

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO.: 16-**

**FAST-TRACK REPORT OF THE  
CRIMINAL PROCEDURE RULES COMMITTEE**

H. Scott Fingerhut, Chair of the Criminal Procedure Rules Committee (“Committee”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this fast-track report, under Florida Rule of Judicial Administration 2.140(e).

All rule 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. Pursuant to Florida Rule of Judicial Administration 2.140(e), the amendments have not been published for comment prior to the filing of this report.

The Committee proposes new Rule 3.181 (Notice to Seek Death Penalty) and amendments to the following: Rule 3.202 (Expert Testimony of Mental Mitigation During Penalty Phase of Capital Trial; Notice and Examination by State Experts); Rule 3.220 (Discovery); and Rule 3.780 (Sentencing Hearing for Capital Cases).

**PROPOSED RULE AMENDMENTS**

**RULE 3.181. NOTICE TO SEEK DEATH PENALTY**

The Committee proposes a new rule of Criminal Procedure entitled “Notice to Seek Death Penalty.” The new Rule addresses statutory changes to section 782.04, Florida Statutes, as amended by section 2, subsection (b), Chapter 2016-13, Laws of Florida. As proposed, the new rule details the notice requirements that the State must follow when seeking the death penalty. Specifically, the notice must be filed within 45 days of arraignment and must contain a list of aggravating factors the State intends to prove. The Committee also proposes a committee note

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to reference the Florida Rules of Criminal Procedure that this new Rule complements.

**RULE 3.202. EXPERT TESTIMONY OF MENTAL MITIGATION DURING PENALTY PHASE OF CAPITAL TRIAL; NOTICE AND EXAMINATION BY STATE EXPERT**

The Committee proposes amending subdivision (a) of Florida Rule of Criminal Procedure 3.202 (Expert Testimony of Mental Mitigation During Penalty Phase by Capital Trial; Notice and Examination by State Expert). The amendments address statutory changes to section 782.04, Florida Statutes, as amended by section 2, subsection (b), Chapter 2016-13, Laws of Florida. Additionally, the amendments conform Rule 3.202 to the newly proposed Rule 3.181 (Notice to Seek Death Penalty) to avoid conflicting time frames for filing a notice to seek the death penalty.

Specifically, the Committee proposes adding “timely” to the middle of the first sentence of subdivision (a) and deleting “within 45 days from the date of arraignment” from the end of that sentence. The Committee proposes deleting the second sentence of subdivision (a) in its entirety as failure to file is no longer excusable and now Rule 3.181 details the requirement. The Committee also proposes amending the title of Rule 3.202 to remove the colon and replace it with a semicolon for consistency throughout the rules set. Finally, the Committee proposes a committee note with cross references to new Rule 3.181 (Notice to Seek Death Penalty) and Rule 3.780 (Sentencing Hearing for Capital Cases).

There were 5 votes in opposition to these amendments. The minority expressed concern that the insertion of “timely” and deletion of “within 45 days from the date of arraignment” in the first sentence are unnecessary.

**RULE 3.220. DISCOVERY**

The Committee proposes amending subdivisions (h)(4) and (b)(1)(L) of Florida Rule of Criminal Procedure 3.220 (Discovery). The amendments address statutory amendments to section 92.53, Florida Statutes, as amended by section 1, Chapter 2016-199, Laws of Florida. The statutory amendments change the age of sensitive witnesses whose depositions must be videotaped from under the age of 16 to 18. The legislative amendments also add those with an intellectual disability to the category of “sensitive witnesses.”

In the first sentence of subdivision (h)(4), the Committee proposes replacing “16” with “18.” At the end of the second sentence, the Committee proposes adding “, or an intellectual disability as defined in section 393.063, Florida Statutes.” Finally, the Committee amending subdivision (b)(1)(L) by adding a comma after “objects” to adhere to the Supreme Court’s Style Guide.

**RULE 3.780. SENTENCING HEARING FOR CAPITAL CASES**

The Committee proposes amending subdivision (a) of Florida Rule of Criminal Procedure 3.780 (Sentencing Hearing for Capital Cases). The amendments address statutory changes to section 782.04, Florida Statutes, as amended by section 2, subsection (b), Chapter 2016-13, Laws of Florida. The statutory changes require the State to file notice of its intent to seek the death penalty within 45 days of the arraignment of the defendant. To address the statutory changes, the Committee proposes adding a cross reference to Florida Rule of Criminal Procedure 3.181 (Notice to Seek Death Penalty). Specifically, the Committee proposes adding “and the notice requirements of Florida Rule of Criminal Procedure 3.181” to the end of the first sentence of subdivision (a).

WHEREFORE, the Criminal Procedure Rules Committee respectfully requests that the Court adopt new Rule 3.181 and amend Florida Rules of Criminal Procedure 3.202, 3.220, and 3.780 as detailed above.

Respectfully submitted on August 11, 2016.

/s/ H. Scott Fingerhut  
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**CERTIFICATE OF COMPLIANCE**

I certify that these rules were read against *West's Florida Rules of Court—State* (2016 Edition).

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

/s/ Heather Savage Telfer  
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