

**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**

The Honorable Thomas H. Bateman III, 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(f) concerning Rules 3.172 and 3.985.

The proposed amendment to Rule 3.172 is in response to *Bolware v. State*, 995 So. 2d 268 (Fla. 2008), which, in footnote 5, directed the CPRC to “formulate language for amendment of rule 3.172(c) for use during the plea colloquy.” *Id.* at 276. (See Appendix A.) As required by *Fla. R. Jud. Admin.* 2.140(f), the proposed amendment was reviewed by the Board of Governors of The Florida Bar, which voted 33-0 in favor of the amendment. The CPRC voted 33-0 in favor of the proposed amendment.

The proposed amendment to Rule 3.985 is in response to a request from Judge Terry Terrell, Chair, Criminal Jury Instructions Committee (see Appendix A). The Criminal Jury Instructions Committee proposed the

amendment but is without authority to request rule changes, therefore the Supreme Court liaison justice indicated that the rules committee should consider the amendment.

As required by *Fla. R. Jud. Admin.* 2.140(f), the proposed amendment was reviewed by the Board of Governors of The Florida Bar which voted 35-0 in favor of the amendment. The CPRC handled this matter through its fast track procedures and voted 19-0 in favor of the proposed amendment.

The proposed amendments were published for comment in the January 15, 2009, Florida Bar News and on the Bar's website (*see* Appendix B). No comments were received.

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 3.172      ACCEPTANCE OF GUILTY OR NOLO  
CONTENDERE PLEA**

The rule is amended to add subdivision (c)(10) to add a provision on determining voluntariness of a plea in accordance with *Bolware*. The amendment requires the trial judge to determine that the defendant understands that if he or she pleads guilty or nolo contendere to an offense for which automatic and mandatory driver's license suspension is required to be imposed, the plea may result in suspension or revocation of the

defendant's driver's license. The proposal also makes conforming editorial changes to subdivisions (c)(8) and (c)(9).

**RULE 3.985. STANDARD JURY INSTRUCTIONS**

The proposal recognizes the practice of the Office of the State Courts Administrator of posting all criminal jury instructions on the Supreme Court website within a business day of release. Because there is a delay between the release of court opinions and the ability of outside publishers to publish amended instructions, the proposal will direct trial judges and practitioners to the most current authorized criminal jury instructions.

The rule deletes reference to the jury instructions published by The Florida Bar and substitutes reference to the Supreme Court's website.<sup>1</sup>

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<sup>1</sup> While not within the CPRC's authority, it is noted that a similarly worded companion civil rule, *Fla. R. Civ. P.* 1.985, contains a reference to the civil jury instructions being "published by The Florida Bar." Because both the criminal and civil jury instructions are now maintained on the Court's website, if the Court adopts the change suggested in this report, the CPRC recommends that the Court consider amending the companion civil rule, *sua sponte*, to refer to publication of the civil jury instructions by the Supreme Court rather than by The Florida Bar.

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 February \_\_\_\_\_, 2009.

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## CERTIFICATION OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court – State* (2008).

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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Jodi Beth Jennings  
Staff Liaison, Florida Criminal Procedure Rules Committee  
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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to The Honorable Terry Terrell, Chair, Committee on Standard Jury Instructions in Criminal Cases, 190 W. Government St., Pensacola, FL 32502-5773 on February \_\_\_\_\_, 2009.

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Jodi Beth Jennings  
Staff Liaison, Criminal Procedure Rules Committee