

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
THE FLORIDA RULES OF CRIMINAL
PROCEDURE - RULE 3.851**

CASE NO.: SC14-

**CAPITAL POSTCONVICTION SUBCOMMITTEE’S PETITION TO
AMEND RULE 3.851(g)(2)**

The Capital Postconviction Proceedings Subcommittee (“Subcommittee”) by and through its chair, Judge Kevin M. Emas, respectfully requests the Court amend rule 3.851(g)(2).

1. Jurisdiction

In AOSC13-11, the Court created a capital postconviction subcommittee, which was directed to recommend whether rule 3.851 or any other rules should be amended to improve the overall efficiency of the capital postconviction process. See Appendix C.

2. Rule 3.851(g)(2)

In SC13-2381, the Capital Postconviction Subcommittee filed a petition to amend a host of capital postconviction-related rules. The Court adopted many of the Subcommittee’s recommendations, including the elimination of the requirement that the postconviction motion be signed under oath by the defendant. In its petition, however, the Subcommittee neglected to recommend that the final sentence in rule 3.851(g)(2) also be amended to eliminate reference to the requirement of a defendant’s signature and oath.¹ Following this Court’s issuance

¹ Rule 3.851(g)(2), as amended in SC13-2381, provides (relevant language underlined):

(2) Collateral counsel may file a motion for competency determination and an accompanying certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the death-sentenced defendant is incompetent to proceed. The motion and certificate shall replace the signed oath by the defendant that otherwise must accompany a motion filed under this rule.

of the opinion in SC13-2381, the Subcommittee filed a motion to correct this oversight. However, that motion was denied without prejudice for the Subcommittee to file a proper petition.² See Appendix D.

Given that rule 3.851 has been amended to eliminate the requirement of a defendant's signature and oath, the last sentence of rule 3.851(g)(2) is no longer necessary and retaining this language may generate confusion.

Accordingly, the Subcommittee unanimously³ requests the Court publish the proposal in Appendix A and then amend rule 3.851(g)(2) as follows:

(g) Incompetence to Proceed in Capital Collateral Proceedings.

(2) Collateral counsel may file a motion for competency determination and an accompanying certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the death-sentenced defendant is incompetent to proceed. ~~The motion and certificate shall replace the signed oath by the prisoner that otherwise must accompany a motion filed under this rule.~~

Respectfully submitted this 14th day of
October, 2014.

s/ Judge Kevin Emas
The Honorable Kevin M. Emas
Florida Bar Number: 353566
Chair, Capital Postconviction
Proceedings Subcommittee
Third District Court of Appeal
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² In that same motion, the Subcommittee also requested the Court to consider a correction to rule 3.112(f)(3). However, the Subcommittee is not pursuing that issue in this petition, as the Subcommittee anticipates the Criminal Procedure Rules Committee will include this proposed change in its upcoming 3-year cycle report.

³ Chief Justice Jorge Labarga and former Judge Belvin Perry, Jr. did not participate in the Subcommittee's discussions on this issue.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Petition has been sent by email to: Honorable Samantha Ward, Chair, Criminal Procedure Rules Committee at wardsl@fljud13.org and Heather Telfer, Committee Liaison, The Florida Bar at htelfer@flabar.org; this 14th day of October, 2014.

s/ Kevin M. Emas
HONORABLE KEVIN M. EMAS
Chair, Capital Postconviction
Proceedings Subcommittee
Florida Bar Number 353566

CERTIFICATION OF COMPLIANCE

I hereby certify that this Petition has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

s/ Kevin M. Emas
HONORABLE KEVIN M. EMAS
Chair, Capital Postconviction
Proceedings Subcommittee
Florida Bar Number 353566