public Defender is appointed, the Public Defender shall designate lead and cocounsel.

The committee has amended subdivision (e) to read as follows.

**(e) Appointment of Counsel.** A court must appoint lead counsel and, upon written application and a showing of need by lead counsel, should appoint cocounsel to handle every capital trial in which the defendant is not represented by retained counsel, ~~or the Public Defender~~. Lead counsel shall have the right to select cocounsel from attorneys on the lead counsel or cocounsel list. Both attorneys shall be reasonably compensated for the trial and sentencing phase. Except under extraordinary circumstances, only one attorney may be compensated for other proceedings. In capital cases in which the Public Defender or Criminal Conflict Regional Counsel is appointed, the Public Defender or Criminal Conflict Regional Counsel shall designate lead and cocounsel.

The committee decided there was no need to include the term “Public Defender” in the first sentence of subdivision (e) since Criminal Conflict Regional Counsel is also covered by the rule. Lead counsel and cocounsel provisions of the rule are applicable to both the Public Defender and Criminal Conflict Regional Counsel. The committee recognizes that the proper name of the legislatively created regional counsel is the Office of Criminal Conflict and Civil Regional Counsel (OCCCCRC). Since Rule 3.112 only covers representation of defendants in capital litigation, the committee opted to shorten the formal name by deleting any reference to Civil Regional Counsel.

Subdivision (f) of Rule 3.112 has remained unchanged by the committee except for subparagraph (7) of the rule. It read as follows.

(7) have attended within the last two years a continuing legal education program of at least twelve hours’ duration devoted specifically to the defense of capital cases. Attorneys who do not meet the continuing legal education requirement on July 1, 2002, shall have until March 1, 2003, in which to satisfy the continuing legal education requirement.

The committee amended (7) as follows.

(7) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases. ~~Attorneys who do not meet the continuing legal education requirement on July 1, 2002, shall have until March 1, 2003, in which to satisfy the continuing legal education requirement.~~

The last sentence has been stricken by the committee since over five years have passed requiring counsel to meet the minimum standards set forth in the rule.

Subdivision (g) of the rule has been left intact by the committee with the exception of an amendment to subparagraph (E). It currently reads:

(E) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases. Attorneys who do not meet the continuing legal education requirement on July 1, 2002, shall have until March 1, 2003, in which to satisfy the requirement.

The committee has amended the subparagraph to read:

(E) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases. ~~Attorneys who do not meet the continuing legal education requirement on July 1, 2002, shall have until March 1, 2003, in which to satisfy the requirement.~~

The last sentence has been stricken by the committee since over five years have passed requiring counsel to meet the minimum standards set forth in the rule.

Subdivision (h) of the rule has not been changed by the committee except for subparagraph (6). It currently reads:

(6) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases. Attorneys who do not meet the continuing legal education requirement on July 1, 2002, shall have until March 1, 2003, in which to satisfy the requirement.

The committee has amended this subparagraph to read:

(6) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases. ~~Attorneys who do not meet the continuing legal education requirement on July 1, 2002, shall have until March 1, 2003, in which to satisfy the requirement.~~

This change by the committee is consistent with the amendments to subdivisions (f) and (g).

The committee has amended subdivision (i) of the rule. It now reads:

**(i) Notice of Appearance.** An attorney who is retained or appointed in place of the Public Defender to represent a defendant in a capital case shall immediately file a notice of appearance certifying that he or she meets the qualifications of this rule. If the office of the Public Defender is appointed to represent the defendant, the public defender shall certify that the assistants assigned as lead and cocounsel meet the requirements of this rule. A notice of appearance filed under this rule shall be served on the defendant.

The committee has amended (i) to read:

**(i) Notice of Appearance.** An attorney who is retained or appointed in place of the Public Defender or Criminal Conflict Regional Counsel to represent a defendant in a capital case shall immediately file a notice of appearance certifying that he or she meets the qualifications of this rule. If the office of the Public Defender or Criminal Conflict Regional Counsel is appointed to represent the defendant, the ~~p~~Public ~~d~~Defender or Criminal Conflict Regional Counsel shall certify that the assistants assigned as lead and cocounsel meet the requirements of this rule. A notice of appearance filed under this rule shall be served on the defendant.

Since Rule 3.112 applies to both the Public Defender and Criminal Conflict Regional Counsel, the conflict counsel has been added to this subdivision of the rule. The committee capitalized "Public Defender" to maintain consistency throughout the rule.

Subdivision (j) has been amended by the committee. Subparagraph (1) remains unchanged; however, subparagraph (2) has been changed. It currently reads:

**(2) Public Defender.** If a Public Defender seeks to refuse appointment to a new capital case based on a claim of excessive caseload, the matter should be referred to the Chief Judge of the circuit or to the administrative judge as so designated by the Chief Judge. The Chief Judge or his or her designate should coordinate with the Public Defender to assess the number of attorneys involved in capital cases, evaluate the availability of prospective attorneys, and resolve any representation issues.

The subparagraph has been amended to read:

**(2) Public Defender.** If a Public Defender or Criminal Conflict Regional Counsel seeks to refuse appointment to a new capital case based on a claim of excessive caseload, the matter should be referred to the Chief Judge of the circuit or to the administrative judge as so designated by the Chief Judge. The Chief Judge or his or her designate should coordinate with the Public Defender or Criminal Conflict Regional Counsel to assess the number of attorneys involved in capital cases, evaluate the availability of prospective attorneys, and resolve any representation issues.

The committee decided that Criminal Conflict Regional Counsel might have reason to believe that the caseload carried by that office was excessive. Since the Public Defender has been afforded an opportunity to address the issue of excessive caseloads with the Chief Judge, the committee voted to extend the same right to regional counsel.

Subdivision **(k)** of the rule remains unchanged.

Respectfully submitted this \_\_\_\_ day of June, 2008.

---

THE HONORABLE O. H. EATON, JR.  
Circuit Court Judge, Eighteenth Judicial Circuit  
Chair, Criminal Court Steering Committee  
101 Bush Blvd.  
Sanford, Florida 32773  
Florida Bar Number 0111108

## **CERTIFICATE OF FONT SIZE**

I hereby certify that this report has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

---

**THE HONORABLE O. H. EATON, JR.**  
Chair, Criminal Court Steering Committee  
Florida Bar Number 0111108