

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.: SC15-

**CRIMINAL PROCEDURE RULES COMMITTEE
AND APPELLATE COURT RULES COMMITTEE
OUT-OF-CYCLE REPORT**

The Honorable Samantha L. Ward, Chair of the Criminal Procedure Rules Committee (“CPRC”), Wendy S. Loquasto, Chair of the Appellate Court Rules Committee (“ACRC”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this out-of-cycle report, under Florida Rule of Judicial Administration 2.140, to resolve a conflict between the Florida Rules of Criminal Procedure and the Florida Rules of Appellate Procedure.

All rule and form amendments have been approved by the full Committee and, as required by Florida Rule of Judicial Administration 2.140, reviewed by The Florida Bar Board of Governors. The voting records of the Committee and the Board of Governors are attached as Appendix A. While the Appellate Court Rules Committee cannot vote on the specific amendments to the Criminal Rules, ACRC has unanimously endorsed the amendments currently proposed by the Criminal Procedure Rules Committee.

The amendments were published in *The Florida Bar News* on November 15, 2014, and were posted on The Florida Bar’s website. (*See* Appendix D.) No comments were received.

Florida law and the Florida Rules of Appellate Procedure have consistently required that rendition of an order for appeal is dependent upon the filing of a “signed, written order.” (*See* Fla. R. App. P. 9.020(i).) That procedure provides a would-be appellant with a clear point of entry into the appellate process.

Relatively recent amendments to the Florida Rules of Criminal Procedure regarding postconviction relief, however, could be interpreted as putting the rendition of postconviction orders in question. While Rule 9.020(i) continues to

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state that a final order is not rendered until a signed, written order disposes of a proper motion for rehearing, Florida Rules of Criminal Procedure 3.192, 3.800, and 3.850 permit motions for rehearing of some postconviction orders to be “deemed denied” if no ruling is entered within a specific number of days. This sets up an apparent and unresolved conflict: If a rehearing motion was “deemed denied” under the criminal rules, does that mean the final order at issue is rendered on the date the rehearing motion is deemed denied? Or would Rule 9.020(i) continue to delay rendition until a signed, written order is entered?

The “deemed denial” language is of specific concern because criminal defendants in these types of proceedings are often unrepresented by counsel. A pro se defendant — who is otherwise required to be specifically informed of his or her right to appeal in an order for postconviction relief — might delay seeking review while awaiting entry of a signed, written order on his or her timely motion for rehearing, when no written order may ever be entered. If a court were to later conclude that the postconviction order was rendered on the date the rehearing motion was deemed denied, the criminal defendant’s appellate rights could be lost.

In his January 17, 2014, letter, Judge Chris Altendbernd brought his concerns regarding a potential conflict between the Rules of Criminal Procedure and the Rules of Appellate Procedure to the Committees’ attention. (*See* Appendix E.)

In response, the Appellate Court Rules Committee and the Criminal Procedure Rules Committee established a joint workgroup to propose revisions to either the criminal or appellate rules that would address this issue. A consensus was reached that rendition should remain dependent on a signed, written order, and that any remedy for the confusion created by the “deemed denied” language should be addressed by amending the criminal rules. To that end, the joint workgroup reviewed those rules and proposed removing the “deemed denied” language from the portions of Rules 3.192, 3.800, and 3.850 where the language would cause confusion over rendition. Additional changes were made as necessary to conform the criminal rules’ references to the definition of rendition in Rule 9.020(i).

The “deemed denied” language will still appear in Rule 3.800(b)(2)(B), regarding motions to correct sentencing errors, since an appeal has already been filed and is pending. In that context, the language presents no risk of confusing the rendition date of the order on appeal in a way that could deprive a criminal defendant of their appellate rights. In addition, defendants in these direct-appeal proceedings would typically have appointed counsel representing them.

There was some concern about permitting this language to remain in the rules in any capacity, in light of a report that the “deemed denied” language was starting to creep into other proposed rules of procedure and could potentially cause other rendition problems. But the language in Rule 3.800(b)(2)(B) was considered necessary because the appellate courts need to insure the pending appeal can be efficiently processed and each appellate court has a procedure in place to conform to the current language of Rule 3.800(b)(2)(B).

The rule and form amendments are proposed for the following reasons and in the following ways:

RULE 3.192. MOTIONS FOR REHEARING

The sixth sentence in the rule, “[i]f no order is filed within 40 days, the motion is deemed denied,” is deleted from Rule 3.192. In the next sentence “40 days from the order of which rehearing is sought, or” is removed and the rule would now require “the filing of a signed, written order.” The proposed amendments require the filing of a signed, written order to trigger rendition and resolve a conflict between Rule 3.192 and the definition of “rendition” found in Florida Rule of Appellate Procedure 9.020(i).

Proposed amendments to the second to last sentence of the rule are before the Court in SC15-177, *In re: Amendments to the Florida Rules of Criminal Procedure*.

RULE 3.800. CORRECTION, REDUCTION, AND MODIFICATION OF SENTENCES

Subdivision (b)(1)(B) is amended to remove the fourth sentence, “[i]f no order is filed within 60 days, the motion shall be considered denied.” The next sentence is amended to require the filing of a “signed, written order.” The eighth sentence is deleted which reads, “[i]f no order is filed within 40 days, the motion is deemed denied.” In the last sentence in the subdivision, “40 days from the order of which rehearing is sought, or” is removed and the rule is amended to require “the filing of a signed, written order.” The Committee proposed amendments require the filing of a signed, written order to trigger rendition. These amendments would resolve a conflict between Rule 3.800(b)(1)(B) and the definition of “rendition” found in Florida Rule of Appellate Procedure 9.020(i).

Subdivision (b)(2)(B) is amended to include the following “except that if the trial court does not file an order ruling on the motion within 60 days, the motion

shall be deemed denied. Similarly, if the trial court does not file an order ruling on a timely motion for rehearing within 40 days from the date of the order of which rehearing is sought, the motion for rehearing shall be deemed denied.” The amendment rephrases the subdivision to clarify that if the trial court does not file an order ruling on the motion to correct a sentencing error within 60 days, the motion shall be deemed denied. This applies to motions filed pending appeal, but not to motions filed prior to appeal.

The sentence in subdivision (c) which states “[i]f no order is entered on the motion within 90 days or such time as extended by the parties or the trial court, the motion shall be deemed denied,” is deleted. The proposed amendments require the filing of a signed, written order to trigger rendition and resolve a conflict between Rule 3.800(c) and the definition of “rendition” found in Florida Rule of Appellate Procedure 9.020(i).

Proposed amendments to subdivision (a) are currently before the Court in SC14-1530, *In re: Amendments to the Florida Rules of Criminal Procedure*.

RULE 3.850. MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE

Subdivision (j) is amended to remove the third sentence, “[a] timely filed motion for rehearing shall toll finality of any final order addressing a motion under this rule.” The last sentence in the subdivision is also deleted: “[i]f no order is filed within 40 days, the motion is deemed denied.” The Committee’s proposed amendments require the entry of a signed, written order to trigger rendition. Additionally, the proposed amendments clarify whether a motion to vacate, set aside, or correct sentence was dismissed for cause or for lack of jurisdiction.

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

Respectfully submitted on February 11, 2015.

/s/ Hon. Samantha L. Ward

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, on February 11, 2015, to:

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CERTIFICATE OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court—State* (2014 Revised Edition).

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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