

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC08-998

IN RE: FLORIDA RULES OF CIVIL PROCEDURE FOR  
INVOLUNTARY COMMITMENT OF SEXUALLY  
VIOLENT PREDATORS

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COMMENT OF THE PUBLIC DEFENDER  
IN AND FOR THE FOURTH JUDICIAL CIRCUIT

Comes now, the Public Defender in and for the Fourth Judicial Circuit, and presents this comment to the Florida Supreme Court's Criminal Court Steering Committee's proposed rules of procedure for "Jimmy Ryce" proceedings. Undersigned counsel respectfully states:

1. Proposed Rule 4.240(e)(2) currently reads as follows:

If a majority of jurors do not find that the respondent is a sexually violent predator, the court shall enter a final judgment in favor of the respondent.

Section 394.917, Florida Statutes, requires a majority of jurors to find that a person is a sexually violent predator before a person can be retried on the petition. This is accurately reflected in proposed Rule 4.240(e)(1). The statute is silent as to the number of jurors required to vote that the person is not a sexually violent predator before release is warranted, but one can deduce that the number must be three.

Section 2.08, Standard Jury Instructions for Proceedings for Commitment of Sexually Violent Predators clarifies this issue and states: "If three or more jurors determine that the respondent is not proven to be a sexually violent predator he/she will not be confined to a secure facility as a sexually violent predator and the case will not be retried before another jury."

Proposed Rule 4.240(e)(2) should read:

If three or more jurors do not find that the respondent is a sexually violent predator, the court shall enter a final judgment in favor of the respondent.

Wherefore, undersigned counsel respectfully requests Proposed Rule 4.240(e)(2) be changed to reflect that a three-three vote by the jury results in release of respondent.

Respectfully submitted,

BILL WHITE  
PUBLIC DEFENDER

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the comment complies with the font requirement of Rule 9.210 and is submitted in Times New Roman 12-point font this \_\_\_\_\_ day of August, 2008.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: Judge O.H. Eaton, Jr., Committee Chair, c/o Les Garringer, Office of the General Counsel, 500 South Duval Street, Tallahassee, Fl., 32399-1925, this \_\_\_\_\_ day of August, 2008.