

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO FLORIDA  
RULES OF CRIMINAL PROCEDURE  
AND FLORIDA RULE OF APPELLATE  
PROCEDURE 9.140**

**CASE NO.: SC15-1582**

**RESPONSE OF THE CRIMINAL PROCEDURE RULES COMMITTEE  
AND THE APPELLATE COURT RULES COMMITTEE**

Meredith Charbula, Chair of the Criminal Procedure Rules Committee (“CPRC”), The Honorable T. Kent Wetherell, II, Chair of the Appellate Court Rules Committee (“ACRC”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this response to comments received on behalf of the Committees.

The Committees received comments from Eugenia Keough Rains and Kenneth McLaughlin; the Florida Association of Criminal Defense Lawyers (“FACDL”); and the Sixth Judicial Circuit.

All rule amendments have been approved by the full Committees and, as required by Florida Rule of Judicial Administration 2.140, reviewed by The Florida Bar Board of Governors. The voting records of the Committees and the Board of Governors are attached as Appendix A.

FACDL made several suggestions including asking ACRC to consider including references to Rule 3.781 (Sentencing Hearing to Consider the Imposition of a Life Sentence for Juvenile Offenders) in Rule 9.140 (Appeal Proceedings in Criminal Cases). The ACRC determined that no rule amendment is necessary as proceedings under Rule 3.781 are not postconviction proceedings. The hearing in question occurs after the guilt phase, but prior to the imposition of a sentence. Accordingly, proceedings under Rule 3.781 are reviewable on direct appeal, not as part of postconviction proceedings.

FACDL also suggested that in Rule 3.802 (Review of Sentences for Juvenile Offenders) an “application” is not required and instead a “notice” should suffice. The CPRC considered the comment, but determined that section 921.1402(4), Florida Statutes, requires an “application” and thus additional amendment is not necessary.

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FACDL further suggested that the requirements in the application subdivision of Rule 3.802 (Review of Sentences for Juvenile Offenders) were too stringent. This comment is addressed in the explanation under Rule 3.802.

The Sixth Circuit comment suggested that the requirements in Rule 3.781 allowing the defendant and state to present evidence at the sentencing hearing may conflict with the jury's finding. The CPRC considered this comment, but determined that no amendment is currently necessary. Additional comments of the Sixth Circuit are addressed in the explanation under Rule 3.781.

**RULE 3.781. SENTENCING HEARING TO CONSIDER THE IMPOSITION OF A LIFE SENTENCE FOR JUVENILE OFFENDERS**

In its comment, the Sixth Judicial Circuit asked the CPRC to amend Rule 3.781 to make it clear that a sentencing hearing is not mandatory in all cases. The Sixth Circuit suggested that subdivision (c) of Rule 3.781 (Sentencing Hearing to Consider the Imposition of a Life Sentence for Juvenile Offenders) omitted a reference to section 921.1402(2)(a), Florida Statutes. The Sixth Circuit suggested that the CPRC's use of "capital cases" in Rule 3.781(c) is overbroad.

To address the concerns of the Sixth Circuit, the CPRC proposes amending the first sentence of subdivision (a) to remove "can" and in its place substitute "may" to allow for cases in which no hearing is necessary as the parties have agreed that life imprisonment, or a term of years equal to life imprisonment, will not be sought. This proposed amendment also tracks the statutory language in section 921.1402(1), Florida Statutes.

For greater clarity for the reader, the CPRC suggests dividing subdivision (c) into new subdivisions (c)(1) – (c)(3). In its comment, the Sixth Circuit suggested that subdivision (c) should be amended to include a reference to section 921.1402(2)(a), Florida Statutes. The sentence currently refers to sections 921.1402(2)(b) and (2)(c), Florida Statutes, the CPRC agrees that this third reference is needed and proposes adding it to the second sentence of new subdivision (c)(1). The CPRC also agrees with the Sixth Circuit that the use of "capital cases" in subdivision (c) is overly broad. In response, the CPRC suggests rephrasing the sentence and separating the language into new subdivision (c)(2). The proposed amendments to subdivision (c)(2) make clear that a defendant, convicted of premeditated murder, is not entitled to a sentencing review proceeding if the defendant was previously convicted of an offense enumerated in

section 921.1402(2)(a), Florida Statutes. The remainder of existing subdivision (c) would become new subdivision (c)(3).

**RULE 3.802. REVIEW OF SENTENCES FOR JUVENILE OFFENDERS**

Regarding Rule 3.802 (Review of Sentences for Juvenile Offenders), the CPRC suggests removing the requirement that the application be certified by removing “certify” and in its place substitute “state” in the first sentence of subdivision (c).

In its comment, FACDL suggested that the application requirements in subdivision (c) were too stringent as some defendants may not have access to a copy of their judgement and sentence. In response, the CPRC proposes adding new subdivisions (c)(1)(A) – (c)(1)(C) that would permit a statement containing the date of sentencing, the offense, and the sentence imposed, instead of strictly requiring a copy of the judgment and sentence.

The CPRC proposes editorial amendments to subdivision (c)(5) to change “section” to “sections” in two places in the middle of the sentence. In subdivision (d), the CPRC proposes removing the second sentence and moving it to new subdivision (g) titled “Right to Counsel.” Also in subdivision (d), the CPRC proposes adding a requirement that the court attach documents to an order if the court denies an application without a hearing. This will assist District Courts of Appeal determine if a summary denial is based on timeliness or eligibility. In particular, the CPRC suggests adding “and shall attach such documents to the order” to the end of the second to last sentence of subdivision (d).

As mentioned above, CPRC proposes creating a new subdivision (g) to address the right to counsel. This will make the rule easier to read. The proposed amendment tracks the language in section 921.1402(5), Florida Statutes.

**RULE 9.141. REVIEW PROCEEDINGS IN COLLATERAL OR POST-CONVICTION CRIMINAL CASES**

Ms. Keough Rains and Mr. McLaughlin asked the ACRC to consider including references to new Rule 3.802 (Review of Sentences for Juvenile Offenders) in Rule 9.141 (Review Proceedings in Collateral or Postconviction Criminal Cases). The ACRC agreed that Ms. Keough Rains and Mr. McLaughlin’s comments were well taken and approved the inclusion of Rule 3.802 into subdivisions (b), (b)(2)(A), (b)(3)(A), and (b)(3)(B)(i) of Rule 9.141.

The ACRC proposes removing the hyphen in “post-conviction” in the title of Rule 9.141, subdivisions (b), (b)(2)(A), and (b)(3)(B)(i) for consistency throughout the rules set.

WHEREFORE, the Criminal Procedure Rules Committee and the Appellate Court Rules Committee respectfully request that the Court amend Florida Rules of Criminal Procedure and Appellate Procedure as recommended in this response.

Respectfully submitted on March 28, 2016.

/s/ Meredith Charbula

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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the e-portal, on March 28, 2016, to:

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**CERTIFICATION OF COMPLIANCE**

I certify that these rules were read against *West’s Florida Rules of Court—State* (2016 Edition) and *In re: Amendments to the Florida Rules of Criminal Procedure and Florida Rule of Appellate Procedure 9.140*, 176 So. 3d 980, (Fla. 2015).

I certify that this response to comment was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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