

IN THE SUPREME COURT OF FLORIDA

IN RE:

SC08-1934

AMENDMENTS TO FLORIDA RULE
OF CRIMINAL PROCEDURE 3.130

COMMENTS OF FLORIDA PUBLIC DEFENDER ASSOCIATION

The Florida Public Defender Association, Inc. (“FPDA”) respectfully offers the following comments on the proposed amendments to Florida Rules of Criminal Procedure 3.130. The FPDA consists of the twenty elected public defenders, hundreds of assistant public defenders, and support staff. As appointed counsel for indigent criminal defendants, FPDA members are deeply interested in the rules of procedure designed to ensure fair and equal treatment of indigent persons in the criminal and juvenile justice systems.

The FPDA strongly supports the proposed rule amendment despite the hardship that staffing these hearings may cause to some public defender offices in the rural circuits which span several counties. FPDA members believe the first appearance hearing is an important hearing which requires presence of an attorney. A timely determination of probable cause and pretrial conditions of release is a critical proceeding for incarcerated

individuals. *See generally Gerstein v. Pugh*, 420 U.S. 103 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

Recognizing the importance of the first appearance hearing, the FPDA supports the rule but requests additional language which will ensure that the hearings are held during normal business hours (8 a.m. to 5 p.m.) with adequate notice to the state attorney and public defender. Anecdotally, there are some counties that hold these hearings at the convenience of the court, at varying times on various days, without notice to the public defenders. In some counties, the hearings are often held very early in the morning (6 a.m. and earlier) in order to accommodate personal needs of the judge. In other counties, the hearings are held at different times: essentially whenever the judge arrives. This is simply impractical for counsel to be present, have the opportunity to consult with the arrestees and adequately prepare for a meaningful first appearance.

In order for first appearance hearings to comport with due process, reasonable notice and a meaningful opportunity to be heard must be incorporated in the rule. *N.C. v. Anderson*, 882 So.2d 990, 993 (Fla.2004) (“Procedural due process requires both reasonable notice and a meaningful opportunity to be heard.”); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972)(due process right to be heard must be granted at meaningful time and in

meaningful manner). Additionally, the hearings should be of record so that meaningful appellate review can occur. *See In re Gault*, 387 U.S. 1, 39 (1967)("[W]ith lawyers come records of proceedings; records make possible appeals which, even if they do not occur, impart by their possibility a healthy atmosphere of accountability."(Internal quotation marks omitted)). Therefore, the FPDA respectfully requests the proposed amendment to the rule be adopted with the following additional language:

First appearance hearings shall be held during normal business hours, with adequate notice to the public defender and state attorney. An official record of the proceedings shall be maintained.

Respectfully submitted,

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General Counsel for
Florida Public Defender
Association, Inc.

CERTIFICATES

I hereby certify that a copy of this request was served by mail to Thomas H. Bateman, Chair, Rules of Criminal Procedure Committee, 24 N. Adams Street, Quincy, FL 32354 on this _____ day of _____, 2008.

ROBERT DEWITT TRAMMELL

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REQUEST FOR ORAL ARGUMENT

The Florida Public Defender Association (Inc.) respectfully requests to participate in any oral argument scheduled in the above matter.

I hereby certify that a copy of this request was served by mail on Thomas H. Bateman, Chair, Rules of Criminal Procedure Committee, 24 N. Adams Street, Quincy, FL 32354 on this _____ day of _____, 2008.

Respectfully submitted,

ROBERT DEWITT TRAMMELL

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