

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CRIMINAL
PROCEDURE**

CASE NO:

**2009 OUT-OF-CYCLE REPORT OF THE
FLORIDA CRIMINAL PROCEDURE RULES COMMITTEE
TO AMEND RULES 3.704, 3.800, AND 3.986**

Fleur J. Lobree, Chair, Florida Criminal Procedure Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this 2009 out-of-cycle report of the Florida Criminal Procedure Rules Committee (CPRC) under *Fla. R. Jud. Admin.* 2.140.

As required by *Fla. R. Jud. Admin.* 2.140, the proposed amendments have been reviewed by the Board of Governors of The Florida Bar through its Executive Committee, which voted 8-0 to recommend acceptance of the amendments and in favor of filing the amendments out-of-cycle. The voting records for the CPRC are stated below.

The amendments to *Rules* 3.704 and 3.986 are proposed in response to 2009 legislative amendments and a referral from the court. Because of the short period of time between the enactment of statutes requiring rule changes and the submission of this report, the proposed changes to *Rules* 3.704 and 3.986 have not been published for comment. Similarly, because the CPRC decided on June 26, 2009, to submit the proposed amendment to *Rule* 3.800 out-of-cycle, it also has not been published for comment.

The text of the amendments in both full-page format (*see* Appendix C) and two-column format (*see* Appendix D) is attached to this report.

The proposed amendments and explanations are as follows:

RULE 3.704. THE CRIMINAL PUNISHMENT CODE

In response to CS/SB 1722, which was approved by the Governor on May 27, 2009, and designated as Chapter 2009-63, Laws of Florida, effective July 1, 2009 (*see* Appendix A, which includes court referral letter), the CPRC voted to amend *Rule* 3.704 by adding two new subdivisions, (d)(28) and (29), and renumbering current subdivision (28).

Section 1 of Chapter 2009-63, Laws of Florida, creates section 775.082(10), Florida Statutes, which allows courts to sentence certain offenders to a nonstate prison sanction unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Proposed subdivision (29) conforms the rule to the statute.

Section 2 of Chapter 2009-63, Laws of Florida, creates section 921.00241, Florida Statutes, which defines criteria for a prison diversion program. Proposed subdivision (28) conforms the rule to the statute.

RULE 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE

In response to CS/CS/SB 2276, which was approved by the Governor on June 16, 2009, and designated as Chapter 2009-190, Laws of Florida, effective July 1, 2009 (*see* Appendix B), the CPRC voted to amend several forms within *Rule* 3.986: (b) Form for Judgment, (c) Form for Charges, Costs, and Fees, (e) Form for Order of Probation, and (f) Order of Community Control.

Chapter 2009-190, Laws of Florida, creates a statewide DNA database. Section 2 of this law creates section 943.325(3), Florida Statutes, which requires that qualified offenders submit DNA samples. *Rule* 3.986(b),

the judgment form, is amended to conform to this requirement. Section 2 of the law also creates section 943.325(12), Florida Statutes, which requires that convicted persons pay the costs of collecting samples. *Rule 3.986(c)*, the form for charges, costs, and fees, is amended to conform to this requirement. Section 4 of the law requires that as a condition of probation, community control, or other court-ordered community supervision, offenders submit to the drawing of blood or other biological specimens. Subdivisions (e) and (f) of *Rule 3.986*, the forms for probation and community control, are amended to conform to these requirements.

The CPRC voted 26-0 in favor of the amendments to *Rules 3.704* and *3.986*.

Rule 3.800. CORRECTION, REDUCTION, AND MODIFICATION OF SENTENCES

At its January 2009 meeting, the CPRC voted to amend *Rule 3.800* to add subdivision (d) to allow for dismissal of successive motions to correct an illegal sentence. At its June 2009 meeting, believing that this matter should be addressed immediately, the committee voted to submit this proposed amendment out-of-cycle.

The history of this proposal is as follows. On February 16, 2006, a subcommittee of the CPRC was asked to consider whether *Rule 3.800* should be amended to include a provision addressing successive motions similar to *Rule 3.850(f)* (*see* Appendix E). On September 15, 2006, the subcommittee proposed that the rule be so amended. However, because the Criminal Court Steering Committee Post Conviction Rule Workgroup was then considering merging *Rule 3.800* with *Rule 3.850*, it was suggested that any action by the CPRC would soon be rendered moot. Accordingly, the

matter was tabled pending action by the Post Conviction Rule Workgroup. Because the matter had not yet been resolved by the Post Conviction Rule Workgroup, in February 2008 the subcommittee reconsidered the issue, determined that the rule should be amended, and presented its proposal to the full CPRC, which voted in favor of this proposal in January 2009.

This proposal is based on case law. In *State v. McBride*, 848 So. 2d 287 (Fla. 2003), the Florida Supreme Court addressed the matter of successive *Rule 3.800* motions and rejected the argument that the doctrine of *res judicata*, which prohibits both relitigation of claims that were raised and *claims that could have been raised*, prohibited the filing of successive 3.800 motions. In so doing, the Court stated:

The doctrine would require a motion to correct an illegal sentence to raise all arguments that the sentence is illegal. Subsequent motions would be barred if they contained arguments that were *or could have been* raised in the prior motion. Rule 3.800, however, allows a court to correct an illegal sentence “at any time.” Florida courts have held, and we agree, that the phrase “at any time” allows defendants to file successive motions under rule 3.800. See *Raley v. State*, 675 So.2d 170, 173 (Fla. 5th DCA 1996); *Barnes v. State*, 661 So.2d 71, 71 (Fla. 2d DCA 1995). Thus, rule 3.800 expressly rejects application of *res judicata* principles to such motions.

Id. at 290. See also *Blidge v. State*, 933 So. 2d 1262 (Fla. 3d DCA 2006) (“there is no proscription against filing successive rule 3.800(a) motions”); *Pleasure v. State*, 931 So.2d 1000 (Fla. 3d DCA 2006) (in case of second or subsequent *Rule 3.800(a)* motion, question is whether subsequent motion is barred by doctrine of collateral estoppel, *i.e.* whether identical issues were raised and decided on merits); *Price v. State*, 692 So. 2d 971 (Fla. 2d DCA 1997). The Court in *McBride* also considered the doctrine of collateral estoppel, which would preclude “a defendant from rearguing in a successive

rule 3.800 motion the same issue argued in a prior motion,” and held that the procedural bar would “not be invoked to bar relief where its application would result in a manifest injustice.” *Id.* at 291, 292. In so doing, the Court noted:

This Court has long recognized that *res judicata* will not be invoked where it would defeat the ends of justice. *See deCancino v. E. Airlines, Inc.*, 283 So. 2d 97, 98 (Fla.1973); *Universal Constr. Co. v. City of Fort Lauderdale*, 68 So. 2d 366, 369 (Fla. 1953). The law of the case doctrine also contains such an exception. *See Strazzulla v. Hendrick*, 177 So. 2d 1, 4 (Fla. 1965).

Id. at 291.

During the discussions on this proposal, several committee members expressed concern that the proposed language was inconsistent with *Rule 3.800(a)*, which provides that the court may “at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it in a sentencing scoresheet, or a sentence that does not grant proper credit for time served when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief.”

Amending *Rule 3.800* to bar successive motions, without placing any time restrictions on the filing of such a motion, would end piecemeal litigation of issues that could, and should otherwise, be raised in a single motion. The express inclusion of reference to the doctrine of manifest injustice would address the concerns raised by some committee members.

The proposed language is a modified version of the rule against successive motions contained in *Rule 3.850(f)*.

The CPRC voted 23-5 in favor of this amendment and 25-2 to expedite the matter by filing it out-of-cycle.

The Criminal Procedure Rules Committee respectfully requests that the Court amend the Florida Rules of Criminal Procedure as outlined in this report.

Respectfully submitted on _____.

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CERTIFICATION OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court – State* (2009).

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

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