

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO:**

**2008 OUT-OF-CYCLE REPORT OF THE  
FLORIDA CRIMINAL PROCEDURE RULES COMMITTEE**

The Honorable Thomas H. Bateman III, Chair, Florida Criminal Procedure Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this 2008 out-of-cycle report of the Florida Criminal Procedure Rules Committee (CPRC) under *Fla. R. Jud. Admin.* 2.140(f).

The proposed amendment to Rule 3.130 is in response to an August 21, 2007, request from attorney Donnie Murrell that the CPRC consider amending Rule 3.130 to require that both the state attorney and the public defender, or their designated assistants, attend all first appearance hearings (*see* Appendix A). This proposal is considered by the CPRC to be a matter of great public importance. The proposed amendments to Rule 3.704 and 3.986 are made in response to statutory amendments requiring changes in procedural rules, specifically in response to a request dated July 7, 2008, from the Office of the Clerk of the Supreme Court (*see* Appendix B) in which the CPRC was directed to consider statutory amendments in HB 43 (Chapter 2008-238, Laws of Florida) (Appendix C) and SB 622 (Chapter

2008-251, Laws of Florida) (Appendix D) which become effective October 1, 2008.<sup>1</sup>

As required by *Fla. R. Jud. Admin.* 2.140(f), the proposed amendments have been reviewed by the Board of Governors of The Florida Bar through its Executive Committee, which voted 8-0 in favor of the amendments. The voting records for the CPRC are stated below.

Because of the short period of time between the enactment of statutes requiring rule changes and the submission of this report, the proposed rule changes have not been published for comment.

The text of the amendments in both full-page format (*see* Appendix E) and two-column format (*see* Appendix F) is attached to this report.

The proposed amendments and explanations are as follows:

### **RULE 3.130      FIRST APPEARANCE**

The rule is amended to add a sentence requiring that the state attorney or an assistant state attorney and the public defender or an assistant public defender attend first appearance proceedings either in person or by other electronic means. The amendment is based in part on extensive comments received by the CPRC at its January 2008 meeting from several guest

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<sup>1</sup> The CPRC is not recommending changes to the Criminal Punishment Code Scoresheet, Rule 3.992, because the court approved amendments resulting from this legislation on September 25, 2008, in *In Re: Amendments to Florida Rule of Criminal Procedure 3.992(A) – Criminal Punishment Code Scoresheet*, SC08-1312.

speakers, including Public Defenders Rick Parker and Howard Finkelstein and State Attorney Jerry Blair. Mr. Parker also addressed the CPRC at its June 2008 meeting (*see* Appendix G). The comments indicated that a state attorney and public defender are not both present at some first appearance hearings throughout the state due, apparently, to practical and financial obstacles. These obstacles include lack of staff (state attorneys, public defenders, and judges) to attend hearings, especially in multi-county circuits that cover a large geographical area, and lack of county government funding for electronic means for appearances. Notwithstanding the obstacles, the CPRC recognizes the critical nature of this stage of the proceedings in proposing this amendment.

The CPRC voted 28-0 in favor of this amendment.

#### **RULE 3.704. THE CRIMINAL PUNISHMENT CODE**

Section 8 of HB 43 amends section 874.04, Florida Statutes, to remove the term “criminal street gang activity” and replace it with the term “gang-related offenses.” Section 26 of HB 43 similarly amends section 921.0024(1)(a), Florida Statutes, to change the term “criminal street gang offense” to “criminal gang offense.” The rule is amended accordingly to change the term “criminal street gang” to “criminal gang.” The proposal also includes an editorial change to correct the spelling of the word “benefiting.”

The CPRC voted 24-0 in favor of this amendment.

**RULE 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE**

Section 21 of HB 43 creates section 948.033, Florida Statutes, to prohibit persons convicted of gang offenses from associating with other gang members during community control or probation, and section 22 amends section 947.18, Florida Statutes, to prohibit persons convicted of gang offenses from associating with other gang members during parole. Accordingly, 3.986(d), the sentencing form, is amended to include a provision for felony convictions for offenses that were found to be related to a criminal gang and 3.986(e) (probation order) and 3.986(f) (community control) are amended to include special conditions prohibiting association with criminal gang members.

The CPRC voted 24-0 in favor of this amendment.

The Criminal Procedure Rules Committee respectfully requests that the Court amend the Florida Rules of Criminal Procedure as outlined in this report.

Respectfully submitted on September \_\_\_\_\_, 2008.

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THOMAS H. BATEMAN III  
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## **CERTIFICATION OF COMPLIANCE**

I certify that these rules were read against *West's Florida Rules of Court – State* (2008).

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

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Jodi Jennings  
Staff Liaison, Florida Criminal Procedure Rules Committee  
The Florida Bar No. 930880

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished by United States mail to Larry Donald Murrell, L.D. Murrell, P.A., 400 Executive Center Drive, Suite 201, West Palm Beach, Florida 33401-2922 on September 29, 2008.

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Jodi Jennings  
Staff Liaison, Criminal Procedure Rules Committee