

IN THE SUPREME COURT OF FLORIDA

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

CASE NO:

**2010 OUT-OF-CYCLE REPORT OF THE
FLORIDA CRIMINAL PROCEDURE RULES COMMITTEE
TO AMEND RULES 3.111, 3.704, 3.720, AND 3.986**

Robert T. Strain, Chair, Florida Criminal Procedure Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this 2010 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 11-0 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 Rule 3.986, subdivisions (e) and (f), are proposed in response to 2010 legislative amendments and a referral from the court (*see* Appendix C). Because of the short period of time between the effective date of amendments to statutes requiring rule changes and the submission of this report, the proposed changes to Rule 3.986(e) and (f) have not been published for comment. Additionally, because the CPRC voted 23-0 on June 25, 2010, to submit proposed amendments to Rules 3.111(b)(5)(A), 3.704(d)(20), 3.720(d)(1), and 3.986(c) out-of-cycle based upon legislative changes that took effect over a year ago, they also have not been published for comment.

The text of the proposed amendments in both full-page format (*see* Appendix A) and two-column format (*see* Appendix B) is attached to this report. The proposed amendments and explanations are as follows:

RULE 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE

In response to CS/CS/HB 1005, which was approved by the Governor on May 11, 2010, and designated as Chapter 2010-64, Laws of Florida, effective July 1, 2010 (*see* Appendix D), the CPRC voted 25-0 to amend two forms within Rule 3.986: (e) Form for Order of Probation, and (f) Order of Community Control. Sections 18 and 20, Chapter 2010-64, Laws of Florida, require that as a condition of probation and community control, offenders submit to the taking of a digitized photograph by the Department of Corrections as a part of the offender's records. The committee recommends that subdivisions (e) and (f) of Rule 3.986, the form orders of probation and community control, be amended to conform to these requirements. Specific references to sections 948.03 and 948.101, Florida Statutes, within these proposals are included because these statutes provide additional information concerning how the department may display these photographs and limitations upon its authority to do so.

Furthermore, in its 2009 cycle report, the CPRC proposed amendment to subdivision (c) (Forms for Charges, Costs, and Fees) of Rule 3.986 to correct statutory references and to remove obsolete statutory references, which this Court made effective on January 1, 2010. *In re Amendments to the Florida Rules of Criminal Procedure*, 26 So. 3d 534, 538 (Fla. 2009). Shortly thereafter, on January 22, 2010, the CPRC recognized the need to further revise one line of this form and voted 24-1 in favor of an amendment to conform this form to the legislative change discussed below with respect to Rules 3.111 and 3.720.

**RULE 3.111. PROVIDING COUNSEL TO INDIGENTS, AND
RULE 3.720. SENTENCING HEARING**

The committee reviewed Rules 3.111 and 3.720 at the request of Julianne M. Holt, Public Defender for the Thirteenth Judicial Circuit, and John J. Skye, Assistant Public Defender (*see* Appendix E), who noted that section 27.56, Florida Statutes, was renumbered in 1997 as section 938.29, Florida Statutes, and that the Office of Criminal Conflict and Civil Regional Counsel was created in 2007 and section 938.29, Florida Statutes, was revised to include that office. *See* Chapter 2007-62, § 29, Laws of Florida, effective October 1, 2007. (*See* Appendix F). Accordingly, the committee voted 30-0 on June 26, 2009, to amend Rule 3.111(b)(5)(A), and voted 24-1 on January 22, 2010, to amend Rule 3.720(d)(1), to correct the statutory reference and include other court appointed counsel within the rules pertaining to the imposition of a lien for services rendered by court appointed counsel.

RULE 3.704. THE CRIMINAL PUNISHMENT CODE

The committee reviewed Rule 3.704 at the request of Lester Garringer of the Office of the State Court Administrator, and Emily Radd of the Department of Corrections (*see* Appendix G). Chapter 2007-212, Section 2, Laws of Florida (HB 409) (*see* Appendix H), which became effective October 1, 2007, revised part of the worksheet key contained in section 921.0024(1)(b), Florida Statutes, pertaining to the law enforcement protection act multiplier. On June 20, 2008, the CPRC voted 24-1 in favor of a corresponding amendment to Rule 3.704(d)(20), but this proposal was not approved in time to be included in the last cycle report and was inadvertently excluded from prior out-of-cycle submissions. Accordingly, on June 25, 2010, the CPRC voted 23-0 to submit this proposal out-of-cycle, so that Rule 3.704 corresponds with the criminal punishment code worksheet computations

statute amended in 2007.

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 _____.

Robert T. Strain, Chair
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CERTIFICATION OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court – State* (2010).

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

Jodi Jennings
Staff Liaison, Florida Criminal Procedure Rules Committee
Florida Bar No. 930880

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to Julianne M. Holt, Public Defender, Thirteenth Judicial Circuit, 700 East Twiggs Street, Fifth Floor, P.O. Box 172910, Tampa, Florida 33672-0910, and Lester Garringer, Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399-1927, on July 27, 2010.

Jodi Jennings
Staff Liaison, Criminal Procedure Rules Committee