

December 12, 2008

The Honorable Thomas Hall  
Clerk of the Court  
Florida Supreme Court  
500 South Duvall Street  
Tallahassee, Florida 32399-1927

RE: Comment on Proposed Rule Change to  
Fla.R.Crim.Pro. 3.130 (SC 08- 1934)

Dear Mr. Hall:

As the proponent of the proposed amendment, I would urge the Court to adopt the requested change to Rule 3.130 and require the presence of State Attorneys and Public Defenders at first appearances. This proposed change was endorsed by the Criminal Law Section of the Florida Bar, was passed unanimously by the Criminal Procedure Rules Committee (by a 28-0 vote) and unanimously approved by the Board of Governors. The week after the amendment was approved by the Criminal Procedure Rules Committee the United States Supreme Court issued its decision in Rothgery v. Gillespie County, Texas, 128 S.Ct. 2578 (June, 2008) holding that local governments can be liable for civil damages for failing to provide counsel to indigents at first appearances.

The amendment simply makes *explicit* that which has always been *implicit* in the current rules: a prosecutor and public defender will attend first appearance proceedings.

The impetus for this proposal came from St. Lucie County Court Judge Cliff Barnes who drew attention to the fact that in St. Lucie County neither the State nor the Public Defender attended first appearances on weekends or holidays. As a

result, in St. Lucie County alone, more than five thousand indigent defendants per year attend first appearances without the benefit of counsel. (This figure comes from sworn testimony of other St. Lucie County judges in In Re: Judge Clifford Barnes, SC 06-2119, presently pending before this Court.) Trial courts are forced to make probable cause and bond decisions without in-put from the State, law enforcement or victims. St. Lucie County is one of four counties in the Nineteenth Circuit. The practice is the same in the other counties in the circuit. Additionally, discussion before the Rules Committee revealed that other counties (predominately rural counties in North Florida) usually do not have prosecutors or public defenders at weekend first appearances. It is clear, given the sheer number of defendants being deprived of a meaningful first appearance, that this rule change is necessary.

I would respectfully urge this Court to adopt the proposed amendment.

Sincerely,

Donnie Murrell

LDM/mz

cc: Hon. Thomas Bateman, III

cc: Jodi Beth Jennings

cc: John Harkness, Jr.