

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENT TO THE
FLORIDA RULES OF CRIMINAL
PROCEDURE (3.111)

CASE NO. SC08-1934

COMMENTS OF JUDGE O. H. EATON, JR.

The proposed change to Rule 3.111 would require an assistant state attorney and an assistant public defender to attend first appearance hearings.

I was under the impression that prosecutors and public defenders attended first appearances throughout the state until this proposal was brought to my attention. Accordingly, I attended the Criminal Procedure Rules Committee meeting in January, 2008, to participate in the discussion on the proposal.

During the meeting, Jerry Blair, State Attorney for the 3d Judicial Circuit, spoke in opposition to the proposed change to the rule. He told the rules committee that his circuit is composed of seven counties, none of which have a population of 60,000.¹ First appearances are not held on some days in the 3d Circuit because there is not an arrest every 24 hours in some of the counties. The county judges in some of the counties do not schedule first appearances on a regular basis and simply have the sheriff bring prisoners over from the jail in between other scheduled court events. Mr. Blair stated that one county judge in²

¹ Thirty-one of Florida's Sixty-seven counties have a population of less than 60,000. U. S. Census Report, 2000.

the 3d Circuit likes to hold first appearances at odd times during duck hunting season so he can make it to his duck blind before dawn. First appearances are not an event of record in some of the counties in the 3d Circuit. Mr. Blair stated that he only has 26 prosecutors and most of them are located nearly 80 miles from some of the county courthouses.

The State of Florida is certainly diverse in its population density and in geography as well as in its judicial culture. It is difficult to fashion a rule of procedure that is satisfactory for application in both Broward County and Levy County. Additionally, requiring lawyers to attend first appearances state-wide will undoubtedly have budgetary impact in a year of budget crisis.

The question the Court must decide in considering the proposed change in the first appearance rule is whether a person arrested for a serious crime in the 3d Circuit is entitled to the same first appearance consideration, including assistance of counsel, as a person who is arrested in Miami, Orlando, or even in Sanford.

The Seminole County Criminal Courts Operations Committee, which I chair, has been studying first appearance procedure for over a year now. We were amazed at the different approaches our local judges took when considering (or not considering) matters that the current rules require to be considered at first appearance. For instance, Rule 3.131 was barely given lip service when

conditions of release were determined, and some judges deferred appointment of counsel until arraignment, or simply did not address the counsel issue at all. The Committee created a First Appearance Manual for use by our local judges and many, but not all, of the problems at first appearance have been solved, or are at least being addressed. The First Appearance Manual has been published at <http://www.flcourts18.org/PDF/Manuals/FirstAppMan1-1-09.pdf> and I recommend that the Court review it for informational purposes.

It is customary in most circuits for all of the judges to take turns handling first appearances on weekends and holidays. This means that judges who have little contact with first appearance procedure deal with it a few times each year, with varying rates of success. A First Appearance Manual is almost a necessity for these judges to correctly handle first appearances.

There is no question about the importance of first appearance. The first appearance judge sets the course of the case by deciding probable cause, setting conditions of release, and appointing counsel for the defendant. Additionally, defendants are given basic information about the charge(s) at first appearance. The determination of whether the defendant will likely remain in custody throughout the case is critical. It is common knowledge that defendants in custody are less able to assist counsel in preparing a defense and are more likely to receive

an incarcerative sentence instead of community supervision.

I would like to urge the Court to adopt the proposed rule. Additionally, the Court should require, at a minimum, that first appearances be regularly scheduled during normal business hours so the lawyers will know the time of first appearances. First appearance hearings should be recorded. A manual setting forth the responsibilities of the first appearance judge and the lawyers who attend first appearances should also be considered.

I realize that adopting the proposed rule will cause a cultural change in some of the smaller counties. The time has come for that change.

I have one further observation. The rules relating to setting conditions of pretrial release need to be enforced by trial courts and the District Courts of Appeal. If the first appearance judge is supposed to first consider personal recognizance of the defendant as the condition of release, there should be justification required for not releasing the defendant on recognizance. Perhaps the rules need to emphasize the priority to be given to the least restrictive conditions of release and address the standard of review in habeas actions challenging the appropriateness of conditions set by the trial courts.

Respectfully submitted,

O. H. Eaton, Jr., Circuit Judge
101 Bush Boulevard
Sanford, Florida 32773
407-665-4939
Fla. Bar No. 0111108

CERTIFICATE OF SERVICE

I hereby certify that a copy of these comments have been furnished to the Honorable Tom Bateman, Chair, Criminal Procedure Rules Committee, Gadsden County Courthouse, 24 N. Adams Street, Quincy, Florida 32354, Robert Dewitt Trammell, Esq., P. O. Box 1799, Tallahassee, Florida 32302 and Donnie Murrell, Esq., 400 Executive Center Drive, Ste 201, West Palm Beach, Florida 33401-2922, this 13th day of January, 2009.

CERTIFICATE OF FONT SIZE

I hereby certify that these comments have 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).

O. H. Eaton, Jr., Circuit Judge
101 Bush Boulevard
Sanford, Florida 32773
407-665-4939
Fla. Bar No. 0111108