

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 RULE 3.853**

Fleur J. Lobree, Chair, Florida Criminal Procedure Rules Committee (CPRC), and John F. Harkness, Jr., Executive Director, The Florida Bar, file this out-of-cycle report requesting an amendment to *Fla. R. Crim. P.* 3.853(c)(7), pursuant to *Fla. R. Jud. Admin.* 2.140.

The proposed amendments were published in the November 1, 2009, *Bar News* (*see* Appendix A). No comments were received.

As required by *Fla. R. Jud. Admin.* 2.140, the proposed amendments have been reviewed by the Board of Governors of The Florida Bar, which voted 44-0 to recommend acceptance of the amendments and in favor of filing the amendments out-of-cycle. The CPRC voted 29-0 in favor of the amendments and in favor of submitting the amendments out-of-cycle.

RULE 3.853. MOTION FOR POST CONVICTION DNA TESTING

This matter was referred to the CPRC by committee member Candance Sabella (*see* Appendix B) to update and correct references to the crime laboratory accrediting organizations. The referral emphasizes “the importance of explicitly specifying the appropriate criteria and/or certification” so that testing is performed only by qualified laboratories, which will help ensure uniformity of test results.

The current rule states that the court may order DNA testing by a “laboratory or agency certified by the American Society of Crime Laboratory Directors or the National Forensic Science Training Center.” As explained by Ralph Keaton, Executive Director, American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), the

accrediting body for crime laboratories is ASCLD/LAB rather than ASCLD. And as explained by Terry Mills, Manager of Accreditation for FQS, the National Forensic Science Training Center no longer accredits testing laboratories; Forensic Quality Services, Inc. (FQS) is now the name of the accrediting body. (*See* Appendix B.)

This amendment to the rule concerning DNA testing is being submitted out-of-cycle because the certification organizations specified in subdivision (c)(7) either no longer exist or have been renamed. Therefore, if a circuit court were to strictly adhere to the current rule, there would be no certified labs that could perform DNA testing other than FDLE, which does not currently perform certain types of testing that are frequently sought by defendants under the rule (mtDNA or Y-STR DNA). Thus, under the current rule, neither the defendant nor the state could obtain such testing, which could create a problem.

The committee believes it is important for the rule to be updated as soon as possible to ensure that DNA testing is performed only by qualified laboratories and results are as uniform as possible. The proposal amends the rule to state the correct names for the certification organizations. The proposed amendment is attached in legislative format (*see* Appendix C) and two-column chart (*see* Appendix D).

The Criminal Procedure Rules Committee respectfully requests that the Court amend *Fla. R. Crim. P.* 3.853(c)(7) as outlined in this report.

Respectfully submitted on _____.

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CERTIFICATION OF COMPLIANCE

I certify that this rule was 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)*.

Jodi Beth Jennings
Staff Liaison, Florida Criminal Procedure Rules Committee
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