

IN THE SUPREME COURT OF FLORIDA

IN RE:

CASE NO. SC08-1934

AMENDMENT TO FLORIDA
RULES OF CRIMINAL PROCEDURE –
RULE 3.130 (FIRST APPEARANCE)

CRIMINAL PROCEDURES RULES COMMITTEE'S RESPONSE TO COMMENTS ON PROPOSED AMENDMENT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.130 (FIRST APPEARANCE) BY THE FLORIDA PUBLIC DEFENDER ASSOCIATION

The Criminal Procedure Rules Committee (CPRC), by and through its chairman, the Honorable Thomas H. Bateman III, Senior Judge, Second Judicial Circuit, files its response to the Florida Public Defenders Association, Inc.'s (FPDA) recommendation to amend rule 3.130 further than the CPRC has proposed. The CPRC appreciates that the FPDA strongly supports the rule amendment the rules committee is proposing. However, the FPDA's suggestion that the rule set a court's hours of operation goes too far for the purpose of a rule of procedure.

Indeed, the FPDA's proposed suggestion, and many others, were fully vetted and discussed at the CPRC's January 2008 mid-year meeting in Miami and at its June 2008 annual meeting in Boca Raton. Notably, the January meeting was dedicated solely to a discussion about this proposed rule. At that meeting, the CPRC heard from 8th Circuit Public Defender, Rick Parker, and 17th Circuit Public

Defender, Howard Finklestein, as well as 8th Circuit State Attorney William Cervone and 3rd Circuit State Attorney Jerry Blair, and others. Each was able to fully explain and discuss their concerns with budget and staffing as well as the actual time some judges conduct first appearance proceedings. The CPRC unanimously passed the rule it is proposing at its June meeting and The Florida Bar's Board of Governors unanimously approved the proposed rule at its August meeting.

The CPRC suggests that as a matter of policy it is not appropriate for the Florida Supreme Court to delineate in a rule of court procedure when a trial court should conduct its business. Such matters are best left to the individual circuits and their judges or chief judge to decide. They are in the best position to know about the availability of necessary resources within their circuit and within the counties within the circuits.

Left unsaid by the FDPA in its comment, but which nevertheless came to light during the CPRC's information gathering and deliberations, is the fact there are individual judges who, because of their own personal quirks or schedules, conduct first appearances at times that are difficult or nearly impossible for the State Attorney and Public Defender to staff. (e.g., 4:00 a.m. or 5:00 a.m., etc.)

The CRC suggest that when such occurrences happen they first should be brought to the attention of the scheduling judge. If the judge fails to make a legally

adequate accommodation, the matter should be taken up with the chief judge. If the chief judge is not able to remedy the situation, an aggrieved party has other avenues available to seek relief, all of which should be explored before resorting to placing in a rule of procedure that which should be obvious to all concerned – that in the absence of exigent or special circumstances, courts should conduct court business during regular business hours. However, if the Court feels that such a rule should be put in place, the CPRC suggests that such a rule would be more appropriate in the Rules of Judicial Administration. Such a rule it should apply to all court proceedings and not merely to first appearance proceedings.

Respectfully submitted,

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
Florida Bar Number 0123390
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5600

THOMAS H. BATEMAN III
Senior Judge
Chair, CPRC
Florida Bar Number 0349781
Leon County Courthouse,
c/o Trial Court Administrator
301 South Monroe Street
Tallahassee, Florida 32301
Telephone: 850-577-4401
Facsimile: 850-922-0327

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by regular U.S. Mail to Robert D. Trammell, General Counsel, Florida Public Defender Association, Inc., Post Office Box 1799, Tallahassee, FL 32302, and Donnie Murrell, Law Office of L.D. Murrell, P.A., Suite 201 – Executive Center Plaza, 400 Executive Center Drive, Wet Palm Beach, Florida 33401, on January 7, 2009.

THOMAS H. BATEMAN III