Florida Rules of Criminal Procedure

QUICK LINKS

Rule 3.010

Scope

These rules shall govern the procedure in all criminal proceedings in state courts including proceedings involving direct and indirect criminal contempt, proceedings under rule 3.850, and vehicular and pedestrian traffic offenses insofar as these rules are made applicable by the Florida Rules of Practice and Procedure for Traffic Courts. These rules shall not apply to direct or indirect criminal contempt of a court acting in any appellate capacity. These rules shall not apply to rules 3.811 and 3.812. These rules shall be known as the Florida Rules of Criminal Procedure and may be cited as Fla. R. Crim. P.

Rule 3.020

Purpose and Construction

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure and fairness in administration.

Rule 3.025

State and Prosecuting Attorney Defined

Whenever the terms “state,” “state attorney,” “prosecutor,” “prosecution,” “prosecuting officer,” or “prosecuting attorney” are used in these rules, they shall be construed to mean the prosecuting authority representing the state of Florida.

Rule 3.030

Service of Pleadings and Papers

(a) Service. Every pleading subsequent to the initial indictment or information on which a

defendant is to be tried unless the court otherwise orders, and every order not entered in open court, every written motion unless it is one about which a hearing ex parte is authorized, and every written notice, demand, and similar document shall be served on each party in conformity with Florida Rule of Judicial Administration 2.516; however, nothing herein shall be construed to require that a plea of not guilty shall be in writing.

(b) Filing. All documents that are "court records" as defined in the Florida Rules of Judicial Administration must be filed with the clerk in accordance with Florida Rules of Judicial Administration 2.520 and 2.525.

(c) Deposit with the Clerk. Any paper document that is a judgment and sentence or required by statute or rule to be sworn to or notarized shall be filed and deposited with the clerk immediately thereafter. The clerk shall maintain deposited original paper documents in accordance with Florida Rule of Judicial Administration 2.430, unless otherwise ordered by the court.

Rule 3.040

Computation of Time

Computation of time shall be governed by Florida Rule of Judicial Administration 2.514(a), except for the periods of time of less than 7 days contained in rules 3.130, 3.132(a) and (c), and 3.133(a).

Rule 3.050

Enlargement of Time

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for good cause shown may, at any time, in its discretion (1) with or without notice, order the period enlarged if a request therefor is made before the expiration of the period originally prescribed or extended by a previous order or (2) upon motion made and notice after the expiration of the specified period, permit the act to be done when the failure to act was the result of excusable neglect; but it may not, except as provided by statute or elsewhere in these rules, extend the time for making a motion for new trial, for taking an appeal, or for making a motion for a judgment of acquittal.

Rule 3.060

Time for Service of Motions and Notice of Hearing

A copy of any written motion which may not be heard ex parte and a copy of the notice of the hearing thereof, shall be served on the adverse party a reasonable time before the time specified for the hearing.

Rule 3.070

Additional Time After Service By Mail, When Permitted, or E-Mail

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other document on the party and the notice or document is served on the party by mail, when permitted, or e-mail, 3 days shall be added to the prescribed period.

Rule 3.080

Nonverification of Pleadings

Except when otherwise specifically provided by these rules or an applicable statute, every written pleading or other document of a party represented by an attorney need not be verified or accompanied by an affidavit.

Rule 3.090

Pleading Captions

Every pleading, motion, order, judgment, or other document shall have a caption containing the name of the court, the file number, the name of the first party on each side with an appropriate indication of other parties, and a designation identifying the party filing it and its nature, to include if the pleading or document is sworn or the nature of the order, as the case may be. All documents filed in the action shall be styled in such a manner as to indicate clearly the subject matter of the document and the party requesting or obtaining relief.

Rule 3.111

Providing Counsel to Indigents

(a) When Counsel Provided. A person entitled to appointment of counsel as provided herein shall have counsel appointed when the person is formally charged with an offense, or as soon as feasible after custodial restraint, or at the first appearance before a committing judge,

whichever occurs earliest.

(b) Cases Applicable.

(1) Counsel shall be provided to indigent persons in all prosecutions for offenses punishable by incarceration including appeals from the conviction thereof. In the discretion of the court, counsel does not have to be provided to an indigent person in a prosecution for a misdemeanor or violation of a municipal ordinance if the judge, at least 15 days prior to trial, files in the cause a written order of no incarceration certifying that the defendant will not be incarcerated in the case pending trial or probation violation hearing, or as part of a sentence after trial, guilty or nolo contendere plea, or probation revocation. This 15-day requirement may be waived by the defendant or defense counsel.

(A) If the court issues an order of no incarceration after counsel has been appointed to represent the defendant, the court may discharge appointed counsel unless the defendant is incarcerated or the defendant would be substantially disadvantaged by the discharge of appointed counsel.

(B) If the court determines that the defendant would be substantially disadvantaged by the discharge of appointed counsel, the court shall either:

(i) not discharge appointed counsel; or

(ii) discharge appointed counsel and allow the defendant a reasonable time to obtain private counsel, or if the defendant elects to represent himself or herself, a reasonable time to prepare for trial.

(C) If the court withdraws its order of no incarceration, it shall immediately appoint counsel if the defendant is otherwise eligible for the services of the public defender. The court may not withdraw its order of no incarceration once the defendant has been found guilty or pled nolo contendere.

(2) Counsel may be provided to indigent persons in all proceedings arising from the initiation of a criminal action against a defendant, including postconviction proceedings and appeals therefrom, extradition proceedings, mental competency proceedings, and other proceedings that are adversary in nature, regardless of the designation of the court in which they occur or the classification of the proceedings as civil or criminal.

(3) Counsel may be provided to a partially indigent person on request, provided that the person shall defray that portion of the cost of representation and the reasonable costs of investigation as he or she is able without substantial hardship to the person or the person's family, as directed by the court.

(4) "Indigent" shall mean a person who is unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person's family; "partially indigent" shall mean a person unable to pay more than a portion of the fee charged by an attorney, including costs of investigation, without substantial hardship to the person or the person's family.

(5) Before appointing a public defender, the court shall:

(A) inform the accused that, if the public defender or other counsel is appointed, a lien for the services rendered by counsel may be imposed as provided by law;

(B) make inquiry into the financial status of the accused in a manner not inconsistent with the guidelines established by section 27.52, Florida Statutes. The accused shall respond to the inquiry under oath;

(C) require the accused to execute an affidavit of insolvency as required by section 27.52, Florida Statutes.

(c) Duty of Booking Officer. In addition to any other duty, the officer who commits a defendant to custody has the following duties:

(1) The officer shall immediately advise the defendant:

(A) of the right to counsel;

(B) that, if the defendant is unable to pay a lawyer, one will be provided immediately at no charge.

(2) If the defendant requests counsel or advises the officer that he or she cannot afford counsel, the officer shall immediately and effectively place the defendant in communication with the (office of) public defender of the circuit in which the arrest was made.

(3) If the defendant indicates that he or she has an attorney or is able to retain an attorney, the officer shall immediately and effectively place the defendant in communication with the attorney or the Lawyer Referral Service of the local bar association.

(4) The public defender of each judicial circuit may interview a defendant when contacted by, or on behalf of, a defendant who is, or claims to be, indigent as defined by law.

(A) If the defendant is in custody and reasonably appears to be indigent, the public defender shall tender such advice as is indicated by the facts of the case, seek the setting of a reasonable bail, and otherwise represent the defendant pending a formal judicial determination of indigency.

(B) If the defendant is at liberty on bail or otherwise not in custody, the public defender shall elicit from the defendant only the information that may be reasonably relevant to the question of indigency and shall immediately seek a formal judicial determination of indigency. If the court finds the defendant indigent, it shall immediately appoint counsel to represent the defendant.

(d) Waiver of Counsel.

(1) The failure of a defendant to request appointment of counsel or the announced intention of a defendant to plead guilty shall not, in itself, constitute a waiver of counsel at any stage of the proceedings.

(2) A defendant shall not be considered to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make a knowing and intelligent waiver. Before determining whether the waiver is knowing and intelligent, the court shall advise the defendant of the disadvantages and dangers of self-representation.

(3) Regardless of the defendant's legal skills or the complexity of the case, the court shall not deny a defendant's unequivocal request to represent himself or herself, if the court makes a determination of record that the defendant has made a knowing and intelligent waiver of the right to counsel, and does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself.

(4) A waiver of counsel made in court shall be of record; a waiver made out of court shall be in writing with not less than 2 attesting witnesses. The witnesses shall attest the voluntary execution thereof.

(5) If a waiver is accepted at any stage of the proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the defendant appears without counsel.

(e) Withdrawal of Defense Counsel After Judgment and Sentence. The attorney of record for a defendant in a criminal proceeding shall not be relieved of any duties, nor be permitted to withdraw as counsel of record, except with approval of the lower tribunal on good cause shown on written motion, until after:

(1) the filing of:

(A) a notice of appeal;

(B) a statement of judicial acts to be reviewed, if a transcript will require the expenditure of public funds;

(C) directions to the clerk, if necessary; and

(D) a designation of that portion of the reporter's transcript that supports the statement of judicial acts to be reviewed, if a transcript will require expenditure of public funds; or

(2) substitute counsel has been obtained or appointed, or a statement has been filed with the appellate court that the appellant has exercised the right to self-representation. In publicly funded cases, the public defender for the local circuit court shall be appointed initially until the record is transmitted to the appellate court; or

(3) the time has expired for filing of a notice of appeal, and no notice has been filed.

Orders allowing withdrawal of counsel are conditional, and counsel shall remain of record for the limited purpose of representing the defendant in the lower tribunal regarding any sentencing error that the lower tribunal is authorized to address during the pendency of the direct appeal under rule 3.800(b)(2).

Rule 3.112

Minimum Standards for Attorneys In Capital Cases

(a) Statement of Purpose. The purpose of these rules is to set minimum standards for attorneys in capital cases to help ensure that competent representation will be provided to capital defendants in all cases. Minimum standards that have been promulgated concerning representation for defendants in criminal cases generally and the level of adherence to such standards required for noncapital cases should not be adopted as sufficient for death penalty cases. Counsel in death penalty cases should be required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation, zealously committed to the capital case, who has had adequate time and resources for preparation. These minimum standards for capital cases are not intended to preclude any circuit from adopting or maintaining standards having greater requirements.

(b) Definitions. A capital trial is defined as any first-degree murder case in which the State has not formally waived the death penalty on the record. A capital appeal is any appeal in which the death penalty has been imposed. A capital postconviction proceeding is any postconviction proceeding where the defendant is still under a sentence of death.

(c) Applicability. This rule applies to all defense counsel handling capital trials and capital appeals, who are appointed or retained on or after July 1, 2002. Subdivision (k) of this rule applies to all lead counsel handling capital postconviction cases, who are appointed or retained on or after April 1, 2015.

(d) List of Qualified Conflict Counsel.

(1) Every circuit shall maintain a list of conflict counsel qualified for appointment in capital cases in each of three categories:

(A) lead trial counsel;

(B) trial co-counsel; and

(C) appellate counsel.

(2) The chief judge for each circuit shall maintain a list of qualified counsel pursuant to section 27.40(3)(a), Florida Statutes.

(e) Appointment of Counsel. A court must appoint lead counsel and, upon written application and a showing of need by lead counsel, should appoint co-counsel to handle every capital trial in which the defendant is not represented by retained counsel. Lead counsel shall have the right to select co-counsel from attorneys on the lead counsel or co-counsel list. Both attorneys shall be reasonably compensated for the trial and sentencing phase. Except under extraordinary circumstances, only one attorney may be compensated for other proceedings. In capital cases in which the Public Defender or Criminal Conflict and Civil Regional Counsel is appointed, the Public Defender or Criminal Conflict and Civil Regional Counsel shall designate lead and co-counsel.

(f) Lead Trial Counsel. Lead trial counsel assignments should be given to attorneys who:

(1) are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and

(2) are experienced and active trial practitioners with at least five years of litigation experience in the field of criminal law; and

(3) have prior experience as lead counsel in no fewer than nine state or federal jury trials of serious and complex cases which were tried to completion, as well as prior experience as lead defense counsel or co-counsel in at least two state or federal cases tried to completion in which the death penalty was sought. In addition, of the nine jury trials which were tried to completion, the attorney should have been lead counsel in at least three cases in which the charge was murder; or alternatively, of the nine jury trials, at least one was a murder trial and an additional five were felony jury trials; and

(4) are familiar with the practice and procedure of the criminal courts of the jurisdiction; and

(5) are familiar with and experienced in the utilization of expert witnesses and evidence, including but not limited to psychiatric and forensic evidence; and

(6) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases, including but not limited to the investigation and presentation of evidence in mitigation of the death penalty; and

(7) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases.

(g) Co-counsel. Trial co-counsel assignments should be given to attorneys who:

(1) are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and

(2) qualify as lead counsel under paragraph (f) of these standards or meet the following requirements:

(A) are experienced and active trial practitioners with at least three years of litigation experience in the field of criminal law; and

(B) have prior experience as lead counsel or cocounsel in no fewer than three state or federal jury trials of serious and complex cases which were tried to completion, at least two of which were trials in which the charge was murder; or alternatively, of the three jury trials, at least one was a murder trial and one was a felony jury trial; and

(C) are familiar with the practice and procedure of the criminal courts of the jurisdiction; and

(D) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases, and

(E) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases.

(h) Appellate Counsel. Appellate counsel assignments should be given to attorneys who:

(1) are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and

(2) are experienced and active trial or appellate practitioners with at least five years of experience in the field of criminal law; and

(3) have prior experience in the appeal of at least one case where a sentence of death was imposed, as well as prior experience as lead counsel in the appeal of no fewer than three felony convictions in federal or state court, at least one of which was an appeal of a murder conviction; or alternatively, have prior experience as lead counsel in the appeal of no fewer than six felony convictions in federal or state court, at least two of which were appeals of a murder conviction;

and

(4) are familiar with the practice and procedure of the appellate courts of the jurisdiction; and

(5) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases; and

(6) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases.

(i) Notice of Appearance. An attorney who is retained or appointed in place of the Public Defender or Criminal Conflict and Civil Regional Counsel to represent a defendant in a capital case shall immediately file a notice of appearance certifying that he or she meets the qualifications of this rule. If the office of the Public Defender or Criminal Conflict and Civil Regional Counsel is appointed to represent the defendant, the Public Defender or Criminal Conflict and Civil Regional Counsel shall certify that the individuals or assistants assigned as lead and co-counsel meet the requirements of this rule. A notice of appearance filed under this rule shall be served on the defendant.

(j) Limitation on Caseloads.

(1) Generally. As soon as practicable, the trial court should conduct an inquiry relating to counsel's availability to provide effective assistance of counsel to the defendant. In assessing the availability of prospective counsel, the court should consider the number of capital or other cases then being handled by the attorney and any other circumstances bearing on the attorney's readiness to provide effective assistance of counsel to the defendant in a timely fashion. No appointment should be made to an attorney who may be unable to provide effective legal representation as a result of an unrealistically high caseload. Likewise, a private attorney should not undertake the representation of a defendant in a capital case if the attorney's caseload is high enough that it might impair the quality of legal representation provided to the defendant.

(2) Public Defender. If a Public Defender or Criminal Conflict and Civil Regional Counsel seeks to refuse appointment to a new capital case based on a claim of excessive caseload, the matter should be referred to the Chief Judge of the circuit or to the administrative judge as so designated by the Chief Judge. The Chief Judge or his or her designate should coordinate with the Public Defender or Criminal Conflict and Civil Regional Counsel to assess the number of attorneys involved in capital cases, evaluate the availability of prospective attorneys, and resolve any representation issues.

(Note that subdivision (k) applies to attorneys appointed or retained after April 1, 2015.)

(k) Qualifications of Lead Counsel in Capital Postconviction Proceedings. In order to serve as lead counsel, as set forth in rule 3.851, for the defendant in a capital postconviction proceeding, an attorney shall have:

(1) been a member of any bar for at least 5 years; and

(2) at least 3 years of experience in the field of postconviction litigation; and

(3) prior participation in a combined total of 5 proceedings in any of the following areas, at least 2 of which shall be from subdivision (k)(3)(C), (k)(3)(D), or (k)(3)(E) below:

(A) capital trials;

(B) capital sentencings;

(C) capital postconviction evidentiary hearings;

(D) capital collateral postconviction appeals;

(E) capital federal habeas proceedings.

(l) Exceptional Circumstances. In the event that the trial court determines that exceptional circumstances require counsel not meeting the requirements of this rule, the trial court shall enter an order specifying, in writing, the exceptional circumstances requiring deviation from the rule and the court's explicit determination that counsel chosen will provide competent representation in accord with the policy concerns of the rule.

Rule 3.113

Minimum Standards for Attorneys In Felony Cases

Before an attorney may participate as counsel of record in the circuit court for any adult felony case, including postconviction proceedings before the trial court, the attorney must complete a course, approved by The Florida Bar for continuing legal education credits, of at least 100 minutes and covering the legal and ethical obligations of discovery in a criminal case, including the requirements of rule 3.220, and the principles established in Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972).

Rule 3.115

Duties of State Attorney; Criminal Intake

The state attorney shall provide the personnel or procedure for criminal intake in the judicial

system. All sworn complaints charging the commission of a criminal offense shall be filed in the office of the clerk of the circuit court and delivered to the state attorney for further proceedings.

Rule 3.120

Committing Judge

Each state and county judge is a committing judge and may issue a summons to, or a warrant for the arrest of, a person against whom a complaint is made in writing and sworn to before a person authorized to administer oaths, when the complaint states facts that show that such person violated a criminal law of this state within the jurisdiction of the judge to whom the complaint is presented. The judge may take testimony under oath to determine if there is reasonable ground to believe the complaint is true. The judge may commit the offender to jail, may order the defendant to appear before the proper court to answer the charge in the complaint, or may discharge the defendant from custody or from any undertaking to appear. The judge may authorize the clerk to issue a summons.

Rule 3.121

Arrest Warrant

(a) Issuance. An arrest warrant, when issued, shall:

(1) be in writing and in the name of the State of Florida;

(2) set forth substantially the nature of the offense;

(3) command that the person against whom the complaint was made be arrested and brought before a judge;

(4) specify the name of the person to be arrested or, if the name is unknown to the judge, designate the person by any name or description by which the person can be identified with reasonable certainty, and include a photograph if reasonably available;

(5) state the date when issued and the county where issued;

(6) be signed by the judge with the title of the office; or, may be electronically signed by the judge if the arrest warrant bears the affiant’s signature, or electronic signature, is supported by an oath or affirmation administered by the judge, or other person authorized by law to administer oaths, and, if submitted electronically, is submitted by reliable electronic means; and

(7) for offenses where a right to bail exists, set the amount of bail or other conditions of release, and the return date.

(b) Amendment. No arrest warrant shall be dismissed nor shall any person in custody be discharged because of any defect as to form in the warrant; but the warrant may be amended by the judge to remedy such defect.

Rule 3.125

Notice to Appear

(a) Definition. Unless indicated otherwise, notice to appear means a written order issued by a law enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.

(b) By Arresting Officer. If a person is arrested for an offense declared to be a misdemeanor of the first or second degree or a violation, or is arrested for violation of a municipal or county ordinance triable in the county, and demand to be taken before a judge is not made, notice to appear may be issued by the arresting officer unless:

(1) the accused fails or refuses to sufficiently identify himself or herself or supply the required information;

(2) the accused refuses to sign the notice to appear;

(3) the officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to the accused or others;

(4) the accused has no ties with the jurisdiction reasonably sufficient to assure the accused's appearance or there is substantial risk that the accused will refuse to respond to the notice;

(5) the officer has any suspicion that the accused may be wanted in any jurisdiction; or

(6) it appears that the accused previously has failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.

(c) By Booking Officer. If the arresting officer does not issue notice to appear because of one of the exceptions listed in subdivision (b) and takes the accused to police headquarters, the booking officer may issue notice to appear if the officer determines that there is a likelihood that the accused will appear as directed, based on a reasonable investigation of the accused's:

(1) residence and length of residence in the community;

(2) family ties in the community;

(3) employment record;

(4) character and mental condition;

(5) past record of convictions; or

(6) past history of appearance at court proceedings.

(d) How and When Served. If notice to appear is issued, it shall be prepared in quadruplicate. The officer shall deliver 1 copy of the notice to appear to the arrested person and the person, to secure release, shall give a written promise to appear in court by signing the 3 remaining copies: 1 to be retained by the officer and 2 to be filed with the clerk of the court. These 2 copies shall be sworn to by the arresting officer before a notary public or a deputy clerk. If notice to appear is issued under subdivision (b), the notice shall be issued immediately upon arrest. If notice to appear is issued under subdivision (c), the notice shall be issued immediately on completion of the investigation. The arresting officer or other duly authorized official then shall release from custody the person arrested.

(e) Copy to the Clerk of the Court. With the sworn notice to appear, the arresting officer shall file with the clerk a list of witnesses and their addresses and a list of tangible evidence in the cause. One copy shall be retained by the officer and 2 copies shall be filed with the clerk of the court.

(f) Copy to State Attorney. The clerk shall deliver 1 copy of the notice to appear and schedule of witnesses and evidence filed therewith to the state attorney.

(g) Contents. If notice to appear is issued, it shall contain the:

(1) name and address of the accused;

(2) date of offense;

(3) offense(s) charged — by statute and municipal ordinance if applicable;

(4) counts of each offense;

(5) time and place that the accused is to appear in court;

(6) name and address of the trial court having jurisdiction to try the offense(s) charged;

(7) name of the arresting officer;

(8) name(s) of any other person(s) charged at the same time; and

(9) signature of the accused.

(h) Failure to Appear. If a person signs a written notice to appear and fails to respond to the notice to appear, a warrant of arrest shall be issued under rule 3.121.

(i) Traffic Violations Excluded. Nothing contained herein shall prevent the operation of a traffic violations bureau, the issuance of citations for traffic violations, or any procedure under chapter 316, Florida Statutes.

(j) Rules and Regulations. Rules and regulations of procedure governing the exercise of authority to issue notices to appear shall be established by the chief judge of the circuit.

(k) Procedure by Court.

(1) When the accused appears before the court under the requirements of the notice to appear, the court shall advise the defendant as set forth in rule 3.130(b), and the provisions of that rule shall apply. The accused at such appearance may elect to waive the right to counsel and trial and enter a plea of guilty or nolo contendere by executing the waiver form contained on the notice to appear, and the court may enter judgment and sentence in the cause.

(2) In the event the defendant enters a plea of not guilty, the court may set the cause for jury or nonjury trial on the notice to appear under the provisions of rules 3.140 and 3.160. When the court sets a trial date by the court, the clerk shall, without further praecipe, issue witness subpoenas to the law enforcement officer who executed the notice to appear and to the witnesses whose names and addresses appear on the list filed by the officer, requiring their attendance at trial.

(l) Form of Notice to Appear and Schedule of Witnesses and Evidence. The notice to appear and schedule of witnesses and evidence shall be in substantially the following form:

IN THE COUNTY COURT, IN AND FOR

COUNTY, FLORIDA NOTICE TO APPEAR

Agency Case # STATE OF FLORIDA, COUNTY OF

In the name of County, Florida: The undersigned certifies that he or she has just and reasonable grounds to believe, and does believe, that:

On .....(date)....., at ( )a.m. ( )p.m.

Last Name First M.I. Aliases

_Street—City and State

Date and Place of Birth Phone Race/Sex

Height Weight Hair Eyes Scars/Marks

Occupation Place of Employment Employment Phone

Complexion Driver's License # Yr./St. Social Security #

at (location)

in County, Florida, committed the following offense(s):

(1) (2) in violation of section(s): : ( ) State Statute

( ) Municipal Ord.

DID (Narrative):

. . . Name of Officer ID

Agency

[ ] Mandatory appearance in court, Location

on .....(date)....., at _____ ( )a.m. ( )p.m.

[ ] You need not appear in court, but must comply with instructions on back.

CO-DEFENDANTS:

[ ] Cited

1. [ ] Jailed Name DOB

Address

[ ] Cited 2. [ ] Jailed Name

DOB Address

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

I AGREE TO APPEAR AT THE TIME AND PLACE DESIGNATED ABOVE TO ANSWER THE OFFENSE CHARGED OR TO PAY THE FINE SUBSCRIBED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED BY THIS NOTICE TO APPEAR, I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST SHALL BE ISSUED.

Signature of Defendant

I swear the above and reverse and attached statements are true and correct to the best of my knowledge and belief.

Complainant

Agency or Department

Sworn to and subscribed before me on .....(date).....

Notary Public, State of Florida

[Editor's Note: Jurat should include identification information required by F.S. 117.05(13).]

WAIVER INFORMATION

If you desire to plead guilty or nolo contendere (no contest) and you need not appear in court as indicated on the face of this notice, you may present this notice at the county court named on the reverse of this page.

From .....(date)....., to .....(date)....., Hour Hour

and pay a fine of dollars in cash, money order, or certified check.

The waiver below must be completed and attached. Read carefully.

Your failure to answer this summons in the manner subscribed will result in a warrant being issued on a separate and additional charge.

"In consideration of my not appearing in court, I the undersigned, do hereby enter my appearance on the affidavit for the offense charged on the other side of this notice and waive

the reading of the affidavit in the above named cause and the right to be present at the trial of said action. I hereby enter my plea of Guilty [ ] or Nolo Contendere [ ], and waive my right to prosecute appeal or error proceedings.

“I understand the nature of the charge against me; I understand my right to have counsel and waive this right and the right to a continuance. I waive my right to trial before a judge or jury. I plead Guilty [ ] or Nolo Contendere [ ] to the charge, being fully aware that my signature to this plea will have the same effect as a judgment of this court.”

Total Fine and Cost

Defendant Signature

Address

IN THE COUNTY COURT, IN AND FOR

COUNTY, FLORIDA

SCHEDULE OF WITNESSES AND

EVIDENCE FOR NOTICE TO APPEAR

Agency Case #

Last Name First M.I. Aliases

Address

.....(date of notice to appear)..... Offense(s): (1)

(2)

TANGIBLE EVIDENCE: (If none, write “None”)

Item: Obtained from (person and/or place): first received by: given to:

WITNESSES: (If none, write “None”)

#1 Name: Res. Tel. No. Address: Bus. Tel. No. Business:

Testimony:

#2 Name: Res. Tel. No. Address: Bus. Tel. No. Business:
Testimony:

#3 Name: Res. Tel. No. Address: Bus. Tel. No. Business:
Testimony:

I certify that the foregoing is a complete list of witnesses and evidence known to me.

Investigating Officer

Agency

Rule 3.130

First Appearance

(a) Prompt First Appearance. Except when previously released in a lawful manner, every arrested person shall be taken before a judicial officer, either in person or by electronic audiovisual device in the discretion of the court, within 24 hours of arrest. In the case of a child in the custody of juvenile authorities, against whom an information or indictment has been filed, the child shall be taken for a first appearance hearing within 24 hours of the filing of the information or indictment. The chief judge of the circuit for each county within the circuit shall designate 1 or more judicial officers from the circuit court, or county court, to be available for the first appearance and proceedings. The state attorney or an assistant state attorney and public defender or an assistant public defender shall attend the first appearance proceeding either in person or by other electronic means. First appearance hearings shall be held with adequate notice to the public defender and state attorney. An official record of the proceedings shall be maintained. If the defendant has retained counsel or ex-presses a desire to and is financially able, the attendance of the public defender or assistant public defender is not required at the first appearance, and the judge shall follow the procedure outlined in subdivision (c)(2).

(b) Advice to Defendant. At the defendant’s first appearance the judge shall immediately inform the defendant of the charge, including an alleged violation of probation or community control and provide the defendant with a copy of the complaint. The judge shall also adequately advise the defendant that:

(1) the defendant is not required to say anything, and that anything the defendant says may be used against him or her;

(2) if unrepresented, that the defendant has a right to counsel, and, if financially unable to afford counsel, that counsel will be appointed; and

(3) the defendant has a right to communicate with counsel, family, or friends, and if necessary, will be provided reasonable means to do so.

(c) Counsel for Defendant.

(1) Appointed Counsel. If practicable, the judge should determine prior to the first appearance whether the defendant is financially able to afford counsel and whether the defendant desires representation. When the judge determines that the defendant is entitled to court-appointed counsel and desires counsel, the judge shall immediately appoint counsel. This determination must be made and, if required, counsel appointed no later than the time of the first appearance and before any other proceedings at the first appearance. If necessary, counsel may be appointed for the limited purpose of representing the defendant only at first appearance or at subsequent proceedings before the judge.

(2) Retained Counsel. When the defendant has employed counsel or is financially able and desires to employ counsel to represent him or her at first appearance, the judge shall allow the defendant a reasonable time to send for counsel and shall, if necessary, postpone the first appearance hearing for that purpose. The judge shall also, on request of the defendant, require an officer to communicate a message to such counsel as the defendant may name. The officer shall, with diligence and without cost to the defendant if the counsel is within the county, perform the duty. If the postponement will likely result in the continued incarceration of the defendant beyond a 24-hour period, at the request of the defendant the judge may appoint counsel to represent the defendant for the first appearance hearing.

(3) Opportunity to Confer. No further steps in the proceedings should be taken until the defendant and counsel have had an adequate opportunity to confer, unless the defendant has intelligently waived the right to be represented by counsel.

(4) Waiver of Counsel. The defendant may waive the right to counsel at first appearance. The waiver, containing an explanation of the right to counsel, shall be in writing and signed and dated by the defendant. This written waiver of counsel shall, in addition, contain a statement that it is limited to first appearance only and shall in no way be construed to be a waiver of counsel for subsequent proceedings.

(d) Pretrial Release. The judicial officer shall proceed to determine conditions of release pursuant to rule 3.131. For a defendant who has been arrested for violation of his or her

probation or community control by committing a new violation of law, the judicial officer:

(1) May order the offender to be taken before the court that granted the probation or community control if the offender admits the violation;

(2) If the offender does not admit the violation at first appearance hearing, the judicial officer may commit and order the offender to be brought before the court that granted probation or community control, or may release the offender with or without bail to await further hearing, notwithstanding section 907.041, Florida Statutes, relating to pretrial detention and release. In determining whether to require or set the amount of bail, the judicial officer may consider whether the offender is more likely than not to receive a prison sanction for the violation.

Rule 3.131

Pretrial Release

(a) Right to Pretrial Release. Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant shall refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure and shall comply with all conditions of pretrial release as ordered by the court. Upon motion by the defendant when bail is set, or upon later motion properly noticed pursuant to law, the court may modify the condition precluding victim contact if good cause is shown and the interests of justice so require. The victim shall be permitted to be heard at any proceeding in which such modification is considered, and the state attorney shall notify the victim of the provisions of this subsection and of the pendency of any such proceeding. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

(b) Hearing at First Appearance—Conditions of Release.

(1) Unless the state has filed a motion for pretrial detention pursuant to rule 3.132, the court shall conduct a hearing to determine pretrial release. For the purpose of this rule, bail is defined as any of the forms of release stated below. Except as otherwise provided by this rule, there is a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release. The judicial officer shall impose the first of the following conditions of release that will reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process; or, if no

single condition gives that assurance, shall impose any combination of the following conditions:

(A) personal recognizance of the defendant;

(B) execution of an unsecured appearance bond in an amount specified by the judge;

(C) placement of restrictions on the travel, association, or place of abode of the defendant during the period of release;

(D) placement of the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(E) execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; provided, however, that any criminal defendant who is required to meet monetary bail or bail with any monetary component may satisfy the bail by providing an appearance bond; or

(F) any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(2) The judge shall at the defendant's first appearance consider all available relevant factors to determine what form of release is necessary to assure the defendant's appearance. If a monetary bail is required, the judge shall determine the amount. Any judge setting or granting monetary bond shall set a separate and specific bail amount for each charge or offense. When bail is posted each charge or offense requires a separate bond.

(3) In determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court may consider the nature and circumstances of the offense charged and the penalty provided by law; the weight of the evidence against the defendant; the defendant's family ties, length of residence in the community, employment history, financial resources, need for substance abuse evaluation and/or treatment, and mental condition; the defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the court considers relevant.

(4) No person charged with a dangerous crime, as defined in section 907.041(4)(a), Florida Statutes, shall be released on nonmonetary conditions under the supervision of a pretrial release service, unless the service certifies to the court that it has investigated or otherwise verified the conditions set forth in section 907.041(3)(b), Florida Statutes.

(5) All information provided by a defendant in connection with any application for or attempt

to secure bail, to any court, court personnel, or individual soliciting or recording such information for the purpose of evaluating eligibility for or securing bail for the defendant, under circumstances such that the defendant knew or should have known that the information was to be used in connection with an application for bail, shall be accurate, truthful, and complete, without omissions, to the best knowledge of the defendant. Failure to comply with the provisions of this subdivision may result in the revocation or modification of bail. However, no defendant shall be compelled to provide information regarding his or her criminal record.

(6) Information stated in, or offered in connection with, any order entered pursuant to this rule need not strictly conform to the rules of evidence.

(c) Consequences of Failure to Appear.

(1) Any defendant who willfully and knowingly fails to appear and breaches a bond as specified in section 903.26, Florida Statutes, and who voluntarily appears or surrenders shall not be eligible for a recognizance bond.

(2) Any defendant who willfully and knowingly fails to appear and breaches a bond as specified in section 903.26, Florida Statutes, and who is arrested at any time following forfeiture shall not be eligible for a recognizance bond or any form of bond that does not require a monetary undertaking or commitment equal to or greater than $2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater.

(d) Subsequent Application for Setting or Modification of Bail.

(1) When a judicial officer not possessing trial jurisdiction orders a defendant held to answer before a court having jurisdiction to try the defendant, and bail has been denied or sought to be modified, application by motion may be made to the court having jurisdiction to try the defendant or, in the absence of the judge of the trial court, to the circuit court. The motion shall be determined promptly. No judge or a court of equal or inferior jurisdiction may modify or set a condition of release, unless the judge:

(A) imposed the conditions of bail or set the amount of bond required;

(B) is the chief judge of the circuit in which the defendant is to be tried;

(C) has been assigned to preside over the criminal trial of the defendant; or

(D) is the first appearance judge and was authorized by the judge initially setting or denying bail to modify or set conditions of release.

(2) Applications by the defendant for modification of bail on any felony charge must be heard by a court in person at a hearing, with the defendant present and with at least 3 hours' notice to

the state attorney and county attorney, if bond forfeiture proceedings are handled by the county attorney. The state may apply for modification of bail by showing good cause and with at least 3 hours' notice to the attorney for the defendant.

(3) If any trial court fixes bail and refuses its reduction before trial, the defendant may institute habeas corpus proceedings seeking reduction of bail. If application is made to the supreme court or district court of appeal, notice and a copy of such application shall be given to the attorney general and the state attorney. Such proceedings shall be determined promptly.

(e) Bail Before Conviction; Condition of Undertaking.

(1) If a person is admitted to bail for appearance for a preliminary hearing or on a charge that a judge is empowered to try, the condition of the undertaking shall be that the person will appear for the hearing or to answer the charge and will submit to the orders and process of the judge trying the same and will not depart without leave.

(2) If a person is admitted to bail after being held to answer by a judge or after an indictment or information on which the person is to be tried has been filed, the condition of the undertaking shall be that the person will appear to answer the charges before the court in which he or she may be prosecuted and submit to the orders and process of the court and will not depart without leave.

(f) Revocation of Bail. The court in its discretion for good cause, any time after a defendant who is at large on bail appears for trial, may commit the defendant to the custody of the proper official to abide by the judgment, sentence, and any further order of the court.

(g) Arrest and Commitment by Court. The court in which the cause is pending may direct the arrest and commitment of the defendant who is at large on bail when:

(1) there has been a breach of the undertaking;

(2) it appears that the defendant's sureties or any of them are dead or cannot be found or are insufficient or have ceased to be residents of the state; or

(3) the court is satisfied that the bail should be increased or new or additional security required.

The order for the commitment of the defendant shall recite generally the facts on which it is based and shall direct that the defendant be arrested by any official authorized to make arrests and that the defendant be committed to the official in whose custody he or she would be if he or she had not been given bail, to be detained by such official until legally discharged. The defendant shall be arrested pursuant to such order on a certified copy thereof, in any county, in the same manner as on a warrant of arrest. If the order provided for is made because of the

failure of the defendant to appear for judgment, the defendant shall be committed. If the order is made for any other cause, the court may determine the conditions of release, if any.

(h) Bail after Recommitment. If the defendant applies to be admitted to bail after recommitment, the court that recommitted the defendant shall determine conditions of release, if any, subject to the limitations of (b) above.

(i) Qualifications of Surety after Order of Recommitment. If the defendant offers bail after recommitment, each surety shall possess the qualifications and sufficiency and the bail shall be furnished in all respects in the manner prescribed for admission to bail before recommitment.

(j) Issuance of Capias; Bail Specified. On the filing of either an indictment or information charging the commission of a crime, if the person named therein is not in custody or at large on bail for the offense charged, the judge shall issue or shall direct the clerk to issue, either immediately or when so directed by the prosecuting attorney, a capias for the arrest of the person. If the person named in the indictment or information is a child and the child has been served with a promise to appear under the Florida Rules of Juvenile Procedure, capias need not be issued. Upon the filing of the indictment or information, the judge shall endorse the amount of bail, if any, and may authorize the setting or modification of bail by the judge presiding over the defendant's first appearance hearing. This endorsement shall be made on the capias and signed by the judge.

(k) Summons on Misdemeanor Charge. When a complaint is filed charging the commission of a misdemeanor only and the judge deems that process should issue as a result, or when an indictment or information on which the defendant is to be tried charging the commission of a misdemeanor only, and the person named in it is not in custody or at large on bail for the offense charged, the judge shall direct the clerk to issue a summons instead of a capias unless the judge has reasonable ground to believe that the person will not appear in response to a summons, in which event an arrest warrant or a capias shall be issued with the amount of bail endorsed on it. The summons shall state substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the judge issuing the summons or the judge having jurisdiction of the offense at a time and place stated in it.

(l) Summons When Defendant Is Corporation. On the filing of an indictment or information or complaint charging a corporation with the commission of a crime, whether felony or misdemeanor, the judge shall direct the clerk to issue or shall issue a summons to secure its appearance to answer the charge. If, after being summoned, the corporation does not appear, a plea of not guilty shall be entered and trial and judgment shall follow without further process.

Rule 3.132

Pretrial Detention

(a) Motion Filed at First Appearance. A person arrested for an offense for which detention may be ordered under section 907.041, Florida Statutes, shall be taken before a judicial officer for a first appearance within 24 hours of arrest. The state may file with the judicial officer at first appearance a motion seeking pretrial detention, signed by the state attorney or an assistant, setting forth with particularity the grounds and the essential facts on which pretrial detention is sought and certifying that the state attorney has received testimony under oath supporting the grounds and the essential facts alleged in the motion. If no such motion is filed, the judicial officer may inquire whether the state intends to file a motion for pretrial detention, and if so, grant the state no more than three days to file a motion under this subdivision. Upon a showing by the state of probable cause that the defendant committed the offense and exigent circumstances, the defendant shall be detained in custody pending the filing of the motion. If, after inquiry, the State indicates it does not intend to file a motion for pretrial detention, or fails to establish exigent circumstances for holding defendant in custody pending the filing of the motion, or files a motion that is facially insufficient, the judicial officer shall proceed to determine the conditions of release pursuant to the provisions of rule 3.131(b). If the motion for pretrial detention is facially sufficient, the judicial officer shall proceed to determine whether there is probable cause that the person committed the offense. If probable cause is found, the person may be detained in custody pending a final hearing on pretrial detention. If probable cause is established after first appearance pursuant to the provisions of rule 3.133 and the person has been released from custody, the person may be recommitted to custody pending a final hearing on pretrial detention.

(b) Motion Filed after First Appearance. A motion for pretrial detention may be filed at any time prior to trial. The motion shall be made to the court with trial jurisdiction. On receipt of a facially sufficient motion and a determination of probable cause, unless otherwise previously established, that an offense eligible for pretrial detention has been committed, the following shall occur:

(1) In the event of exigent circumstances, the court shall issue a warrant for the arrest of the named person, if the person has been released from custody. The person may be detained in custody pending a final hearing on pretrial detention.

(2) In the absence of exigent circumstances, the court shall order a hearing on the motion as provided in (c) below.

(c) Final Order.

(1) Hearing Required. A final order of pretrial detention shall be entered only after a hearing

in the court of trial jurisdiction. The hearing shall be held within 5 days of the filing of the motion or the date of taking the person in custody pursuant to a motion for pretrial detention, whichever is later. The state attorney has the burden of showing beyond a reasonable doubt the need for pretrial detention pursuant to the criteria in section 907.041, Florida Statutes. The defendant may request a continuance. The state shall be entitled to 1 continuance for good cause. No continuance shall exceed 5 days unless there are extenuating circumstances. The defendant may be detained pending the hearing, but in no case shall the defendant be detained in excess of 10 days, unless the delay is sought by the defendant. The person sought to be detained is entitled to representation by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence and testimony under oath without complying with the rules of evidence, but evidence secured in violation of the United States Constitution or the Constitution of the State of Florida shall not be admissible. A final order of pretrial detention shall not be based exclusively on hearsay evidence. No testimony by the defendant shall be admissible to prove the guilt of the defendant at any other judicial proceeding, but may be admitted in an action for perjury based on the defendant's statements made at the pretrial detention hearing or for impeachment.

(2) Findings and Conclusions to Be Recorded. The court's pretrial detention order shall be based solely on evidence produced at the hearing and shall contain findings of fact and conclusions of law to support it. The order shall be made either in writing or orally on the record. The court shall render its findings within 24 hours of the pretrial detention hearing.

(3) Dissolution of Order. The defendant shall be entitled to dissolution of the pretrial detention order whenever the court finds that a subsequent event has eliminated the basis for detention.

(4) Further Proceedings on Order. If any trial court enters a final order of pretrial detention, the defendant may obtain review by motion to the appropriate appellate court. If motion for review is taken to the supreme court or the district court of appeal, notice and a copy of the motion shall be served on the attorney general and the state attorney; if review is taken to the circuit court, service shall be on the state attorney.

Rule 3.133

Pretrial Probable Cause Determinations and Adversary Preliminary Hearings

(a) Nonadversary Probable Cause Determination.

(1) Defendant in Custody. In all cases in which the defendant is in custody, a nonadversary probable cause determination shall be held before a judge within 48 hours from the time of the defendant's arrest; provided, however, that this proceeding shall not be required when a

probable cause determination has been previously made by a judge and an arrest warrant issued for the specific offense for which the defendant is charged. The judge after a showing of extraordinary circumstance may continue the proceeding for not more than 24 hours beyond the 48-hour period. The judge, after a showing that an extraordinary circumstance still exists, may continue the proceeding for not more than 24 additional hours following the expiration of the initial 24-hour continuance. This determination shall be made if the necessary proof is available at the time of the first appearance as required under rule 3.130, but the holding of this determination at that time shall not affect the fact that it is a nonadversary proceeding.

(2) Defendant on Pretrial Release. A defendant who has been released from custody before a probable cause determination is made and who is able to establish that the pretrial release conditions are a significant restraint on his or her liberty may file a written motion for a nonadversary probable cause determination setting forth with specificity the items of significant restraint that a finding of no probable cause would eliminate. The motion shall be filed within 21 days from the date of arrest, and notice shall be given to the state. A judge who finds significant restraints on the defendant's liberty shall make a probable cause determination within 7 days from the filing of the motion.

(3) Standard of Proof. Upon presentation of proof, the judge shall determine whether there is probable cause for detaining the arrested person pending further proceedings. The defendant need not be present. In determining probable cause to detain the defendant, the judge shall apply the standard for issuance of an arrest warrant, and the finding may be based on sworn complaint, affidavit, deposition under oath, or, if necessary, on testimony under oath properly recorded.

(4) Action on Determination. If probable cause is found, the defendant shall be held to answer the charges. If probable cause is not found or the specified time periods are not complied with, the defendant shall be released from custody unless an information or indictment has been filed, in which event the defendant shall be released on recognizance subject to the condition that he or she appear at all court proceedings or shall be released under a summons to appear before the appropriate court at a time certain. Any release occasioned by a failure to comply with the specified time periods shall be by order of the judge on a written application filed by the defendant with notice sent to the state or by a judge without a written application but with notice to the state. The judge shall order the release of the defendant after it is determined that the defendant is entitled to release and after the state has a reasonable period of time, not to exceed 24 hours, in which to establish probable cause. A release required by this rule does not void further prosecution by information or indictment but does prohibit any restraint on liberty other than appearing for trial. A finding that probable cause does or does not exist shall be made in writing, signed by the judge, and filed, together with the evidence of such probable cause, with the clerk of the court having jurisdiction of the offense for which the defendant is charged.

(b) Adversary Preliminary Hearing.

(1) When Applicable. A defendant who is not charged in an information or indictment within 21 days from the date of arrest or service of the capias on him or her shall have a right to an adversary preliminary hearing on any felony charge then pending against the defendant. The subsequent filing of an information or indictment shall not eliminate a defendant's entitlement to this proceeding.

(2) Process. The judge shall issue such process as may be necessary to secure attendance of witnesses within the state for the state or the defendant.

(3) Witnesses. All witnesses shall be examined in the presence of the defendant and may be cross-examined. Either party may request that the witnesses be sequestered. At the conclusion of the testimony for the prosecution, the defendant who so elects shall be sworn and testify in his or her own behalf, and in such cases the defendant shall be warned in advance of testifying that anything he or she may say can be used against him or her at a subsequent trial. The defendant may be cross-examined in the same manner as other witnesses, and any witnesses offered by the defendant shall be sworn and examined.

(4) Record. At the request of either party, the entire preliminary hearing, including all testimony, shall be recorded verbatim stenographically or by mechanical means and at the request of either party shall be transcribed. If the record of the proceedings, or any part thereof, is transcribed at the request of the prosecuting attorney, a copy of this transcript shall be furnished free of cost to the defendant or the defendant's counsel.

(5) Action on Hearing. If from the evidence it appears to the judge that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the judge shall cause the defendant to be held to answer to the circuit court; otherwise, the judge shall release the defendant from custody unless an information or indictment has been filed, in which event the defendant shall be released on recognizance subject to the condition that he or she appear at all court proceedings or shall be released under a summons to appear before the appropriate court at a time certain. Such release does not, however, void further prosecution by information or indictment but does prohibit any restraint on liberty other than appearing for trial. A finding that probable cause does or does not exist shall be made in writing, signed by the judge, and, together with the evidence received in the cause, shall be filed with the clerk of the circuit court.

(c) Additional Nonadversary Probable Cause Determinations and Preliminary Hearings. If there has been a finding of no probable cause at a nonadversary determination or adversary preliminary hearing, or if the specified time periods for holding a nonadversary probable cause determination have not been complied with, a judge may thereafter make a determination of probable cause at a nonadversary probable cause determination, in which event the defendant

shall be retained in custody or returned to custody upon appropriate process issued by the judge. A defendant who has been retained in custody or returned to custody by such a determination shall be allowed an adversary preliminary hearing in all instances in which a felony offense is charged.

Rule 3.134

Time for Filing Formal Charges

The state shall file formal charges on defendants in custody by information, or indictment, or in the case of alleged misdemeanors by whatever documents constitute a formal charge, within 30 days from the date on which defendants are arrested or from the date of the service of capiases upon them. If the defendants remain uncharged, the court on the 30th day and with notice to the state shall:

(1) Order that the defendants automatically be released on their own recognizance on the 33rd day unless the state files formal charges by that date; or

(2) If good cause is shown by the state, order that the defendants automatically be released on their own recognizance on the 40th day unless the state files formal charges by that date.

In no event shall any defendants remain in custody beyond 40 days unless they have been formally charged with a crime.

Rule 3.140

Indictments; Informations

(a) Methods of Prosecution.

(1) Capital Crimes. An offense that may be punished by death shall be prosecuted by indictment.

(2) Other Crimes. The prosecution of all other criminal offenses shall be as follows:

In circuit courts and county courts, prosecution shall be solely by indictment or information, except that prosecution in county courts for violations of municipal ordinances and metropolitan county ordinances may be by affidavit or docket entries and prosecutions for misdemeanors, municipal ordinances, and county ordinances may be by notice to appear issued and served pursuant to rule 3.125. A grand jury may indict for any offense. When a grand jury returns an indictment for an offense not triable in the circuit court, the circuit judge shall either issue a

summons returnable in the county court or shall bail the accused for trial in the county court, and the judge, or at the judge's direction, the clerk of the circuit court, shall certify the indictment and file it in the records of the county court.

(b) Nature of Indictment or Information. The indictment or information on which the defendant is to be tried shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged.

(c) Caption, Commencement, Date, and Personal Statistics.

(1) Caption. No formal caption is essential to the validity of an indictment or information on which the defendant is to be tried. Upon objection made as to its absence a caption shall be prefixed in substantially the following manner:

In the (name of court)

State of Florida versus (name of defendant) or, in the case of municipal ordinance cases in county court, City of _____/_____ County versus (name of defendant).

Any defect, error, or omission in a caption may be amended as of course, at any stage of the proceeding, whether before or after a plea to the merits, by court order.

(2) Commencement. All indictments or informations on which the defendant is to be tried shall expressly state that the prosecution is brought in the name and by the authority of the State of Florida. Indictments shall state that the defendant is charged by the grand jury of the county. Informations shall state that the appropriate prosecuting attorney makes the charge.

(3) Date. Every indictment or information on which the defendant is to be tried shall bear the date (day, month, year) that it is filed in each court in which it is so filed.

(4) Personal Statistics. Every indictment or information shall include the defendant's race, gender, and date of birth when any of these facts are known. Failure to include these facts shall not invalidate an otherwise sufficient indictment or information.

(d) The Charge.

(1) Allegation of Facts; Citation of Law Violated. Each count of an indictment or information on which the defendant is to be tried shall allege the essential facts constituting the offense charged. In addition, each count shall recite the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. Error in or omission of the citation shall not be ground for dismissing the count or for a reversal of a conviction based thereon if the error or omission did not mislead the defendant to the defendant's prejudice.

(2) Name of Accused. The name of the accused person shall be stated, if known, and if not known, the person may be described by any name or description by which the person can be identified with reasonable certainty. If the grand jury, prosecuting attorney, or affiant making the charge does not know either the name of the accused or any name or description by which the accused can be identified with reasonable certainty, the indictment or information, as the case may be, shall so allege and the accused may be charged by a fictitious name.

(3) Time and Place. Each count of an indictment or information on which the defendant is to be tried shall contain allegations stating as definitely as possible the time and place of the commission of the offense charged in the act or transaction or on 2 or more acts or transactions connected together, provided the court in which the indictment or information is filed has jurisdiction to try all of the offenses charged.

(4) Allegation of Intent to Defraud. If an intent to defraud is required as an element of the offense to be charged, it shall be sufficient to allege an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded.

(e) Incorporation by Reference. Allegations made in 1 count shall not be incorporated by reference in another count.

(f) Endorsement and Signature; Indictment. An indictment shall be signed by the foreperson or the acting foreperson of the grand jury returning it. The state attorney or acting state attorney or an assistant state attorney shall make and sign a statement on the indictment to the effect that he or she has advised the grand jury returning the indictment as authorized and required by law. No objection to the indictment on the ground that the statement has not been made shall be entertained after the defendant pleads to the merits.

(g) Signature, Oath, and Certification; Information. An information charging the commission of a felony shall be signed by the state attorney, or a designated assistant state attorney, under oath stating his or her good faith in instituting the prosecution and certifying that he or she has received testimony under oath from the material witness or witnesses for the offense. An information charging the commission of a misdemeanor shall be signed by the state attorney, or a designated assistant state attorney, under oath stating his or her good faith in instituting the prosecution. No objection to an information on the ground that it was not signed or verified, as herein provided, shall be entertained after the defendant pleads to the merits.

(h) Conclusion. An indictment or information on which the defendant is to be tried need contain no formal conclusion.

(i) Surplusage. An unnecessary allegation may be disregarded as surplusage and, on motion of the defendant, may be stricken from the pleading by the court.

(j) Amendment of Information. An information on which the defendant is to be tried that charges an offense may be amended on the motion of the prosecuting attorney or defendant at any time prior to trial because of formal defects.

(k) Form of Certain Allegations. Allegations concerning the following items may be alleged as indicated below:

(1) Description of Written Instruments. Instruments consisting wholly or in part of writing or figures, pictures, or designs may be described by any term by which they are usually known or may be identified, without setting forth a copy or facsimile thereof.

(2) Words; Pictures. Necessary averments relative to spoken or written words or pictures may be made by the general purport of such words or pictures without setting forth a copy or facsimile thereof.

(3) Judgments; Determinations; Proceedings. A judgment, determination, or proceeding of any court or official, civil or military, may be alleged generally in such a manner as to identify the judgment, determination, or proceeding, without alleging facts conferring jurisdiction on the court or official.

(4) Exceptions; Excuses; Provisos. Statutory exceptions, excuses, or provisos relative to offenses created or defined by statute need not be negatived by allegation.

(5) Alternative or Disjunctive Allegations. For an offense that may be committed by doing 1 or more of several acts, or by 1 or more of several means, or with 1 or more of several intents or results, it is permissible to allege in the disjunctive or alternative such acts, means, intents, or results.

(6) Offenses Divided into Degrees. For an offense divided into degrees it is sufficient to charge the commission of the offense without specifying the degree.

(7) Felonies. It shall not be necessary to allege that the offense charged is a felony or was done feloniously.

(l) Custody of Indictment or Information. Unless the defendant named therein has been previously released on a citation, order to appear, personal recognizance, or bail, or has been summoned to appear, or unless otherwise ordered by the court having jurisdiction, all indictments or informations and the records thereof shall be in the custody of the clerk of the court to which they are presented and shall not be inspected by any person other than the judge, clerk, attorney general, and prosecuting attorney until the defendant is in custody or until 1 year has elapsed between the return of an indictment or the filing of an information, after which time they shall be opened for public inspection.

(m) Defendant's Right to Copy of Indictment or Information. Each person who has been indicted or informed against for an offense shall, on application to the clerk, be furnished a copy of the indictment or information and the endorsements thereon, at least 24 hours before being required to plead to the indictment or information if a copy has not been so furnished. A failure to furnish a copy shall not affect the validity of any subsequent proceeding against the defendant if he or she pleads to the indictment or information.

(n) Statement of Particulars. The court, on motion, shall order the prosecuting attorney to furnish a statement of particulars when the indictment or information on which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable the defendant to prepare a defense. The statement of particulars shall specify as definitely as possible the place, date, and all other material facts of the crime charged that are specifically requested and are known to the prosecuting attorney, including the names of persons intended to be defrauded. Reasonable doubts concerning the construction of this rule shall be resolved in favor of the defendant.

(o) Defects and Variances. No indictment or information, or any count thereof, shall be dismissed or judgment arrested, or new trial granted on account of any defect in the form of the indictment or information or of misjoinder of offenses or for any cause whatsoever, unless the court shall be of the opinion that the indictment or information is so vague, indistinct, and indefinite as to mislead the accused and embarrass him or her in the preparation of a defense or expose the accused after conviction or acquittal to substantial danger of a new prosecution for the same offense.

Rule 3.150

Joinder of Offenses and Defendants

(a) Joinder of Offenses. Two or more offenses that are triable in the same court may be charged in the same indictment or information in a separate count for each offense, when the offenses, whether felonies or misdemeanors, or both, are based on the same act or transaction or on 2 or more connected acts or transactions.

(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information on which they are to be tried when:

(1) each defendant is charged with accountability for each offense charged;

(2) each defendant is charged with conspiracy and some of the defendants are also charged with 1 or more offenses alleged to have been committed in furtherance of the conspiracy; or

(3) even if conspiracy is not charged and all defendants are not charged in each count, it is

alleged that the several offenses charged were part of a common scheme or plan.

Such defendants may be charged in 1 or more counts together or separately, and all of the defendants need not be charged in each count.

(c) Joint Representation. When 2 or more defendants have been jointly charged under rule 3.150(b) or have been joined for trial and are represented by the same attorney or by attorneys who are associated in the practice of law, the court shall, as soon as practicable, inquire into such joint representation and shall personally advise each defendant of the right to effective assistance of counsel, including separate representation. The court shall take such measures as are necessary to protect each defendant's right to counsel.

Rule 3.151

Consolidation of Related Offenses

(a) Related Offenses. For purposes of these rules, 2 or more offenses are related offenses if they are triable in the same court and are based on the same act or transaction or on 2 or more connected acts or transactions.

(b) Consolidation of Indictments or Informations. Two or more indictments or informations charging related offenses shall be consolidated for trial on a timely motion by a defendant or by the state. The procedure thereafter shall be the same as if the prosecution were under a single indictment or information. Failure to timely move for consolidation constitutes a waiver of the right to consolidation.

(c) Dismissal of Related Offenses after Trial. When a defendant has been tried on a charge of 1 of 2 or more related offenses, the charge of every other related offense shall be dismissed on the defendant's motion unless a motion by the defendant for consolidation of the charges has been previously denied, or unless the defendant has waived the right to consolidation, or unless the prosecution has been unable, by due diligence, to obtain sufficient evidence to warrant charging the other offense or offenses.

(d) Plea. A defendant may plead guilty or nolo contendere to a charge of 1 offense on the condition that other charges of related offenses be dismissed or that no charges of other related offenses be instituted. Should the court find that the condition cannot be fulfilled, the plea shall be considered withdrawn.

Rule 3.152

Severance of Offenses and Defendants

(a) Severance of Offenses.

(1) In case 2 or more offenses are improperly charged in a single indictment or information, the defendant shall have a right to a severance of the charges on timely motion.

(2) In case 2 or more charges of related offenses are joined in a single indictment or information, the court nevertheless shall grant a severance of charges on motion of the state or of a defendant:

(A) before trial on a showing that the severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense; or

(B) during trial, only with defendant's consent, on a showing that the severance is necessary to achieve a fair determination of the defendant's guilt or innocence of each offense.

(b) Severance of Defendants.

(1) On motion of the state or a defendant, the court shall order a severance of defendants and separate trials:

(A) before trial, on a showing that the order is necessary to protect a defendant's right to a speedy trial, or is appropriate to promote a fair determination of the guilt or innocence of 1 or more defendants; or

(B) during trial, only with defendant's consent and on a showing that the order is necessary to achieve a fair determination of the guilt or innocence of 1 or more defendants.

(2) If a defendant moves for a severance of defendants on the ground that an oral or written statement of a codefendant makes reference to him or her but is not admissible against him or her, the court shall determine whether the state will offer evidence of the statement at the trial. If the state intends to offer the statement in evidence, the court shall order the state to submit its evidence of the statement for consideration by the court and counsel for defendants and if the court determines that the statement is not admissible against the moving defendant, it shall require the state to elect 1 of the following courses:

(A) a joint trial at which evidence of the statement will not be admitted;

(B) a joint trial at which evidence of the statement will be admitted after all references to the moving defendant have been deleted, provided the court determines that admission of the evidence with deletions will not prejudice the moving defendant; or

(C) severance of the moving defendant.

(3) In cases in which, at the close of the state's case or at the close of all of the evidence, the

evidence is not sufficient to support a finding that allegations on which the joinder of a defendant is based have been proved, the court shall, on motion of that defendant, grant a severance unless the court finds that severance is unnecessary to achieve a fair determination of that defendant's guilt or innocence.

Rule 3.153

Timeliness of Defendant's Motion; Waiver

(a) Timeliness; Waiver. A defendant's motion for severance of multiple offenses or defendants charged in a single indictment or information shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for such a motion, but the court in its discretion may entertain such a motion at the trial. The right to file such a motion is waived if it is not timely made.

(b) Renewal of Motion. If a defendant's pretrial motion for severance is overruled, the defendant may renew the motion on the same grounds at or before the close of all the evidence at the trial.

Rule 3.160

Arraignment

(a) Nature of Arraignment. The arraignment shall be conducted in open court or by audiovisual device in the discretion of the court and shall consist of the judge or clerk or prosecuting attorney reading the indictment or information on which the defendant will be tried to the defendant or stating orally to the defendant the substance of the charge or charges and calling on the defendant to plead thereto. The reading or statement as to the charge or charges may be waived by the defendant. If the defendant is represented by counsel, counsel may file a written plea of not guilty at or before arraignment and thereupon arraignment shall be deemed waived.

(b) Effect of Failure to Arraign or Irregularity of Arraignment. Neither a failure to arraign nor an irregularity in the arraignment shall affect the validity of any proceeding in the cause if the defendant pleads to the indictment or information on which the defendant is to be tried or proceeds to trial without objection to such failure or irregularity.

(c) Plea of Guilty after Indictment or Information Filed. If a person who has been indicted or informed against for an offense, but who has not been arraigned, desires to plead guilty thereto, the person may so inform the court having jurisdiction of the offense, and the court shall, as soon as convenient, arraign the defendant and permit the defendant to plead guilty to the

indictment or information.

(d) Time to Prepare for Trial. After a plea of not guilty the defendant is entitled to a reasonable time in which to prepare for trial.

(e) Defendant Not Represented by Counsel. Prior to arraignment of any person charged with the commission of a crime, if he or she is not represented by counsel, the court shall advise the person of the right to counsel and, if he or she is financially unable to obtain counsel, of the right to be assigned court-appointed counsel to represent him or her at the arraignment and at all subsequent proceedings. The person shall execute an affidavit that he or she is unable financially or otherwise to obtain counsel, and if the court shall determine the reason to be true, the court shall appoint counsel to represent the person.

If the defendant, however, understandingly waives representation by counsel, he or she shall execute a written waiver of such representation, which shall be filed in the case. If counsel is appointed, a reasonable time shall be accorded to counsel before the defendant shall be required to plead to the indictment or information on which he or she is to be arraigned or tried, or otherwise to proceed further.

Rule 3.170

Pleas

(a) Types of Plea; Court's Discretion. A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. Except as otherwise provided by these rules, all pleas to a charge shall be in open court and shall be entered by the defendant. If the sworn complaint charges the commission of a misdemeanor, the defendant may plead guilty to the charge at the first appearance under rule 3.130, and the judge may thereupon enter judgment and sentence without the necessity of any further formal charges being filed. A plea of not guilty may be entered in writing by counsel. Every plea shall be entered of record, but a failure to enter it shall not affect the validity of any proceeding in the cause.

(b) Pleading to Other Charges. Having entered a plea in accordance with this rule, the defendant may, with the court's permission, enter a plea of guilty or nolo contendere to any and all charges pending against him or her in the State of Florida over which the court would have jurisdiction and, when authorized by law, to charges pending in a court of lesser jurisdiction, if the prosecutor in the other case or cases gives written consent thereto. The court accepting such a plea shall make a disposition of all such charges by judgment, sentence, or otherwise. The record of the plea and its disposition shall be filed in the court of original jurisdiction of the offense. If a defendant secures permission to plead to other pending charges and does so plead, the entry of such a plea shall constitute a waiver by the defendant of venue and all

nonjurisdictional defects relating to such charges.

(c) Standing Mute or Pleading Evasively. If a defendant stands mute, or pleads evasively, a plea of not guilty shall be entered.

(d) Failure of Corporation to Appear. If the defendant is a corporation and fails to appear, a plea of not guilty shall be entered of record.

(e) Plea of Not Guilty; Operation in Denial. A plea of not guilty is a denial of every material allegation in the indictment or information on which the defendant is to be tried.

(f) Withdrawal of Plea of Guilty or No Contest. The court may in its discretion, and shall on good cause, at any time before a sentence, permit a plea of guilty or no contest to be withdrawn and, if judgment of conviction has been entered thereon, set aside the judgment and allow a plea of not guilty, or, with the consent of the prosecuting attorney, allow a plea of guilty or no contest of a lesser included offense, or of a lesser degree of the offense charged, to be substituted for the plea of guilty or no contest. The fact that a defendant may have entered a plea of guilty or no contest and later withdrawn the plea may not be used against the defendant in a trial of that cause.

(g) Vacation of Plea and Sentence Due to Defendant's Noncompliance.

(1) Whenever a plea agreement requires the defendant to comply with some specific terms, those terms shall be expressly made a part of the plea entered into in open court.

(2) Unless otherwise stated at the time the plea is entered:

(A) The state may move to vacate a plea and sentence within 60 days of the defendant's noncompliance with the specific terms of a plea agreement.

(B) When a motion is filed pursuant to subdivision (g)(2)(A) of this rule, the court shall hold an evidentiary hearing on the issue unless the defendant admits noncompliance with the specific terms of the plea agreement.

(C) No plea or sentence shall be vacated unless the court finds that there has been substantial noncompliance with the express plea agreement.

(D) When a plea and sentence is vacated pursuant to this rule, the cause shall be set for trial within 90 days of the order vacating the plea and sentence.

(h) Plea of Guilty to Lesser Included Offense or Lesser Degree. The defendant, with the consent of the court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged that is included in the offense charged in the indictment or information or to any lesser degree of the offense charged.

(i) Plea of Guilty to an Offense Divided into Degrees; Determination of the Degree. When an indictment or information charges an offense that is divided into degrees without specifying the degree, if the defendant pleads guilty, generally the court shall, before accepting the plea, examine witnesses to determine the degree of the offense of which the defendant is guilty.

(j) Time and Circumstances of Plea. No defendant, whether represented by counsel or otherwise, shall be called on to plead unless and until he or she has had a reasonable time within which to deliberate thereon.

(k) Responsibility of Court on Pleas. No plea of guilty or nolo contendere shall be accepted by a court without the court first determining, in open court, with means of recording the proceedings stenographically or mechanically, that the circumstances surrounding the plea reflect a full understanding of the significance of the plea and its voluntariness and that there is a factual basis for the plea of guilty. A complete record of the proceedings at which a defendant pleads shall be kept by the court.

(l) Motion to Withdraw the Plea after Sentencing. A defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue may file a motion to withdraw the plea within thirty days after rendition of the sentence, but only upon the grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)–(e) except as provided by law.

(m) Motion to Withdraw the Plea after Drug Court Transfer. A defendant who pleads guilty or nolo contendere to a charge for the purpose of transferring the case, pursuant to section 910.035, Florida Statutes, may file a motion to withdraw the plea upon successful completion of the drug court treatment program.

Rule 3.171

Plea Discussions and Agreements

(a) In General. Ultimate responsibility for sentence determination rests with the trial judge. However, the prosecuting attorney and the defense attorney, or the defendant when representing himself or herself, are encouraged to discuss and to agree on pleas that may be entered by a defendant. The discussion and agreement must be conducted with the defendant's counsel. If the defendant represents himself or herself, all discussions between the defendant and the prosecuting attorney shall be of record.

(b) Responsibilities of the Prosecuting Attorney.

(1) A prosecuting attorney may:

(A) engage in discussions with defense counsel or a defendant who is without counsel with a view toward reaching an agreement that, upon the defendant's entering a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the prosecuting attorney will do any of the following:

(i) abandon other charges; or

(ii) make a recommendation, or agree not to oppose the defendant's request for a particular sentence, with the understanding that such recommendation or request shall not be binding on the trial judge; or

(iii) agree to a specific sentence; and

(B) consult with the victim, investigating officer, or other interested persons and advise the trial judge of their views during the course of plea discussions.

(2) The prosecuting attorney shall:

(A) apprise the trial judge of all material facts known to the attorney regarding the offense and the defendant's background prior to acceptance of a plea by the trial judge; and

(B) maintain the record of direct discussions with a defendant who represents himself or herself and make the record available to the trial judge upon the entry of a plea arising from these discussions.

(c) Responsibilities of Defense Counsel.

(1) Defense counsel shall not conclude any plea agreement on behalf of a defendant-client without the client's full and complete consent thereto, being certain that any decision to plead guilty or nolo contendere is made by the defendant.

(2) Defense counsel shall advise defendant of:

(A) all plea offers; and

(B) all pertinent matters bearing on the choice of which plea to enter and the particulars attendant upon each plea and the likely results thereof, as well as any possible alternatives that may be open to the defendant.

(d) Responsibilities of the Trial Judge. After an agreement on a plea has been reached, the trial judge may have made known to him or her the agreement and reasons therefor prior to the acceptance of the plea. Thereafter, the judge shall advise the parties whether other factors (unknown at the time) may make his or her concurrence impossible.

Rule 3.172

Acceptance of Guilty or Nolo Contendere Plea

(a) Voluntariness; Factual Basis. Before accepting a plea of guilty or nolo contendere, the trial judge shall determine that the plea is voluntarily entered and that a factual basis for the plea exists. Counsel for the prosecution and the defense shall assist the trial judge in this function.

(b) Open Court. All pleas shall be taken in open court, except that when good cause is shown a plea may be taken in camera.

(c) Determination of Voluntariness. Except when a defendant is not present for a plea pursuant to the provisions of rule 3.180(d), the trial judge must, when determining voluntariness, place the defendant under oath, address the defendant personally and determine on the record that he or she understands:

(1) Nature of the Charge. The nature of the charge to which the plea is offered, the maximum possible penalty, and any mandatory minimum penalty provided by law.

(2) Right to Representation. If not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, an attorney will be appointed to represent him or her.

(3) Right to Trial By Jury and Attendant Rights. The right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury, and at that trial a defendant has the right to the assistance of counsel, the right to compel attendance of witnesses on his or her behalf, the right to confront and cross-examine witnesses against him or her, and the right not to testify or be compelled to incriminate himself or herself.

(4) Effect of Plea. Upon a plea of guilty, or nolo contendere without express reservation of the right to appeal, he or she gives up the right to appeal all matters relating to the judgment, including the issue of guilt or innocence, but does not impair the right to review by appropriate collateral attack.

(5) Waiving Right to Trial. If the defendant pleads guilty or is adjudged guilty after a plea of nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he or she waives the right to a trial.

(6) Questioning by Judge. If the defendant pleads guilty or nolo contendere, the trial judge may ask the defendant questions about the offense to which he or she has pleaded, and if the defendant answers these questions under oath, on the record, and in the presence of counsel, the answers may later be used against him or her in a prosecution for perjury.

(7) Terms of Plea Agreement. The complete terms of any plea agreement, including specifically all obligations the defendant will incur as a result.

(8) Deportation Consequences.

(A) If the defendant is not a citizen of the United States, a finding of guilt by the court, and the court's acceptance of the defendant's plea of guilty or no contest, regardless of whether adjudication of guilt has been withheld, may have the additional consequence of changing his or her immigration status, including deportation or removal from the United States.

(B) The court should advise the defendant to consult with counsel if he or she needs additional information concerning the potential deportation consequences of the plea.

(C) If the defendant has not discussed the potential deportation consequences with his or her counsel, prior to accepting the defendant's plea, the court is required, upon request, to allow a reasonable amount of time to permit the defendant to consider the appropriateness of the plea in light of the advisement described in this section.

(D) This admonition should be given to all defendants in all cases, and the trial court must not require at the time of entering a plea that the defendant disclose his or her legal status in the United States.

(9) Sexually Violent or Sexually Motivated Offenses. If the defendant pleads guilty or nolo contendere, and the offense to which the defendant is pleading is a sexually violent offense or a sexually motivated offense, or if the defendant has been previously convicted of such an offense, the plea may subject the defendant to involuntary civil commitment as a sexually violent predator upon completion of his or her sentence. It shall not be necessary for the trial judge to determine whether the present or prior offenses were sexually motivated, as this admonition shall be given to all defendants in all cases.

(10) Driver's License Suspension or Revocation. If the defendant pleads guilty or nolo contendre and the offense to which the defendant is pleading is one for which automatic, mandatory driver's license suspension or revocation is required by law to be imposed (either by the court or by a separate agency), the plea will provide the basis for the suspension or revocation of the defendant's driver's license.

(d) DNA Evidence Inquiry. Before accepting a defendant's plea of guilty or nolo contendere to a felony, the judge must inquire whether counsel for the defense has reviewed the discovery disclosed by the state, whether such discovery included a listing or description of physical items of evidence, and whether counsel has reviewed the nature of the evidence with the defendant. The judge must then inquire of the defendant and counsel for the defendant and the state whether physical evidence containing DNA is known to exist that could exonerate the

defendant. If no such physical evidence is known to exist, the court may accept the defendant's plea and impose sentence. If such physical evidence is known to exist, upon defendant's motion specifying the physical evidence to be tested, the court may postpone the proceeding and order DNA testing.

(e) Acknowledgment by Defendant. Before the trial judge accepts a guilty or nolo contendere plea, the judge must determine that the defendant either (1) acknowledges his or her guilt or (2) acknowledges that he or she feels the plea to be in his or her best interest, while maintaining his or her innocence.

(f) Proceedings of Record. The proceedings at which a defendant pleads guilty or nolo contendere shall be of record.

(g) Withdrawal of Plea Offer or Negotiation. No plea offer or negotiation is binding until it is accepted by the trial judge formally after making all the inquiries, advisements, and determinations required by this rule. Until that time, it may be withdrawn by either party without any necessary justification.

(h) Withdrawal of Plea When Judge Does Not Concur. If the trial judge does not concur in a tendered plea of guilty or nolo contendere arising from negotiations, the plea may be withdrawn.

(i) Evidence. Except as otherwise provided in this rule, evidence of an offer or a plea of guilty or nolo contendere, later withdrawn, or of statements made in connection therewith, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

(j) Prejudice. Failure to follow any of the procedures in this rule shall not render a plea void absent a showing of prejudice.

Rule 3.180

Presence of Defendant

(a) Presence of Defendant. In all prosecutions for crime the defendant shall be present:

(1) at first appearance;

(2) when a plea is made, unless a written plea of not guilty shall be made in writing under the provisions of rule 3.170(a);

(3) at any pretrial conference, unless waived by the defendant in writing;

(4) at the beginning of the trial during the examination, challenging, impanelling, and

swearing of the jury;

(5) at all proceedings before the court when the jury is present;

(6) when evidence is addressed to the court out of the presence of the jury for the purpose of laying the foundation for the introduction of evidence before the jury;

(7) at any view by the jury;

(8) at the rendition of the verdict; and

(9) at the pronouncement of judgment and the imposition of sentence.

(b) Presence; definition. A defendant is present for purposes of this rule if the defendant is physically in attendance for the courtroom proceeding, and has a meaningful opportunity to be heard through counsel on the issues being discussed.

(c) Defendant Absenting Self.

(1) Trial. If the defendant is present at the beginning of the trial and thereafter, during the progress of the trial or before the verdict of the jury has been returned into court, voluntarily absents himself or herself from the presence of the court without leave of court, or is removed from the presence of the court because of his or her disruptive conduct during the trial, the trial of the cause or the return of the verdict of the jury in the case shall not thereby be postponed or delayed, but the trial, the submission of the case to the jury for verdict, and the return of the verdict thereon shall proceed in all respects as though the defendant were present in court at all times.

(2) Sentencing. If the defendant is present at the beginning of the trial and thereafter absents himself or herself as described in subdivision (1), or if the defendant enters a plea of guilty or no contest and thereafter absents himself or herself from sentencing, the sentencing may proceed in all respects as though the defendant were present at all times.

(d) Defendant May Be Tried in Absentia for Misdemeanors. Persons prosecuted for misdemeanors may, at their own request, by leave of court, be excused from attendance at any or all of the proceedings aforesaid.

(e) Presence of Corporation. A corporation may appear by counsel at all times and for all purposes.

Rule 3.181

Notice to Seek Death Penalty

In a prosecution for a capital offense, if the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant of the state's intent to seek the death penalty. The notice must be filed with the court within 45 days of arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause.

Rule 3.190

Pretrial Motions

(a) In General. Every pretrial motion and pleading in response to a motion shall be in writing and signed by the party making the motion or the attorney for the party. This requirement may be waived by the court for good cause shown. Each motion or other pleading shall state the ground or grounds on which it is based. A copy shall be served on the adverse party. A certificate of service must accompany the filing of any pleading.

(b) Motion to Dismiss; Grounds. All defenses available to a defendant by plea, other than not guilty, shall be made only by motion to dismiss the indictment or information, whether the same shall relate to matters of form, substance, former acquittal, former jeopardy, or any other defense.

(c) Time for Moving to Dismiss. Unless the court grants further time, the defendant shall move to dismiss the indictment or information either before or at arraignment. The court in its discretion may permit the defendant to plead and thereafter to file a motion to dismiss at a time to be set by the court. Except for objections based on fundamental grounds, every ground for a motion to dismiss that is not presented by a motion to dismiss within the time hereinabove provided shall be considered waived. However, the court may at any time entertain a motion to dismiss on any of the following grounds:

(1) The defendant is charged with an offense for which the defendant has been pardoned.

(2) The defendant is charged with an offense for which the defendant previously has been placed in jeopardy.

(3) The defendant is charged with an offense for which the defendant previously has been granted immunity.

(4) There are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant.

The facts on which the motion is based should be alleged specifically and the motion sworn to.

(d) Traverse or Demurrer. The state may traverse or demur to a motion to dismiss that alleges factual matters. Factual matters alleged in a motion to dismiss under subdivision (c)(4) of this rule shall be considered admitted unless specifically denied by the state in the traverse. The court may receive evidence on any issue of fact necessary to the decision on the motion. A motion to dismiss under subdivision (c)(4) of this rule shall be denied if the state files a traverse that, with specificity, denies under oath the material fact or facts alleged in the motion to dismiss. The demurrer or traverse shall be filed a reasonable time before the hearing on the motion to dismiss.

(e) Effect of Sustaining a Motion to Dismiss. If the motion to dismiss is sustained, the court may order that the defendant be held in custody or admitted to bail for a reasonable specified time pending the filing of a new indictment or information. If a new indictment or information is not filed within the time specified in the order, or within such additional time as the court may allow for good cause shown, the defendant, if in custody, shall be discharged therefrom, unless some other charge justifies a continuation in custody. If the defendant has been released on bail, the defendant and the sureties shall be exonerated; if money or bonds have been deposited as bail, the money or bonds shall be refunded.

(f) Motion for Continuance.

(1) Definition. A continuance within the meaning of this rule is the postponement of a cause for any period of time.

(2) Cause. On motion of the state or a defendant or on its own motion, the court may grant a continuance, in its discretion for good cause shown.

(3) Time for Filing. A motion for continuance may be made only before or at the time the case is set for trial, unless good cause for failure to so apply is shown or the ground for the motion arose after the cause was set for trial.

(4) Certificate of Good Faith. A motion for continuance shall be accompanied by a certificate of the movant’s counsel that the motion is made in good faith.

(5) Affidavits. The party applying for a continuance may file affidavits in support of the motion, and the adverse party may file counter-affidavits in opposition to the motion.

(g) Motion to Suppress Evidence in Unlawful Search.

(1) Grounds. A defendant aggrieved by an unlawful search and seizure may move to suppress anything so obtained for use as evidence because:

(A) the property was illegally seized without a warrant;

(B) the warrant is insufficient on its face;

(C) the property seized is not the property described in the warrant;

(D) there was no probable cause for believing the existence of the grounds on which the warrant was issued; or

(E) the warrant was illegally executed.

(2) Contents of Motion. Every motion to suppress evidence shall state clearly the particular evidence sought to be suppressed, the reasons for suppression, and a general statement of the facts on which the motion is based.

(3) Hearing. Before hearing evidence, the court shall determine if the motion is legally sufficient. If it is not, the motion shall be denied. If the court hears the motion on its merits, the defendant shall present evidence supporting the defendant's position and the state may offer rebuttal evidence.

(4) Time for Filing. The motion to suppress shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court may entertain the motion or an appropriate objection at the trial.

(h) Motion to Suppress a Confession or Admission Illegally Obtained.

(1) Grounds. On motion of the defendant or on its own motion, the court shall suppress any confession or admission obtained illegally from the defendant.

(2) Contents of Motion. Every motion made by a defendant to suppress a confession or admission shall identify with particularity any statement sought to be suppressed, the reasons for suppression, and a general statement of the facts on which the motion is based.

(3) Time for Filing. The motion to suppress shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion or an appropriate objection at the trial.

(4) Hearing. The court shall receive evidence on any issue of fact necessary to be decided to rule on the motion.

(i) Motion to Take Deposition to Perpetuate Testimony.

(1) After the filing of an indictment or information on which a defendant is to be tried, the defendant or the state may apply for an order to perpetuate testimony. The application shall be

verified or supported by the affidavits of credible persons that a prospective witness resides beyond the territorial jurisdiction of the court or may be unable to attend or be prevented from attending a trial or hearing, that the witness's testimony is material, and that it is necessary to take the deposition to prevent a failure of justice. The court shall order a commission to be issued to take the deposition of the witnesses to be used in the trial and that any nonprivileged designated books, papers, documents, or tangible objects be produced at the same time and place. If the application is made within 10 days before the trial date, the court may deny the application.

(2) If the defendant or the state desires to perpetuate the testimony of a witness living in or out of the state whose testimony is material and necessary to the case, the same proceedings shall be followed as provided in subdivision (i)(1), but the testimony of the witness may be taken before an official court reporter, transcribed by the reporter, and filed in the trial court.

(3) If the deposition is taken on the application of the state, the defendant and the defendant's attorney shall be given reasonable notice of the time and place set for the deposition. The officer having custody of the defendant shall be notified of the time and place and shall produce the defendant at the examination and keep the defendant in the presence of the witness during the examination. A defendant not in custody may be present at the examination, but the failure to appear after notice and tender of expenses shall constitute a waiver of the right to be present. The state shall pay to the defendant's attorney and to a defendant not in custody the expenses of travel and subsistence for attendance at the examination. The state shall make available to the defendant for examination and use at the deposition any statement of the witness being deposed that is in the possession of the state and that the state would be required to make available to the defendant if the witness were testifying at trial.

(4) The application and order to issue the commission may be made either in term time or in vacation. The commission shall be issued at a time to be fixed by the court.

(5) Except as otherwise provided, the rules governing the taking and filing of oral depositions, the objections thereto, the issuing, execution, and return of the commission, and the opening of the depositions in civil actions shall apply in criminal cases.

(6) No deposition shall be used or read into evidence when the attendance of the witness can be procured. If the court determines that any person whose deposition has been taken is absent because of procurement, inducement, or threats of any person on behalf of the state or of the defendant or of any person on the defendant's behalf, the deposition shall not be read in evidence on behalf of the defendant.

(j) Motion to Expedite. On motion by the state, the court, in the exercise of its discretion, shall take into consideration the dictates of sections 825.106 and 918.0155, Florida Statutes

(1995).

Rule 3.191

Speedy Trial

(a) Speedy Trial without Demand. Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (f), every person charged with a crime shall be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest if the crime charged is a felony. If trial is not commenced within these time periods, the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p). The time periods established by this subdivision shall commence when the person is taken into custody as defined under subdivision (d). A person charged with a crime is entitled to the benefits of this rule whether the person is in custody in a jail or correctional institution of this state or a political subdivision thereof or is at liberty on bail or recognizance or other pretrial release condition. This subdivision shall cease to apply whenever a person files a valid demand for speedy trial under subdivision (b).

(b) Speedy Trial upon Demand. Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (g), every person charged with a crime by indictment or information shall have the right to demand a trial within 60 days, by filing with the court a separate pleading entitled “Demand for Speedy Trial,” and serving a copy on the prosecuting authority.

(1) No later than 5 days from the filing of a demand for speedy trial, the court shall hold a calendar call, with notice to all parties, for the express purposes of announcing in open court receipt of the demand and of setting the case for trial.

(2) At the calendar call the court shall set the case for trial to commence at a date no less than 5 days nor more than 45 days from the date of the calendar call.

(3) The failure of the court to hold a calendar call on a demand that has been properly filed and served shall not interrupt the running of any time periods under this subdivision.

(4) If the defendant has not been brought to trial within 50 days of the filing of the demand, the defendant shall have the right to the appropriate remedy as set forth in subdivision (p).

(c) Commencement of Trial. A person shall be considered to have been brought to trial if the trial commences within the time herein provided. The trial is considered to have commenced when the trial jury panel for that specific trial is sworn for voir dire examination or, on waiver of a jury trial, when the trial proceedings begin before the judge.

(d) Custody. For purposes of this rule, a person is taken into custody

(1) when the person is arrested as a result of the conduct or criminal episode that gave rise to the crime charged, or

(2) when the person is served with a notice to appear in lieu of physical arrest.

(e) Prisoners outside Jurisdiction. A person who is in federal custody or incarcerated in a jail or correctional institution outside the jurisdiction of this state or a subdivision thereof, and who is charged with a crime by indictment or information issued or filed under the laws of this state, is not entitled to the benefit of this rule until that person returns or is returned to the jurisdiction of the court within which the Florida charge is pending and until written notice of the person's return is filed with the court and served on the prosecutor. For these persons, the time period under subdivision (a) commences on the date the last act required under this subdivision occurs. For these persons the time period under subdivision (b) commences when the demand is filed so long as the acts required under this subdivision occur before the filing of the demand. If the acts required under this subdivision do not precede the filing of the demand, the demand is invalid and shall be stricken upon motion of the prosecuting attorney. Nothing in this rule shall affect a prisoner's right to speedy trial under law.

(f) Consolidation of Felony and Misdemeanor. When a felony and a misdemeanor are consolidated for disposition in circuit court, the misdemeanor shall be governed by the same time period applicable to the felony.

(g) Demand for Speedy Trial; Accused Is Bound. A demand for speedy trial binds the accused and the state. No demand for speedy trial shall be filed or served unless the accused has a bona fide desire to obtain a trial sooner than otherwise might be provided. A demand for speedy trial shall be considered a pleading that the accused is available for trial, has diligently investigated the case, and is prepared or will be prepared for trial within 5 days. A demand filed by an accused who has not diligently investigated the case or who is not timely prepared for trial shall be stricken as invalid on motion of the prosecuting attorney. A demand may not be withdrawn by the accused except on order of the court, with consent of the state or on good cause shown. Good cause for continuances or delay on behalf of the accused thereafter shall not include nonreadiness for trial, except as to matters that may arise after the demand for trial is filed and that reasonably could not have been anticipated by the accused or counsel for the accused. A person who has demanded speedy trial, who thereafter is not prepared for trial, is not entitled to continuance or delay except as provided in this rule.

(h) Notice of Expiration of Time for Speedy Trial; When Timely. A notice of expiration of speedy trial time shall be timely if filed and served after the expiration of the periods of time for trial provided in this rule. However, a notice of expiration of speedy trial time filed before expiration of the period of time for trial is invalid and shall be stricken on motion of the

prosecuting attorney.

(i) When Time May Be Extended. The periods of time established by this rule may be extended, provided the period of time sought to be extended has not expired at the time the extension was procured. An extension may be procured by:

(1) stipulation, announced to the court or signed in proper person or by counsel, by the party against whom the stipulation is sought to be enforced;

(2) written or recorded order of the court on the court's own motion or motion by either party in exceptional circumstances as hereafter defined in subdivision (l);

(3) written or recorded order of the court with good cause shown by the accused;

(4) written or recorded order of the court for a period of reasonable and necessary delay resulting from proceedings including but not limited to an examination and hearing to determine the mental competency or physical ability of the defendant to stand trial, for hearings on pretrial motions, for appeals by the state, for DNA testing ordered on the defendant's behalf upon defendant's motion specifying the physical evidence to be tested pursuant to section 925.12(2), Florida Statutes, and for trial of other pending criminal charges against the accused; or

(5) administrative order issued by the chief justice, under Florida Rule of Judicial Administration 2.205(a)(2)(B)(iv), suspending the speedy trial procedures as stated therein.

(j) Delay and Continuances; Effect on Motion. If trial of the accused does not commence within the periods of time established by this rule, a pending motion for discharge shall be granted by the court unless it is shown that:

(1) a time extension has been ordered under subdivision (i) and that extension has not expired;

(2) the failure to hold trial is attributable to the accused, a codefendant in the same trial, or their counsel;

(3) the accused was unavailable for trial under subdivision (k); or

(4) the demand referred to in subdivision (g) is invalid.

If the court finds that discharge is not appropriate for reasons under subdivisions (j)(2), (3), or (4), the pending motion for discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial.

(k) Availability for Trial. A person is unavailable for trial if the person or the person's counsel

fails to attend a proceeding at which either's presence is required by these rules, or the person or counsel is not ready for trial on the date trial is scheduled. A person who has not been available for trial during the term provided for in this rule is not entitled to be discharged. No presumption of nonavailability attaches, but if the state objects to discharge and presents any evidence tending to show nonavailability, the accused must establish, by competent proof, availability during the term.

(l) Exceptional Circumstances. As permitted by subdivision (i) of this rule, the court may order an extension of the time periods provided under this rule when exceptional circumstances are shown to exist. Exceptional circumstances shall not include general congestion of the court's docket, lack of diligent preparation, failure to obtain available witnesses, or other avoidable or foreseeable delays. Exceptional circumstances are those that, as a matter of substantial justice to the accused or the state or both, require an order by the court. These circumstances include:

(1) unexpected illness, unexpected incapacity, or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial;

(2) a showing by the state that the case is so unusual and so complex, because of the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this rule;

(3) a showing by the state that specific evidence or testimony is not available despite diligent efforts to secure it, but will become available at a later time;

(4) a showing by the accused or the state of necessity for delay grounded on developments that could not have been anticipated and that materially will affect the trial;

(5) a showing that a delay is necessary to accommodate a codefendant, when there is reason not to sever the cases to proceed promptly with trial of the defendant; and

(6) a showing by the state that the accused has caused major delay or disruption of preparation of proceedings, as by preventing the attendance of witnesses or otherwise.

(m) Effect of Mistrial; Appeal; Order of New Trial. A person who is to be tried again or whose trial has been delayed by an appeal by the state or the defendant shall be brought to trial within 90 days from the date of declaration of a mistrial by the trial court, the date of an order by the trial court granting a new trial, the date of an order by the trial court granting a motion in arrest of judgment, or the date of receipt by the trial court of a mandate, order, or notice of whatever form from a reviewing court that makes possible a new trial for the defendant, whichever is last in time. If a defendant is not brought to trial within the prescribed time periods, the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p).

(n) Discharge from Crime; Effect. Discharge from a crime under this rule shall operate to bar prosecution of the crime charged and of all other crimes on which trial has not commenced nor conviction obtained nor adjudication withheld and that were or might have been charged as a result of the same conduct or criminal episode as a lesser degree or lesser included offense.

(o) Nolle Prosequi; Effect. The intent and effect of this rule shall not be avoided by the state by entering a nolle prosequi to a crime charged and by prosecuting a new crime grounded on the same conduct or criminal episode or otherwise by prosecuting new and different charges based on the same conduct or criminal episode, whether or not the pending charge is suspended, continued, or is the subject of entry of a nolle prosequi.

(p) Remedy for Failure to Try Defendant within the Specified Time.

(1) No remedy shall be granted to any defendant under this rule until the court has made the required inquiry under subdivision (j).

(2) At any time after the expiration of the prescribed time period, the defendant may file a separate pleading entitled "Notice of Expiration of Speedy Trial Time," and serve a copy on the prosecuting authority.

(3) No later than 5 days from the date of the filing of a notice of expiration of speedy trial time, the court shall hold a hearing on the notice and, unless the court finds that one of the reasons set forth in subdivision (j) exists, shall order that the defendant be brought to trial within 10 days. A defendant not brought to trial within the 10-day period through no fault of the defendant, on motion of the defendant or the court, shall be forever discharged from the crime.

Rule 3.192

Motions for Rehearing

When an appeal by the state is authorized by Florida Rule of Appellate Procedure 9.140, or sections 924.07 or 924.071, Florida Statutes, the state may file a motion for rehearing within 10 days of an order subject to appellate review. A motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the state, the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding. A response may be filed within 10 days of service of the motion. The trial court's order disposing of the motion for rehearing shall be filed within 15 days of the response but not later than 40 days from the date of the order of which rehearing is sought. A timely filed motion for rehearing shall toll rendition of the order subject to appellate review and the order shall be deemed rendered upon the filing of a signed, written order denying the motion for rehearing. This rule shall not apply to postconviction proceedings pursuant to rule 3.800(a), 3.801, 3.850,

3.851, or 3.853. Nothing in this rule precludes the trial court from exercising its inherent authority to reconsider a ruling while the court has jurisdiction of the case.

Rule 3.200

Notice of Alibi

On the written demand of the prosecuting attorney, specifying as particularly as is known to the prosecuting attorney the place, date, and time of the commission of the crime charged, a defendant in a criminal case who intends to offer evidence of an alibi in defense shall, not less than 10 days before trial or such other time as the court may direct, file and serve on the prosecuting attorney a notice in writing of an intention to claim an alibi, which notice shall contain specific information as to the place at which the defendant claims to have been at the time of the alleged offense and, as particularly as is known to the defendant or the defendant's attorney, the names and addresses of the witnesses by whom the defendant proposes to establish the alibi. Not more than 5 days after receipt of defendant's witness list, or any other time as the court may direct, the prosecuting attorney shall file and serve on the defendant the names and addresses (as particularly as are known to the prosecuting attorney) of the witnesses the state proposes to offer in rebuttal to discredit the defendant's alibi at the trial of the cause. Both the defendant and the prosecuting attorney shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses who come to the attention of either party subsequent to filing their respective witness lists as provided in this rule. If a defendant fails to file and serve a copy of the notice as herein required, the court may exclude evidence offered by the defendant for the purpose of providing an alibi, except the defendant's own testimony. If the notice is given by a defendant, the court may exclude the testimony of any witness offered by the defendant for the purpose of proving an alibi if the name and address of the witness as particularly as is known to the defendant or the defendant's attorney is not stated in the notice. If the prosecuting attorney fails to file and serve a copy on the defendant of a list of witnesses as herein provided, the court may exclude evidence offered by the state in rebuttal to the defendant's alibi evidence. If notice is given by the prosecuting attorney, the court may exclude the testimony of any witness offered by the prosecuting attorney for the purpose of rebutting the defense of alibi if the name and address of the witness as particularly as is known to the prosecuting attorney is not stated in the notice. For good cause shown the court may waive the requirements of this rule.

Rule 3.201

Battered-Spouse Syndrome Defense

(a) Battered-Spouse Syndrome. When in any criminal case it shall be intention of the

defendant to rely on the defense of battered-spouse syndrome at trial, no evidence offered by the defendant for the purpose of establishing that defense shall be admitted in the case unless advance notice in writing of the defense shall have been given by the defendant as hereinafter provided.

(b) Time for Filing Notice. The defendant shall give notice of intent to rely on the defense of battered-spouse syndrome no later than 30 days prior to trial. The notice shall contain a statement of particulars showing the nature of the defense the defendant expects to prove and the names and addresses of the witnesses by whom the defendant expects to show battered-spouse syndrome, insofar as possible.

Rule 3.202

Expert Testimony of Mental Mitigation During Penalty Phase of Capital Trial: Notice and Examination By State Expert

(a) Notice of Intent to Seek Death Penalty. The provisions of this rule apply only in those capital cases in which the state gives timely written notice of its intent to seek the death penalty.

(b) Notice of Intent to Present Expert Testimony of Mental Mitigation. When in any capital case, in which the state has given notice of intent to seek the death penalty under subdivision (a) of this rule, it shall be the intention of the defendant to present, during the penalty phase of the trial, expert testimony of a mental health professional, who has tested, evaluated, or examined the defendant, in order to establish statutory or nonstatutory mental mitigating circumstances, the defendant shall give written notice of intent to present such testimony.

(c) Time for Filing Notice; Contents. The defendant shall give notice of intent to present expert testimony of mental mitigation not less than 20 days before trial. The notice shall contain a statement of particulars listing the statutory and nonstatutory mental mitigating circumstances the defendant expects to establish through expert testimony and the names and addresses of the mental health experts by whom the defendant expects to establish mental mitigation, insofar as is possible.

(d) Appointment of State Expert; Time of Examination. After the filing of such notice and on the motion of the state indicating its desire to seek the death penalty, the court shall order that, within 48 hours after the defendant is convicted of capital murder, the defendant be examined by a mental health expert chosen by the state. Attorneys for the state and defendant may be present at the examination. The examination shall be limited to those mitigating circumstances the defendant expects to establish through expert testimony.

(e) Defendant's Refusal to Cooperate. If the defendant refuses to be examined by or fully cooperate with the state's mental health expert, the court may, in its discretion:

(1) order the defense to allow the state's expert to review all mental health reports, tests, and evaluations by the defendant's mental health expert; or

(2) prohibit defense mental health experts from testifying concerning mental health tests, evaluations, or examinations of the defendant.

Rule 3.203

Defendant's Intellectual Disability As A Bar to Imposition of The Death Penalty

(a) Scope. This rule applies in all first-degree murder cases in which the state attorney has not waived the death penalty on the record and the defendant's intellectual disability becomes an issue.

(b) Definition of Intellectual Disability. As used in this rule, the term "intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this rule, means performance that is two or more standard deviations from the mean score on a standardized intelligence test authorized by the Department of Children and Family Services in rule 65G-4.011 of the Florida Administrative Code. The term "adaptive behavior," for the purpose of this rule, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

(c) Motion for Determination of Intellectual Disability as a Bar to Execution: Contents; Procedures.

(1) A defendant who intends to raise intellectual disability as a bar to execution shall file a written motion to establish intellectual disability as a bar to execution with the court.

(2) The motion shall state that the defendant is intellectually disabled and, if the defendant has been tested, evaluated, or examined by one or more experts, the names and addresses of the experts. Copies of reports containing the opinions of any experts named in the motion shall be attached to the motion. The court shall appoint an expert chosen by the state attorney if the state attorney so requests. The expert shall promptly test, evaluate, or examine the defendant and shall submit a written report of any findings to the parties and the court.

(3) If the defendant has not been tested, evaluated, or examined by one or more experts, the

motion shall state that fact and the court shall appoint two experts who shall promptly test, evaluate, or examine the defendant and shall submit a written report of any findings to the parties and the court.

(4) Attorneys for the state and defendant may be present at the examinations conducted by court-appointed experts.

(5) If the defendant refuses to be examined or fully cooperate with the court appointed experts or the state's expert, the court may, in the court's discretion:

(A) order the defense to allow the court-appointed experts to review all mental health reports, tests, and evaluations by the defendant's expert;

(B) prohibit the defense experts from testifying concerning any tests, evaluations, or examinations of the defendant regarding the defendant's intellectual disability; or

(C) order such relief as the court determines to be appropriate.

(d) Time for filing Motion for Determination of Intellectual Disability as a Bar to Execution. The motion for a determination of intellectual disability as a bar to execution shall be filed not later than 90 days prior to trial, or at such time as is ordered by the court.

(e) Hearing on Motion to Determine Intellectual Disability. The circuit court shall conduct an evidentiary hearing on the motion for a determination of intellectual disability. At the hearing, the court shall consider the findings of the experts and all other evidence on the issue of whether the defendant is intellectually disabled. The court shall enter a written order prohibiting the imposition of the death penalty and setting forth the court's specific findings in support of the court's determination if the court finds that the defendant is intellectually disabled as defined in subdivision (b) of this rule. The court shall stay the proceedings for 30 days from the date of rendition of the order prohibiting the death penalty or, if a motion for rehearing is filed, for 30 days following the rendition of the order denying rehearing, to allow the state the opportunity to appeal the order. If the court determines that the defendant has not established intellectual disability, the court shall enter a written order setting forth the court's specific findings in support of the court's determination.

(f) Waiver. A claim authorized under this rule is waived if not filed in accord with the time requirements for filing set out in this rule, unless good cause is shown for the failure to comply with the time requirements.

(g) Finding of Intellectual Disability; Order to Proceed. If, after the evidence presented, the court is of the opinion that the defendant is intellectually disabled, the court shall order the case to proceed without the death penalty as an issue.

(h) Appeal. An appeal may be taken by the state if the court enters an order finding that the defendant is intellectually disabled, which will stay further proceedings in the trial court until a decision on appeal is rendered. Appeals are to proceed according to Florida Rule of Appellate Procedure 9.140(c).

(i) Motion to Establish Intellectual Disability as a Bar to Execution; Stay of Execution. The filing of a motion to establish intellectual disability as a bar to execution shall not stay further proceedings without a separate order staying execution.

RULE 3.210. INCOMPETENCE TO PROCEED: PROCEDURE FOR RAISING THE ISSUE

(a) Proceedings Barred during Incompetency. A person accused of an offense or a violation of probation or community control who is mentally incompetent to proceed at any material stage of a criminal proceeding shall not be proceeded against while incompetent.

(1) A "material stage of a criminal proceeding" shall include the trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, violation of probation or violation of community control proceedings, sentencing, hearings on issues regarding a defendant's failure to comply with court orders or conditions, or other matters where the mental competence of the defendant is necessary for a just resolution of the issues being considered. The terms "competent," "competence," "incompetent," and "incompetence," as used in rules 3.210–3.219, shall refer to mental competence or incompetence to proceed at a material stage of a criminal proceeding.

(2) The incompetence of the defendant shall not preclude such judicial action, hearings on motions of the parties, discovery proceedings, or other procedures that do not require the personal participation of the defendant.

(b) Motion for Examination. If, at any material stage of a criminal proceeding, the court of its own motion, or on motion of counsel for the defendant or for the state, has reasonable ground to believe that the defendant is not mentally competent to proceed, the court shall immediately enter its order setting a time for a hearing to determine the defendant's mental condition, which shall be held no later than 20 days after the date of the filing of the motion, and may order the defendant to be examined by no more than 3 experts, as needed, prior to the date of the hearing. Attorneys for the state and the defendant may be present at any examination ordered by the court.

(1) A written motion for the examination made by counsel for the defendant shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is incompetent to proceed. To the extent that it does not invade the lawyer-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant that have formed the basis for the motion.

(2) A written motion for the examination made by counsel for the state shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe the defendant is incompetent to proceed and shall include a recital of the specific facts that have formed the basis for the motion, including a recitation of the observations of and statements of the defendant that have caused the state to file the motion.

(3) If the defendant has been released on bail or other release provision, the court may order the defendant to appear at a designated place for evaluation at a specific time as a condition of such release. If the court determines that the defendant will not submit to the evaluation or that the defendant is not likely to appear for the scheduled evaluation, the court may order the defendant taken into custody until the determination of the defendant's competency to proceed. A motion made for evaluation under this subdivision shall not otherwise affect the defendant's right to release.

(4) The order appointing experts shall:

(A) identify the purpose or purposes of the evaluation, including the nature of the material proceeding, and specify the area or areas of inquiry that should be addressed by the evaluator;

(B) specify the legal criteria to be applied; and

(C) specify the date by which the report should be submitted and to whom the report should be submitted.

Rule 3.210

Incompetence to Proceed: Procedure for Raising The Issue

(a) Proceedings Barred during Incompetency. A person accused of an offense or a violation of probation or community control who is mentally incompetent to proceed at any material stage of a criminal proceeding shall not be proceeded against while incompetent.

(1) A "material stage of a criminal proceeding" shall include the trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, violation of probation or violation of community control proceedings, sentencing, hearings on issues regarding a defendant's failure to comply with court orders or conditions, or other matters where the mental competence of the defendant is necessary for a just resolution of the issues being considered. The terms "competent," "competence," "incompetent," and "incompetence," as used in rules 3.210–3.219, shall refer to mental competence or incompetence to proceed at a material stage of a criminal proceeding.

(2) The incompetence of the defendant shall not preclude such judicial action, hearings on

motions of the parties, discovery proceedings, or other procedures that do not require the personal participation of the defendant.

(b) Motion for Examination. If, at any material stage of a criminal proceeding, the court of its own motion, or on motion of counsel for the defendant or for the state, has reasonable ground to believe that the defendant is not mentally competent to proceed, the court shall immediately enter its order setting a time for a hearing to determine the defendant's mental condition, which shall be held no later than 20 days after the date of the filing of the motion, and may order the defendant to be examined by no more than 3 experts, as needed, prior to the date of the hearing. Attorneys for the state and the defendant may be present at any examination ordered by the court.

(1) A written motion for the examination made by counsel for the defendant shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is incompetent to proceed. To the extent that it does not invade the lawyer-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant that have formed the basis for the motion.

(2) A written motion for the examination made by counsel for the state shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe the defendant is incompetent to proceed and shall include a recital of the specific facts that have formed the basis for the motion, including a recitation of the observations of and statements of the defendant that have caused the state to file the motion.

(3) If the defendant has been released on bail or other release provision, the court may order the defendant to appear at a designated place for evaluation at a specific time as a condition of such release. If the court determines that the defendant will not submit to the evaluation or that the defendant is not likely to appear for the scheduled evaluation, the court may order the defendant taken into custody until the determination of the defendant's competency to proceed. A motion made for evaluation under this subdivision shall not otherwise affect the defendant's right to release.

(4) The order appointing experts shall:

(A) identify the purpose or purposes of the evaluation, including the nature of the material proceeding, and specify the area or areas of inquiry that should be addressed by the evaluator;

(B) specify the legal criteria to be applied; and

(C) specify the date by which the report should be submitted and to whom the report should be submitted.

Rule 3.211

Competence to Proceed: Scope of Examination and Report

(a) Examination by Experts. Upon appointment by the court, the experts shall examine the defendant with respect to the issue of competence to proceed, as specified by the court in its order appointing the experts to evaluate the defendant, and shall evaluate the defendant as ordered.

(1) The experts shall first consider factors related to the issue of whether the defendant meets the criteria for competence to proceed; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.

(2) In considering the issue of competence to proceed, the examining experts shall consider and include in their report:

(A) the defendant's capacity to:

(i) appreciate the charges or allegations against the defendant;

(ii) appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;

(iii) understand the adversary nature of the legal process;

(iv) disclose to counsel facts pertinent to the proceedings at issue;

(v) manifest appropriate courtroom behavior;

(vi) testify relevantly; and

(B) any other factors deemed relevant by the experts.

(b) Factors to Be Evaluated. If the experts should find that the defendant is incompetent to proceed, the experts shall report on any recommended treatment for the defendant to attain competence to proceed. In considering the issues relating to treatment, the examining experts shall report on:

(1) the mental illness or intellectual disability causing the incompetence;

(2) the treatment or treatments appropriate for the mental illness or intellectual disability of the defendant and an explanation of each of the possible treatment alternatives in order of

choices;

(3) the availability of acceptable treatment. If treatment is available in the community, the expert shall so state in the report; and

(4) the likelihood of the defendant attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future.

(c) Written Findings of Experts. Any written report submitted by the experts shall:

(1) identify the specific matters referred for evaluation;

(2) describe the evaluative procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(3) state the expert's clinical observations, findings, and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion; and

(4) identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.

The procedure for determinations of the confidential status of reports is governed by Rule of Judicial Administration 2.420.

(d) Limited Use of Competency Evidence.

(1) The information contained in any motion by the defendant for determination of competency to proceed or in any report of experts filed under this rule insofar as the report relates solely to the issues of competency to proceed and commitment, and any information elicited during a hearing on competency to proceed or commitment held pursuant to this rule, shall be used only in determining the mental competency to proceed or the commitment or other treatment of the defendant.

(2) The defendant waives this provision by using the report, or portions thereof, in any proceeding for any other purpose, in which case disclosure and use of the report, or any portion thereof, shall be governed by applicable rules of evidence and rules of criminal procedure. If a part of the report is used by the defendant, the state may request the production of any other portion of that report that, in fairness, ought to be considered.

Rule 3.212

Competence to Proceed: Hearing and Disposition

(a) Admissibility of Evidence. The experts preparing the reports may be called by either party or the court, and additional evidence may be introduced by either party. The experts appointed by the court shall be deemed court witnesses whether called by the court or either party and may be examined as such by either party.

(b) Finding of Competence. The court shall first consider the issue of the defendant's competence to proceed. If the court finds the defendant competent to proceed, the court shall enter its order so finding and shall proceed.

(c) Commitment on Finding of Incompetence. If the court finds the defendant is incompetent to proceed, or that the defendant is competent to proceed but that the defendant's competence depends on the continuation of appropriate treatment for a mental illness or intellectual disability, the court shall consider issues relating to treatment necessary to restore or maintain the defendant's competence to proceed.

(1) The court may order the defendant to undergo treatment if the court finds that the defendant is mentally ill or intellectually disabled and is in need of treatment and that treatment appropriate for the defendant's condition is available. If the court finds that the defendant may be treated in the community on bail or other release conditions, the court may make acceptance of reasonable medical treatment a condition of continuing bail or other release conditions.

(2) If the defendant is incarcerated, the court may order treatment to be administered at the custodial facility or may order the defendant transferred to another facility for treatment or may commit the defendant as provided in subdivision (3).

(3) A defendant may be committed for treatment to restore a defendant's competence to proceed if the court finds that:

(A) the defendant meets the criteria for commitment as set forth by statute;

(B) there is a substantial probability that the mental illness or intellectual disability causing the defendant's incompetence will respond to treatment and that the defendant will regain competency to proceed in the reasonably foreseeable future;

(C) treatment appropriate for restoration of the defendant's competence to proceed is available; and

(D) no appropriate treatment alternative less restrictive than that involving commitment is available.

(4) If the court commits the defendant, the order of commitment shall contain:

(A) findings of fact relating to the issues of competency and commitment addressing the factors set forth in rule 3.211 when applicable;

(B) copies of the reports of the experts filed with the court pursuant to the order of examination;

(C) copies of any other psychiatric, psychological, or social work reports submitted to the court relative to the mental state of the defendant; and

(D) copies of the charging instrument and all supporting affidavits or other documents used in the determination of probable cause.

(5) The treatment facility shall admit the defendant for hospitalization and treatment and may retain and treat the defendant. No later than 6 months from the date of admission, the administrator of the facility shall file with the court a report that shall address the issues and consider the factors set forth in rule 3.211, with copies to all parties. If, at any time during the 6–month period or during any period of extended commitment that may be ordered pursuant to this rule, the administrator of the facility determines that the defendant no longer meets the criteria for commitment or has become competent to proceed, the administrator shall notify the court by such a report, with copies to all parties.

(A) If, during the 6–month period of commitment and treatment or during any period of extended commitment that may be ordered pursuant to this rule, counsel for the defendant shall have reasonable grounds to believe that the defendant is competent to proceed or no longer meets the criteria for commitment, counsel may move for a hearing on the issue of the defendant's competence or commitment. The motion shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is now competent to proceed or no longer meets the criteria for commitment. To the extent that it does not invade the attorney-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant that have formed the basis for the motion.

(B) If, upon consideration of a motion filed by counsel for the defendant or the prosecuting attorney and any information offered the court in support thereof, the court has reasonable grounds to believe that the defendant may have regained competence to proceed or no longer meets the criteria for commitment, the court shall order the administrator of the facility to report to the court on such issues, with copies to all parties, and shall order a hearing to be held on those issues.

(6) The court shall hold a hearing within 30 days of the receipt of any such report from the administrator of the facility on the issues raised thereby. If, following the hearing, the court

determines that the defendant continues to be incompetent to proceed and that the defendant meets the criteria for continued commitment or treatment, the court shall order continued commitment or treatment for a period not to exceed 1 year. When the defendant is retained by the facility, the same procedure shall be repeated prior to the expiration of each additional 1–year period of extended commitment.

(7) If, at any time after such commitment, the court decides, after hearing, that the defendant is competent to proceed, it shall enter its order so finding and shall proceed.

(8) If, after any such hearing, the court determines that the defendant remains incompetent to proceed but no longer meets the criteria for commitment, the court shall proceed as provided in rule 3.212(d).

(d) Release on Finding of Incompetence. If the court decides that a defendant is not mentally competent to proceed but does not meet the criteria for commitment, the defendant may be released on appropriate release conditions. The court may order that the defendant receive outpatient treatment at an appropriate local facility and that the defendant report for further evaluation at specified times during the release period as conditions of release. A report shall be filed with the court after each evaluation by the persons appointed by the court to make such evaluations, with copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of Judicial Administration 2.420.

Rule 3.213

Continuing Incompetency to Proceed, Except Incompetency to Proceed With Sentencing: Disposition

(a) Dismissal without Prejudice during Continuing Incompetency.

(1) If at any time after 5 years following a determination that a person is incompetent to stand trial or proceed with a probation or community control violation hearing when charged with a felony, or 1 year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing, that there is no substantial probability that the defendant will become mentally competent to stand trial or proceed with a probation or community control violation hearing in the foreseeable future, and that the defendant does not meet the criteria for commitment, it shall dismiss the charges against the defendant without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

(2) If the incompetency to stand trial or to proceed is due to intellectual disability or autism, the court shall dismiss the charges within a reasonable time after such determination, not to

exceed 2 years for felony charges and 1 year for misdemeanor charges, unless the court specifies in its order the reasons for believing that the defendant will become competent within the foreseeable future and specifies the time within which the defendant is expected to become competent. The dismissal shall be without prejudice to the state to refile should the defendant be declared competent to proceed in the future.

(b) Commitment or Treatment during Continuing Incompetency.

(1) If at any time after 5 years following a determination that a person is incompetent to stand trial or proceed with a probation or community control violation hearing when charged with a felony, or 1 year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing, that there is no substantial probability that the defendant will become mentally competent to stand trial or proceed with a probation or community control violation hearing in the foreseeable future, and that the defendant does meet the criteria for commitment, the court shall dismiss the charges against the defendant and commit the defendant to the Department of Children and Family Services for involuntary hospitalization or residential services solely under the provisions of law or may order that the defendant receive outpatient treatment at any other facility or service on an outpatient basis subject to the provisions of those statutes. In the order of commitment, the judge shall order that the administrator of the facility notify the state attorney of the committing circuit no less than 30 days prior to the anticipated date of release of the defendant. If charges are dismissed pursuant to this subdivision, the dismissal shall be without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

(2) If the continuing incompetency is due to intellectual disability or autism, and the defendant either lacks the ability to provide for his or her well-being or is likely to physically injure himself or herself, or others, the defendant may be involuntarily admitted to residential services as provided by law.

(c) Applicability. This rule shall not apply to defendants determined to be incompetent to proceed with sentencing, which is addressed in rule 3.214.

Rule 3.214

Incompetency to Proceed to Sentencing:
Disposition

If a defendant is determined to be incompetent to proceed after being found guilty of an offense or violation of probation or community control or after voluntarily entering a plea to an offense or violation of probation or community control, but prior to sentencing, the court shall postpone the pronouncement of sentence and proceed pursuant to rule 3.210 (et seq.) and the following

rules.

Rule 3.215

Effect of Adjudication of Incompetency to Proceed: Psychotropic Medication

(a) Former Jeopardy. If the defendant is declared incompetent to stand trial during trial and afterwards declared competent to stand trial, the defendant's other uncompleted trial shall not constitute former jeopardy.

(b) Limited Application of Incompetency Adjudication. An adjudication of incompetency to proceed shall not operate as an adjudication of incompetency to consent to medical treatment or for any other purpose unless such other adjudication is specifically set forth in the order.

(c) Psychotropic Medication. A defendant who, because of psychotropic medication, is able to understand the proceedings and to assist in the defense shall not automatically be deemed incompetent to proceed simply because the defendant's satisfactory mental condition is dependent on such medication, nor shall the defendant be prohibited from proceeding solely because the defendant is being administered medication under medical supervision for a mental or emotional condition.

(1) Psychotropic medication is any drug or compound affecting the mind, behavior, intellectual functions, perception, moods, or emotion and includes anti-psychotic, anti-depressant, anti-manic, and anti-anxiety drugs.

(2) If the defendant proceeds to trial with the aid of medication for a mental or emotional condition, on the motion of defense counsel, the jury shall, at the beginning of the trial and in the charge to the jury, be given explanatory instructions regarding such medication.

Rule 3.216

Insanity At Time of Offense or Probation or Community Control Violation: Notice and Appointment of Experts

(a) Expert to Aid Defense Counsel. When in any criminal case a defendant is adjudged to be indigent or partially indigent, and is not represented by the public defender or regional counsel, and counsel has reason to believe that the defendant may be incompetent to proceed or that the defendant may have been insane at the time of the offense or probation or community control violation, counsel may so inform the court who shall appoint 1 expert to examine the defendant in order to assist counsel in the preparation of the defense. The expert shall report only to the attorney for the defendant and matters related to the expert shall be deemed to fall under the

lawyer-client privilege.

(b) Notice of Intent to Rely on Insanity Defense. When in any criminal case it shall be the intention of the defendant to rely on the defense of insanity either at trial or probation or community control violation hearing, no evidence offered by the defendant for the purpose of establishing that defense shall be admitted in the case unless advance notice in writing of the defense shall have been given by the defendant as hereinafter provided.

(c) Time for Filing Notice. The defendant shall give notice of intent to rely on the defense of insanity no later than 15 days after the arraignment or the filing of a written plea of not guilty in the case when the defense of insanity is to be relied on at trial or no later than 15 days after being brought before the appropriate court to answer to the allegations in a violation of probation or community control proceeding. If counsel for the defendant shall have reasonable grounds to believe that the defendant may be incompetent to proceed, the notice shall be given at the same time that the motion for examination into the defendant's competence is filed. The notice shall contain a statement of particulars showing the nature of the insanity the defendant expects to prove and the names and addresses of the witnesses by whom the defendant expects to show insanity, insofar as is possible.

(d) Court-Ordered Evaluations. On the filing of such notice and on motion of the state, the court shall order the defendant to be examined by the state's mental health expert(s) as to the sanity or insanity of the defendant at the time of the commission of the alleged offense or probation or community control violation. Attorneys for the state and defendant may be present at the examination.

(e) Time for Filing Notice of Intent to Rely on a Mental Health Defense Other than Insanity. The defendant shall give notice of intent to rely on any mental health defense other than insanity as soon as a good faith determination has been made to utilize the defense but in no event later than 30 days prior to trial. The notice shall contain a statement of particulars showing the nature of the defense the defendant expects to prove and the names and addresses of the witnesses by whom the defendant expects to prove the defense, insofar as possible. If expert testimony will be presented, the notice shall indicate whether the expert has examined the defendant.

(f) Court-Ordered Experts for Other Mental Health Defenses. If the notice to rely on any mental health defense other than insanity indicates the defendant will rely on the testimony of an expert who has examined the defendant, the court shall upon motion of the state order the defendant be examined by one qualified expert for the state as to the mental health defense raised by the defendant. Upon a showing of good cause, the court may order additional examinations upon motion by the state or the defendant. Attorneys for the state and defendant may be present at the examination. When the defendant relies on the testimony of an expert

who has not examined the defendant, the state shall not be entitled to a compulsory examination of the defendant.

(g) Waiver of Time to File. On good cause shown for the omission of the notice of intent to rely on the defense of insanity, or any mental health defense, the court may in its discretion grant the defendant 10 days to comply with the notice requirement. If leave is granted and the defendant files the notice, the defendant is deemed unavailable to proceed. If the trial has already commenced, the court, only on motion of the defendant, may declare a mistrial in order to permit the defendant to raise the defense of insanity pursuant to this rule. Any motion for mistrial shall constitute a waiver of the defendant's right to any claim of former jeopardy arising from the uncompleted trial.

(h) Evaluating Defendant after Pretrial Release. If the defendant has been released on bail or other release conditions, the court may order the defendant to appear at a designated place for evaluation at a specific time as a condition of the release provision. If the court determines that the defendant will not submit to the evaluation provided for herein or that the defendant is not likely to appear for the scheduled evaluation, the court may order the defendant taken into custody until the evaluation is completed. A motion made for evaluation under this subdivision shall not otherwise affect the defendant's right to pretrial release.

(i) Evidence. Any experts appointed by the court may be summoned to testify at the trial, and shall be deemed court witnesses whether called by the court or by either party. Other evidence regarding the defendant's insanity or mental condition may be introduced by either party. At trial, in its instructions to the jury, the court shall include an instruction on the consequences of a verdict of not guilty by reason of insanity.

Rule 3.217

Judgment of Not Guilty By Reason of Insanity: Disposition of Defendant

(a) Verdict of Not Guilty by Reason of Insanity. When a person is found by the jury or the court not guilty of the offense or is found not to be in violation of probation or community control by reason of insanity, the jury or judge, in giving the verdict or finding of not guilty judgment, shall state that it was given for that reason.

(b) Treatment, Commitment, or Discharge after Acquittal. When a person is found not guilty of the offense or is found not to be in violation of probation or community control by reason of insanity, if the court then determines that the defendant presently meets the criteria set forth by law, the court shall commit the defendant to the Department of Children and Family Services or shall order outpatient treatment at any other appropriate facility or service, or shall discharge the defendant. Any order committing the defendant or requiring outpatient treatment

or other outpatient service shall contain:

(1) findings of fact relating to the issue of commitment or other court-ordered treatment;

(2) copies of any reports of experts filed with the court; and

(3) any other psychiatric, psychological, or social work report submitted to the court relative to the mental state of the defendant.

Rule 3.218

Commitment of A Defendant Found Not Guilty By Reason of Insanity

(a) Commitment; 6-Month Report. The Department of Children and Family Services shall admit to an appropriate facility a defendant found not guilty by reason of insanity under rule 3.217 and found to meet the criteria for commitment for hospitalization and treatment and may retain and treat the defendant. No later than 6 months from the date of admission, the administrator of the facility shall file with the court a report, and provide copies to all parties, which shall address the issues of further commitment of the defendant. If at any time during the 6-month period, or during any period of extended hospitalization that may be ordered under this rule, the administrator of the facility shall determine that the defendant no longer meets the criteria for commitment, the administrator shall notify the court by such a report and provide copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of Judicial Administration 2.420.

(b) Right to Hearing if Committed upon Acquittal. The court shall hold a hearing within 30 days of the receipt of any report from the administrator of the facility on the issues raised thereby, and the defendant shall have a right to be present at the hearing. If the court determines that the defendant continues to meet the criteria for continued commitment or treatment, the court shall order further commitment or treatment for a period not to exceed 1 year. The same procedure shall be repeated before the expiration of each additional 1-year period in which the defendant is retained by the facility.

(c) Evidence to Determine Continuing Insanity. Before any hearing held under this rule, the court may, on its own motion, and shall, on motion of counsel for the state or defendant, appoint no fewer than 2 nor more than 3 experts to examine the defendant relative to the criteria for continued commitment or placement of the defendant and shall specify the date by which the experts shall report to the court on these issues and provide copies to all parties.

Rule 3.219

Conditional Release

(a) Release Plan. The committing court may order a conditional release of any defendant who has been committed according to a finding of incompetency to proceed or an adjudication of not guilty by reason of insanity based on an approved plan for providing appropriate outpatient care and treatment. When the administrator shall determine outpatient treatment of the defendant to be appropriate, the administrator may file with the court, and provide copies to all parties, a written plan for outpatient treatment, including recommendations from qualified professionals. The plan may be submitted by the defendant. The plan shall include:

(1) special provisions for residential care, adequate supervision of the defendant, or both;

(2) provisions for outpatient mental health services; and

(3) if appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based on the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release, and progress in treatment, and provide copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of Judicial Administration 2.420.

(b) Defendant's Failure to Comply. If it appears at any time that the defendant has failed to comply with the conditions of release, or that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court, after hearing, may modify the release conditions or, if the court finds the defendant meets the statutory criteria for commitment, may order that the defendant be recommitted to the Department of Children and Family Services for further treatment.

(c) Discharge. If at any time it is determined after hearing that the defendant no longer requires court-supervised follow-up care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Rule 3.220

Discovery

(a) Notice of Discovery. After the filing of the charging document, a defendant may elect to participate in the discovery process provided by these rules, including the taking of discovery

depositions, by filing with the court and serving on the prosecuting attorney a "Notice of Discovery" which shall bind both the prosecution and defendant to all discovery procedures contained in these rules. Participation by a defendant in the discovery process, including the taking of any deposition by a defendant or the filing of a public records request under chapter 119, Florida Statutes, for law enforcement records relating to the defendant's pending prosecution, which are nonexempt as a result of a codefendant's participation in discovery, shall be an election to participate in discovery and triggers a reciprocal discovery obligation for the defendant. If any defendant knowingly or purposely shares in discovery obtained by a codefendant, the defendant shall be deemed to have elected to participate in discovery.

(b) Prosecutor's Discovery Obligation.

(1) Within 15 days after service of the Notice of Discovery, the prosecutor shall serve a written Discovery Exhibit which shall disclose to the defendant and permit the defendant to inspect, copy, test, and photograph the following information and material within the state's possession or control, except that any property or material that portrays sexual performance by a child or constitutes child pornography may not be copied, photographed, duplicated, or otherwise reproduced so long as the state attorney makes the property or material reasonably available to the defendant or the defendant's attorney:

(A) a list of the names and addresses of all persons known to the prosecutor to have information that may be relevant to any offense charged or any defense thereto, or to any similar fact evidence to be presented at trial under section 90.404(2), Florida Statutes. The names and addresses of persons listed shall be clearly designated in the following categories:

(i) Category A. These witnesses shall include (1) eye witnesses, (2) alibi witnesses and rebuttal to alibi witnesses, (3) witnesses who were present when a recorded or unrecorded statement was taken from or made by a defendant or codefendant, which shall be separately identified within this category, (4) investigating officers, (5) witnesses known by the prosecutor to have any material information that tends to negate the guilt of the defendant as to any offense charged, (6) child hearsay witnesses, (7) expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify, and (8) informant witnesses, whether in custody, who offer testimony concerning the statements of a defendant about the issues for which the defendant is being tried.

(ii) Category B. All witnesses not listed in either Category A or Category C.

(iii) Category C. All witnesses who performed only ministerial functions or whom the prosecutor does not intend to call at trial and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense;

(B) the statement of any person whose name is furnished in compliance with the preceding

subdivision. The term “statement” as used herein includes a written statement made by the person and signed or otherwise adopted or approved by the person and also includes any statement of any kind or manner made by the person and written or recorded or summarized in any writing or recording. The term “statement” is specifically intended to include all police and investigative reports of any kind prepared for or in connection with the case, but shall not include the notes from which those reports are compiled;

(C) any written or recorded statements and the substance of any oral statements made by the defendant, including a copy of any statements contained in police reports or report summaries, together with the name and address of each witness to the statements;

(D) any written or recorded statements and the substance of any oral statements made by a codefendant;

(E) those portions of recorded grand jury minutes that contain testimony of the defendant;

(F) any tangible papers or objects that were obtained from or belonged to the defendant;

(G) whether the state has any material or information that has been provided by a confidential informant;

(H) whether there has been any electronic surveillance, including wiretapping, of the premises of the defendant or of conversations to which the defendant was a party and any documents relating thereto;

(I) whether there has been any search or seizure and any documents relating thereto;

(J) reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(K) any tangible papers or objects that the prosecuting attorney intends to use in the hearing or trial and that were not obtained from or that did not belong to the defendant;

(L) any tangible paper, objects, or substances in the possession of law enforcement that could be tested for DNA; and

(M) whether the state has any material or information that has been provided by an informant witness, including:

(i) the substance of any statement allegedly made by the defendant about which the informant witness may testify;

(ii) a summary of the criminal history record of the informant witness;

(iii) the time and place under which the defendant's alleged statement was made;

(iv) whether the informant witness has received, or expects to receive, anything in exchange for his or her testimony;

(v) the informant witness' prior history of cooperation, in return for any benefit, as known to the prosecutor.

(2) If the court determines, in camera, that any police or investigative report contains irrelevant, sensitive information or information interrelated with other crimes or criminal activities and the disclosure of the contents of the police report may seriously impair law enforcement or jeopardize the investigation of those other crimes or activities, the court may prohibit or partially restrict the disclosure.

(3) The court may prohibit the state from introducing into evidence any of the foregoing material not disclosed, so as to secure and maintain fairness in the just determination of the cause.

(4) As soon as practicable after the filing of the charging document the prosecutor shall disclose to the defendant any material information within the state's possession or control that tends to negate the guilt of the defendant as to any offense charged, regardless of whether the defendant has incurred reciprocal discovery obligations.

(c) Disclosure to Prosecution.

(1) After the filing of the charging document and subject to constitutional limitations, the court may require a defendant to:

(A) appear in a lineup;

(B) speak for identification by witnesses to an offense;

(C) be fingerprinted;

(D) pose for photographs not involving re-enactment of a scene;

(E) try on articles of clothing;

(F) permit the taking of specimens of material under the defendant's fingernails;

(G) permit the taking of samples of the defendant's blood, hair, and other materials of the defendant's body that involves no unreasonable intrusion thereof;

(H) provide specimens of the defendant's handwriting; and

(I) submit to a reasonable physical or medical inspection of the defendant's body.

(2) If the personal appearance of a defendant is required for the foregoing purposes, reasonable notice of the time and location of the appearance shall be given by the prosecuting attorney to the defendant and his or her counsel. Provisions may be made for appearances for such purposes in an order admitting a defendant to bail or providing for pretrial release.

(d) Defendant's Obligation.

(1) If a defendant elects to participate in discovery, either through filing the appropriate notice or by participating in any discovery process, including the taking of a discovery deposition, the following disclosures shall be made:

(A) Within 15 days after receipt by the defendant of the Discovery Exhibit furnished by the prosecutor pursuant to subdivision (b)(1)(A) of this rule, the defendant shall furnish to the prosecutor a written list of the names and addresses of all witnesses whom the defendant expects to call as witnesses at the trial or hearing. When the prosecutor subpoenas a witness whose name has been furnished by the defendant, except for trial subpoenas, the rules applicable to the taking of depositions shall apply.

(B) Within 15 days after receipt of the prosecutor's Discovery Exhibit the defendant shall serve a written Discovery Exhibit which shall disclose to and permit the prosecutor to inspect, copy, test, and photograph the following information and material that is in the defendant's possession or control:

(i) the statement of any person listed in subdivision (d)(1)(A), other than that of the defendant;

(ii) reports or statements of experts, that the defendant intends to use as a witness at a trial or hearing, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons; and

(iii) any tangible papers or objects that the defendant intends to use in the hearing or trial.

(2) The prosecutor and the defendant shall perform their obligations under this rule in a manner mutually agreeable or as ordered by the court.

(3) The filing of a motion for protective order by the prosecutor will automatically stay the times provided for in this subdivision. If a protective order is granted, the defendant may, within 2 days thereafter, or at any time before the prosecutor furnishes the information or material that is the subject of the motion for protective order, withdraw the defendant's notice of discovery and not be required to furnish reciprocal discovery.

(e) Restricting Disclosure. The court on its own initiative or on motion of counsel shall deny or partially restrict disclosures authorized by this rule if it finds there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to either party.

(f) Additional Discovery. On a showing of materiality, the court may require such other discovery to the parties as justice may require.

(g) Matters Not Subject to Disclosure.

(1) Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting or defense attorney or members of their legal staffs.

(2) Informants. Disclosure of a confidential informant shall not be required unless the confidential informant is to be produced at a hearing or trial or a failure to disclose the informant's identity will infringe the constitutional rights of the defendant.

(h) Discovery Depositions.

(1) Generally. At any time after the filing of the charging document any party may take the deposition upon oral examination of any person authorized by this rule. A party taking a deposition shall give reasonable written notice to each other party and shall make a good faith effort to coordinate the date, time, and location of the deposition to accommodate the schedules of other parties and the witness to be deposed. The notice shall state the time and the location where the deposition is to be taken, the name of each person to be examined, and a certificate of counsel that a good faith effort was made to coordinate the deposition schedule. After notice to the parties the court may, for good cause shown, extend or shorten the time and may change the location of the deposition. Except as provided herein, the procedure for taking the deposition, including the scope of the examination, and the issuance of a subpoena for deposition by an attorney of record in the action, shall be the same as that provided in the Florida Rules of Civil Procedure and section 48.031, Florida Statutes. Any deposition taken pursuant to this rule may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. The trial court or the clerk of the court may, upon application by a pro se litigant or the attorney for any party, issue subpoenas for the persons whose depositions are to be taken. In any case, including multiple defendants or consolidated cases, no person shall be deposed more than once except by consent of the parties or by order of the court issued on good cause shown. A witness who refuses to obey a duly served subpoena may be adjudged in contempt of the court from which the subpoena issued.

(A) The defendant may, without leave of court, take the deposition of any witness listed by the

prosecutor as a Category A witness or listed by a co-defendant as a witness to be called at a joint trial or hearing. After receipt by the defendant of the Discovery Exhibit, the defendant may, without leave of court, take the deposition of any unlisted witness who may have information relevant to the offense charged. The prosecutor may, without leave of court, take the deposition of any witness listed by the defendant to be called at a trial or hearing.

(B) No party may take the deposition of a witness listed by the prosecutor as a Category B witness except upon leave of court with good cause shown. In determining whether to allow a deposition, the court should consider the consequences to the defendant, the complexities of the issues involved, the complexity of the testimony of the witness (e.g., experts), and the other opportunities available to the defendant to discover the information sought by deposition.

(C) A witness listed by the prosecutor as a Category C witness shall not be subject to deposition unless the court determines that the witness should be listed in another category.

(D) No deposition shall be taken in a case in which the defendant is charged only with a misdemeanor or a criminal traffic offense when all other discovery provided by this rule has been complied with unless good cause can be shown to the trial court. In determining whether to allow a deposition, the court should consider the consequences to the defendant, the complexity of the issues involved, the complexity of the witness' testimony (e.g., experts), and the other opportunities available to the defendant to discover the information sought by deposition. However, this prohibition against the taking of depositions shall not be applicable if following the furnishing of discovery by the defendant the state then takes the statement of a listed defense witness pursuant to section 27.04, Florida Statutes.

(2) Transcripts. No transcript of a deposition for which the state may be obligated to expend funds shall be ordered by a party unless it is in compliance with general law.

(3) Location of Deposition. Depositions of witnesses residing in the county in which the trial is to take place shall be taken in the building in which the trial shall be held, such other location as is agreed on by the parties, or a location designated by the court. Depositions of witnesses residing outside the county in which the trial is to take place shall be taken in a court reporter's office in the county or state in which the witness resides, such other location as is agreed on by the parties, or a location designated by the court.

(4) Depositions of Sensitive Witnesses. Depositions of children under the age of 18 shall be videotaped unless otherwise ordered by the court. The court may order the videotaping of a deposition or the taking of a deposition of a witness with fragile emotional strength, or an intellectual disability as defined in section 393.063, Florida Statutes, to be in the presence of the trial judge or a special magistrate.

(5) Depositions of Law Enforcement Officers. Subject to the general provisions of subdivision

(h)(1), law enforcement officers shall appear for deposition, without subpoena, upon written notice of taking deposition delivered at the address of the law enforcement agency or department, or an address designated by the law enforcement agency or department, five days prior to the date of the deposition. Law enforcement officers who fail to appear for deposition after being served notice as required by the rule may be adjudged in contempt of court.

(6) Witness Coordinating Office/Notice of Taking Deposition. If a witness coordinating office has been established in the jurisdiction pursuant to applicable Florida Statutes, the deposition of any witness should be coordinated through that office. The witness coordinating office should attempt to schedule the depositions of a witness at a time and location convenient for the witness and acceptable to the parties.

(7) Defendant's Physical Presence. A defendant shall not be physically present at a deposition except on stipulation of the parties or as provided by this rule. The court may order the physical presence of the defendant on a showing of good cause. The court may consider (A) the need for the physical presence of the defendant to obtain effective discovery, (B) the intimidating effect of the defendant's presence on the witness, if any, (C) any cost or inconvenience which may result, and (D) any alternative electronic or audio/visual means available.

(8) Telephonic Statements. On stipulation of the parties and the consent of the witness, the statement of any witness may be taken by telephone in lieu of the deposition of the witness. In such case, the witness need not be under oath. The statement, however, shall be recorded and may be used for impeachment at trial as a prior inconsistent statement pursuant to the Florida Evidence Code.

(i) Investigations Not to Be Impeded. Except as is otherwise provided as to matters not subject to disclosure or restricted by protective orders, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information (except the defendant) to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(j) Continuing Duty to Disclose. If, subsequent to compliance with the rules, a party discovers additional witnesses or material that the party would have been under a duty to disclose or produce at the time of the previous compliance, the party shall promptly disclose or produce the witnesses or material in the same manner as required under these rules for initial discovery.

(k) Court May Alter Times. The court may alter the times for compliance with any discovery under these rules on good cause shown.

(l) Protective Orders.

(1) Motion to Restrict Disclosure of Matters. On a showing of good cause, the court shall at any time order that specified disclosures be restricted, deferred, or exempted from discovery, that certain matters not be inquired into, that the scope of the deposition be limited to certain matters, that a deposition be sealed and after being sealed be opened only by order of the court, or make such other order as is appropriate to protect a witness from harassment, unnecessary inconvenience, or invasion of privacy, including prohibiting the taking of a deposition. All material and information to which a party is entitled, however, must be disclosed in time to permit the party to make beneficial use of it.

(2) Motion to Terminate or Limit Examination. At any time during the taking of a deposition, on motion of a party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the circuit court where the deposition is being taken may (1) terminate the deposition, (2) limit the scope and manner of the taking of the deposition, (3) limit the time of the deposition, (4) continue the deposition to a later time, (5) order the deposition to be taken in open court, and, in addition, may (6) impose any sanction authorized by this rule. If the order terminates the deposition, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of any party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(m) In Camera and Ex Parte Proceedings.

(1) Any person may move for an order denying or regulating disclosure of sensitive matters. The court may consider the matters contained in the motion in camera.

(2) Upon request, the court shall allow the defendant to make an ex parte showing of good cause for taking the deposition of a Category B witness.

(3) A record shall be made of proceedings authorized under this subdivision. If the court enters an order granting relief after an in camera inspection or ex parte showing, the entire record of the proceeding shall be sealed and preserved and be made available to the appellate court in the event of an appeal.

(n) Sanctions.

(1) If, at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or with an order issued pursuant to an applicable discovery rule, the court may order the party to comply with the discovery or inspection of materials not previously disclosed or produced, grant a continuance, grant a mistrial, prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed, or enter such other order as it deems just under the

circumstances.

(2) Willful violation by counsel or a party not represented by counsel of an applicable discovery rule, or an order issued pursuant thereto, shall subject counsel or the unrepresented party to appropriate sanctions by the court. The sanctions may include, but are not limited to, contempt proceedings against the attorney or unrepresented party, as well as the assessment of costs incurred by the opposing party, when appropriate.

(3) Every request for discovery or response or objection, including a notice of deposition made by a party represented by an attorney, shall be signed by at least 1 attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and list his or her address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection and that to the best of the signer's knowledge, information, or belief formed after a reasonable inquiry it is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of this rule, the court, on motion or on its own initiative, shall impose on the person who made the certification, the firm or agency with which the person is affiliated, the party on whose behalf the request, response, or objection is made, or any or all of the above an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(o) Pretrial Conference.

(1) The trial court may hold 1 or more pretrial conferences, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. The defendant shall be present unless the defendant waives this in writing.

(2) The court may set, and upon the request of any party shall set, a discovery schedule,

including a discovery cut-off date, at the pretrial conference.

Rule 3.231

Substitution of Judge

If by reason of death or disability the judge before whom a trial has commenced is unable to proceed with the trial, or posttrial proceedings, another judge, certifying that he or she has become familiar with the case, may proceed with the disposition of the case, except in death penalty sentencing proceedings. In death penalty sentencing proceedings, a successor judge who did not hear the evidence during the penalty phase of the trial shall conduct a new sentencing proceeding before a new jury.

Rule 3.240

Change of Venue

(a) Grounds for Motion. The state or the defendant may move for a change of venue on the ground that a fair and impartial trial cannot be had in the county where the case is pending for any reason other than the interest and prejudice of the trial judge.

(b) Contents of Motion. Every motion for change of venue shall be in writing and be accompanied by:

(1) affidavits of the movant and 2 or more other persons setting forth facts on which the motion is based; and

(2) a certificate by the movant's counsel that the motion is made in good faith.

(c) Time for Filing. A motion for change of venue shall be filed no less than 10 days before the time the case is called for trial unless good cause is shown for failure to file within such time.

(d) Action on Motion. The court shall consider the affidavits filed by all parties and receive evidence on every issue of fact necessary to its decision. If the court grants the motion it shall make an order removing the cause to the court having jurisdiction to try such offense in some other convenient county where a fair and impartial trial can be had.

(e) Defendant in Custody. If the defendant is in custody, the order shall direct that the defendant be forthwith delivered to the custody of the sheriff of the county to which the cause is removed.

(f) Transmittal of Documents. The clerk shall enter on the minutes the order of removal and

transmit to the court to which the cause is removed a certified copy of the order of removal and of the record and proceedings and of the undertakings of the witnesses and the accused.

(g) Attendance by Witnesses. When the cause is removed to another court, witnesses who have been lawfully subpoenaed or ordered to appear at the trial shall, on notice of such removal, attend the court to which the cause is removed at the time specified in the order of removal. A witness who refuses to obey a duly served subpoena may be adjudged in contempt of court.

(h) Multiple Defendants. If there are several defendants and an order is made removing the cause on the application of one or more but not all of them, the other defendants shall be tried and all proceedings had against them in the county in which the cause is pending in all respects as if no order of removal had been made as to any defendant.

(i) Action of Receiving Court. The court to which the cause is removed shall proceed to trial and judgment therein as if the cause had originated in that court. If it is necessary to have any of the original pleadings or other documents before that court, the court from which the cause is removed shall at any time on application of the prosecuting attorney or the defendant order such documents or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

(j) Prosecuting Attorney's Obligation. The prosecuting attorney of the court to which the cause is removed may amend the information, or file a new information, and such new information shall be entitled in the county in which the trial is had, but the allegations as to the place of commission of the crime shall refer to the county in which the crime was actually committed.

Rule 3.250

Accused As Witness

In all criminal prosecutions the accused may choose to be sworn as a witness in the accused's own behalf and shall in that case be subject to examination as other witnesses, but no accused person shall be compelled to give testimony against himself or herself, nor shall any prosecuting attorney be permitted before the jury or court to comment on the failure of the accused to testify in his or her own behalf.

Rule 3.251

Right to Trial By Jury

In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury in the county where the crime was committed.

Rule 3.260

Waiver of Jury Trial

A defendant may in writing waive a jury trial with the consent of the state.

Rule 3.270

Number of Jurors

Twelve persons shall constitute a jury to try all capital cases, and 6 persons shall constitute a jury to try all other criminal cases.

Rule 3.280

Alternate Jurors

(a) Selection. The court may direct that jurors, in addition to the regular panel, be called and impanelled to sit as alternate jurors. Alternate jurors, in the order in which they are impanelled, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, be subject to the same examination, take the same oath, and have the same functions, powers, facilities, and privileges as the principal jurors. Except as hereinafter provided regarding capital cases, an alternate juror who does not replace a principal juror shall be discharged at the same time the jury retires to consider its verdict.

(b) Responsibilities. At the conclusion of the guilt or innocence phase of the trial, each alternate juror will be excused with instructions to remain in the courtroom. The jury will then retire to consider its verdict, and each alternate will be excused with appropriate instructions that the alternate juror may have to return for an additional hearing should the defendant be convicted of a capital offense.

Rule 3.281

List of Prospective Jurors

Upon request, any party shall be furnished by the clerk of the court with a list containing names

and addresses of prospective jurors summoned to try the case together with copies of all jury questionnaires returned by the prospective jurors.

Rule 3.290

Challenge to Panel

The state or defendant may challenge the panel. A challenge to the panel may be made only on the ground that the prospective jurors were not selected or drawn according to law. Challenges to the panel shall be made and decided before any individual juror is examined, unless otherwise ordered by the court. A challenge to the panel shall be in writing and shall specify the facts constituting the ground of the challenge. Challenges to the panel shall be tried by the court. Upon the trial of a challenge to the panel the witnesses may be examined on oath by the court and may be so examined by either party. If the challenge to the panel is sustained, the court shall discharge the panel. If the challenge is not sustained, the individual jurors shall be called.

Rule 3.300

Voir Dire Examination, Oath, and Excusing of Member

a) Oath. The prospective jurors shall be sworn collectively or individually, as the court may decide. The form of oath shall be as follows:

“Do you solemnly swear (or affirm) that you will answer truthfully all questions asked of you as prospective jurors, so help you God?”

If any prospective juror affirms, the clause “so help you God” shall be omitted.

(b) Examination. The court may then examine each prospective juror individually or may examine the prospective jurors collectively. Counsel for both the state and defendant shall have the right to examine jurors orally on their voir dire. The order in which the parties may examine each juror shall be determined by the court. The right of the parties to conduct an examination of each juror orally shall be preserved.

(c) Prospective Jurors Excused. If, after the examination of any prospective juror, the court is of the opinion that the juror is not qualified to serve as a trial juror, the court shall excuse the juror from the trial of the cause. If, however, the court does not excuse the juror, either party may then challenge the juror, as provided by law or by these rules.

Rule 3.310

Time for Challenge

The state or defendant may challenge an individual prospective juror before the juror is sworn to try the cause; except that the court may, for good cause, permit a challenge to be made after the juror is sworn, but before any evidence is presented.

Rule 3.315

Exercise of Challenges

On the motion of any party, all challenges shall be addressed to the court outside the hearing of the jury panel in a manner selected by the court so that the jury panel is not aware of the nature of the challenge, the party making the challenge, or the basis of the court's ruling on the challenge, if for cause.

Rule 3.320

Manner of Challenge

A challenge to an individual juror may be oral. When a juror is challenged for cause the ground of the challenge shall be stated.

Rule 3.330

Determination of Challenge for Cause

The court shall determine the validity of a challenge of an individual juror for cause. In making such determination the juror challenged and any other material witnesses, produced by the parties, may be examined on oath by either party. The court may consider also any other evidence material to such challenge.

Rule 3.340

Effect of Sustaining Challenge

If a challenge for cause of an individual juror is sustained, the juror shall be discharged from the trial of the cause. If a peremptory challenge to an individual juror is made, the juror shall be discharged likewise from the trial of the cause.

Rule 3.350

Peremptory Challenges

(a) Number. Each party shall be allowed the following number of peremptory challenges:

(1) Felonies Punishable by Death or Imprisonment for Life. Ten, if the offense charged is punishable by death or imprisonment for life.

(2) All Other Felonies. Six, if the offense charged is a felony not punishable by death or imprisonment for life.

(3) Misdemeanors. Three, if the offense charged is a misdemeanor.

(b) Codefendants. If 2 or more defendants are jointly tried, each defendant shall be allowed the number of peremptory challenges specified above, and in such case the state shall be allowed as many challenges as are allowed to all of the defendants.

(c) Multiple Counts and Multiple Charging Documents. If an indictment or information contains 2 or more counts or if 2 or more indictments or informations are consolidated for trial, the defendant shall be allowed the number of peremptory challenges that would be permissible in a single case, but in the interest of justice the judge may use judicial discretion in extenuating circumstances to grant additional challenges to the accumulated maximum based on the number of charges or cases included when it appears that there is a possibility that the state or the defendant may be prejudiced. The state and the defendant shall be allowed an equal number of challenges.

(d) Alternate Jurors. If 1 or 2 alternate jurors are called, each party is entitled to 1 peremptory challenge, in addition to those otherwise allowed by law, for each alternate juror so called. The additional peremptory challenge may be used only against the alternate juror and the other peremptory challenges allowed by law shall not be used against the alternate juror.

(e) Additional Challenges. The trial judge may exercise discretion to allow additional peremptory challenges when appropriate.

Rule 3.360

Oath of Trial Jurors

The following oath shall be administered to the jurors: “Do you solemnly swear (or affirm) that you will well and truly try the issues between the State of Florida and the defendant and render a true verdict according to the law and the evidence, so help you God?” If any juror affirms, the

clause “so help you God” shall be omitted.

Rule 3.361

Witness Attendance and Subpoenas

(a) Subpoenas generally. Subpoenas for testimony before the court and subpoenas for production of tangible evidence before the court may be issued by the clerk of the court or by any attorney of record in an action.

(b) Subpoena for testimony or production of tangible evidence.

(1) A subpoena for testimony or production of tangible evidence before the court shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony or produce the evidence at a time and place specified in the subpoena.

(2) On oral request of an attorney, the clerk shall issue a subpoena for testimony before the court or a subpoena for the production of tangible evidence before the court, signed and sealed but otherwise in blank, and the subpoena shall be filled in by the attorney before service.

(c) For production of tangible evidence.

(1) If a subpoena commands a person or entity to produce books, papers, documents, or tangible things, the person or entity may move the court to quash or modify the subpoena before the time specified in the subpoena for compliance.

(2) The court may (A) quash or modify the subpoena if it is unreasonable and oppressive, or (B) require the person in whose behalf the subpoena is issued to advance the reasonable cost of producing the books, papers, documents, or tangible things.

(d) Attendance and enforcement. A witness subpoenaed for testimony before the court or for production of tangible evidence before the court shall appear and remain in attendance until excused by the court or by all parties. A witness who refuses to obey a subpoena or who departs without being excused properly may be held in contempt.

Rule 3.370

Regulation and Separation of Jurors

(a) During Trial. After the jurors have been sworn they shall hear the case as a body and, within the discretion of the trial judge, may be sequestered. In capital cases, absent a showing

of prejudice, the trial court may order that between the guilt and penalty phases of the trial the jurors may separate for a definite time to be fixed by the court and then reconvene before the beginning of the penalty phase.

(b) After Submission of Cause. Unless the jurors have been kept together during the trial the court may, after the final submission of the cause, order that the jurors may separate for a definite time to be fixed by the court and then reconvene in the courtroom before retiring for consideration of their verdict.

(c) During Deliberations. Absent exceptional circumstances of emergency, accident, or other special necessity or unless sequestration is waived by the state and the defendant, in all capital cases in which the death penalty is sought by the state, once the jurors have retired for consideration of their verdict, they must be sequestered until such time as they have reached a verdict or have otherwise been discharged by the court. In all other cases, the court, in its discretion, either on the motion of counsel or on the court's initiative, may order that the jurors be permitted to separate. If jurors are allowed to separate, the trial judge shall give appropriate cautionary instructions.

Rule 3.371

Juror Questions of Witnesses

(a) Judicial Discretion. At the discretion of the presiding trial judge, jurors may be allowed to submit questions of witnesses during the trial.

(b) Procedure. The trial judge shall utilize the following procedure if a juror indicates that the juror wishes to ask a question:

(1) the questions must be submitted in writing;

(2) the trial judge shall review the question outside the presence of the jury;

(3) counsel shall have an opportunity to object to the question outside the presence of the jury;

(4) counsel shall be allowed to ask follow up questions; and

(5) the jury must be advised that if a question submitted by a juror is not allowed for any reason, the juror must not discuss it with the other jurors and must not hold it against either party.

Rule 3.372

Juror Notebooks

In its discretion, the court may authorize documents and exhibits to be included in notebooks for use by the jurors during trial to aid them in performing their duties.

Rule 3.380

Motion for Judgment of Acquittal

(a) Timing. If, at the close of the evidence for the state or at the close of all the evidence in the cause, the court is of the opinion that the evidence is insufficient to warrant a conviction, it may, and on the motion of the prosecuting attorney or the defendant shall, enter a judgment of acquittal.

(b) Waiver. A motion for judgment of acquittal is not waived by subsequent introduction of evidence on behalf of the defendant. The motion must fully set forth the grounds on which it is based.

(c) Renewal. If the jury returns a verdict of guilty or is discharged without having returned a verdict, the defendant's motion may be made or renewed within 10 days after the reception of a verdict and the jury is discharged or such further time as the court may allow.

Rule 3.381

Final Arguments

In all criminal trials, excluding the sentencing phase of a capital case, at the close of all the evidence, the prosecuting attorney shall be entitled to an initial closing argument and a rebuttal closing argument before the jury or the court sitting without a jury. Failure of the prosecuting attorney to make a closing argument shall not deprive the defense of its right to make a closing argument or the prosecuting attorney's right to then make a rebuttal argument. If the defendant does not present a closing argument, the prosecuting attorney will not be permitted a rebuttal argument.

Rule 3.390

Jury Instructions

(a) Subject of Instructions. The presiding judge shall instruct the jury only on the law of the case before or after the argument of counsel and may provide appropriate instructions during the trial. If the instructions are given prior to final argument, the presiding judge shall give the jury final procedural instructions after final arguments are concluded and prior to deliberations. Except in capital cases, the judge shall not instruct the jury on the sentence that may be imposed for the offense for which the accused is on trial.

(b) Form of Instructions. The instruction to a jury shall be orally delivered and shall also be in writing. All written instructions shall also be filed in the cause.

(c) Written Request. At the close of the evidence, or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action on the request and of the instructions that will be given prior to their argument to the jury.

(d) Objections. No party may raise on appeal the giving or failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the presence of the jury.

(e) Transcript and Review. When an objection is made to the giving of or failure to give an instruction, no exception need be made to the court's ruling thereon in order to have the ruling reviewed, and the grounds of objection and ruling thereon shall be taken by the court reporter and, if the jury returns a verdict of guilty, transcribed by the court reporter and filed in the cause.

Rule 3.391

Selection of Foreperson of Jury

The court shall instruct the jurors to select one of their number foreperson.

Rule 3.400

Materials to The Jury Room

(a) Discretionary Materials. The court may permit the jury, upon retiring for deliberation, to take to the jury room:

(1) a copy of the charges against the defendant;

(2) forms of verdict approved by the court, after being first submitted to counsel;

(3) all things received in evidence other than depositions. If the thing received in evidence is a public record or a private document which, in the opinion of the court, ought not to be taken from the person having it in custody, a copy shall be taken or sent instead of the original.

(b) Mandatory Materials. The court must provide the jury, upon retiring for deliberation, with a written copy of the instructions given to take to the jury room.

Rule 3.410

Jury Request to Review Evidence or for Additional Instructions

(a) If, after they have retired to consider their verdict, jurors request additional instructions or to have any testimony read or played back to them they may be conducted into the courtroom by the officer who has them in charge and the court may give them the additional instructions or may order the testimony read or played back to them. The instructions shall be given and the testimony presented only after notice to the prosecuting attorney and to counsel for the defendant. All testimony read or played back must be done in open court in the presence of all parties. In its discretion, the court may respond in writing to the inquiry without having the jury brought before the court, provided the parties have received the opportunity to place objections on the record and both the inquiry and response are made part of the record.

(b) In a case in which the jury requests to have the transcripts of trial testimony, the following procedures must be followed:

(1) The trial judge must deny the requests for transcripts.

(2) The trial judge must instruct jurors that they can, however, request to have any testimony read or played back, which may or may not be granted at the court's discretion.

(3) In cases in which jurors make only a general request for transcripts, as opposed to identifying any particular witness' testimony that they wish to review, the trial judge must instruct jurors that, if they request a read or play back, they must specify the particular trial testimony they wish to have read or played back.

(c) If, after being properly instructed in accordance with subdivision (b), the jurors request a read or play back of any trial testimony, the trial judge must follow the procedures set forth in subdivision (a).

Rule 3.420

Recall of Jury for Additional Instructions

The court may recall the jurors after they have retired to consider their verdict to give them additional instructions or to correct any erroneous instructions given them. The additional or corrective instructions may be given only after notice to the prosecuting attorney and to counsel for the defendant.

Rule 3.430

Jury Not Recallable to Hear Additional Evidence

After the jurors have retired to consider their verdict the court shall not recall the jurors to hear additional evidence.

Rule 3.440

Rendition of Verdict; Reception and Recording

When the jurors have agreed upon a verdict they shall be conducted into the courtroom by the officer having them in charge. The court shall ask the foreperson if an agreement has been reached on a verdict. If the foreperson answers in the affirmative, the judge shall call on the foreperson to deliver the verdict in writing to the clerk. The court may then examine the verdict and correct it as to matters of form with the unanimous consent of the jurors. The clerk shall then read the verdict to the jurors and, unless disagreement is expressed by one or more of them or the jury is polled, the verdict shall be entered of record, and the jurors discharged from the cause. No verdict may be rendered unless all of the trial jurors concur in it.

Rule 3.450

Polling The Jury

On the motion of either the state or the defendant or on its own motion, the court shall cause the jurors to be asked severally if the verdict rendered is their verdict. If a juror dissents, the court must direct that the jury be sent back for further consideration. If there is no dissent the verdict shall be entered of record and the jurors discharged. However, no motion to poll the jury shall be entertained after the jury is discharged or the verdict recorded.

Rule 3.451

Judicial Comment On Verdict

While it is appropriate for the court to thank jurors at the conclusion of a trial for their public service, the court shall not praise or criticize their verdict.

Rule 3.470

Proceedings On Sealed Verdict

The court may, with the consent of the prosecuting attorney and the defendant, direct the jurors that if they should agree upon a verdict during a temporary adjournment of the court, the foreperson and each juror shall sign the same, and the verdict shall be sealed in an envelope and delivered to the officer having charge of the jury, after which the jury may separate until the next convening of the court. When the court authorizes the rendition of a sealed verdict, it shall admonish the jurors not to make any disclosure concerning it or to speak with other persons concerning the cause, until their verdict shall have been rendered in open court. The officer shall, forthwith, deliver the sealed verdict to the clerk. When the jurors have reassembled in open court, the envelope shall be opened by the court or clerk and the same proceedings shall be had as in the receiving of other verdicts.

Rule 3.490

Determination of Degree of Offense

If the indictment or information charges an offense divided into degrees, the jury may find the defendant guilty of the offense charged or any lesser degree supported by the evidence. The judge shall not instruct on any degree as to which there is no evidence.

Rule 3.500

Verdict of Guilty Where More Than One Count

If different offenses are charged in the indictment or information on which the defendant is tried, the jurors shall, if they convict the defendant, make it appear by their verdict on which counts or of which offenses they find the defendant guilty.

Rule 3.505

Inconsistent Verdicts

The state need not elect between inconsistent counts, but the trial court shall submit to the jury

verdict forms as to each count with instructions applicable to returning its verdicts from the inconsistent counts.

Rule 3.510

Determination of Attempts and Lesser Included Offenses

On an indictment or information on which the defendant is to be tried for any offense the jury may convict the defendant of:

(a) an attempt to commit the offense if such attempt is an offense and is supported by the evidence. The judge shall not instruct the jury if there is no evidence to support the attempt and the only evidence proves a completed offense; or

(b) any offense that as a matter of law is a necessarily included offense or a lesser included offense of the offense charged in the indictment or information and is supported by the evidence. The judge shall not instruct on any lesser included offense as to which there is no evidence.

Rule 3.520

Verdict In Case of Joint Defendants

On the trial of 2 or more defendants jointly the jurors may render a verdict as to any defendant in regard to whom the jurors agree.

Rule 3.530

Reconsideration of Ambiguous or Defective Verdict

If a verdict is so defective that the court cannot determine from it whether the jurors intended to acquit the defendant or to convict the defendant of an offense for which judgment could be entered under the indictment or information on which the defendant is tried, or cannot determine from it on what count or counts the jurors intended to acquit or convict the defendant, the court shall, with proper instructions, direct the jurors to reconsider the verdict, and the verdict shall not be received until it shall clearly appear therefrom whether the jurors intended to convict or acquit the defendant and on what count or counts they intended to acquit or convict the defendant. If the jury persists in rendering a defective verdict, the court shall declare a mistrial.

Rule 3.540

When Verdict May Be Rendered

A verdict may be rendered and additional or corrective instructions given on any day, including Sunday or any legal holiday.

Rule 3.550

Disposition of Defendant

If a verdict of guilty is rendered the defendant shall, if in custody, be remanded. If the defendant is at large on bail, the defendant may be taken into custody and committed to the proper official or remain at liberty on the same or additional bail as the court may direct.

Rule 3.560

Discharge of Jurors

After the jurors have retired to consider their verdict, the court shall discharge them from the cause when:

(a) their verdict has been received;

(b) on the expiration of such time as the court deems proper, if the court finds there is no reasonable probability that the jurors can agree on a verdict; or

(c) a necessity exists for their discharge.

The court may in any event discharge the jurors from the cause if the prosecuting attorney and the defendant consent to the discharge.

Rule 3.570

Irregularity In Rendition, Reception, and Recording of Verdict

No irregularity in the rendition or reception of a verdict may be raised unless it is raised before the jury is discharged. No irregularity in the recording of a verdict shall affect its validity unless the defendant was in fact prejudiced by the irregularity.

Rule 3.575

Motion to Interview Juror

A party who has reason to believe that the verdict may be subject to legal challenge may move the court for an order permitting an interview of a juror or jurors to so determine. The motion shall be filed within 10 days after the rendition of the verdict, unless good cause is shown for the failure to make the motion within that time. The motion shall state the name of any juror to be interviewed and the reasons that the party has to believe that the verdict may be subject to challenge. After notice and hearing, the trial judge, upon a finding that the verdict may be subject to challenge, shall enter an order permitting the interview, and setting therein a time and a place for the interview of the juror or jurors, which shall be conducted in the presence of the court and the parties. If no reason is found to believe that the verdict may be subject to challenge, the court shall enter its order denying permission to interview.

Rule 3.580

Court May Grant New Trial

When a verdict has been rendered against the defendant or the defendant has been found guilty by the court, the court on motion of the defendant, or on its own motion, may grant a new trial or arrest judgment.

Rule 3.590

Time for and Method of Making Motions; Procedure; Custody Pending Hearing

(a) Time for Filing in Noncapital Cases. In cases in which the state does not seek the death penalty, a motion for new trial or in arrest of judgment, or both may be made, either orally in open court or in writing and filed with the clerk’s office, within 10 days after the rendition of the verdict or the finding of the court. A timely motion may be amended to state new grounds without leave of court prior to expiration of the 10–day period and in the discretion of the court at any other time before the motion is determined.

(b) Time for Filing in Capital Cases Where the Death Penalty Is an Issue. A motion for new trial or arrest of judgment, or both, or for a new penalty phase hearing may be made within 10 days after written final judgment of conviction and sentence of life imprisonment or death is filed. The motion may address grounds which arose in the guilt phase and the penalty phase of the trial. Separate motions for the guilt phase and the penalty phase may be filed. The motion or motions may be amended without leave of court prior to the expiration of the 10 day period, and

in the discretion of the court, at any other time before the motion is determined.

(c) Oral Motions. When the defendant has been found guilty by a jury or by the court, the motion may be dictated into the record, if a court reporter is present, and may be argued immediately after the return of the verdict or the finding of the court. The court may immediately rule on the motion.

(d) Written Motions. The motion may be in writing, filed with the clerk; it shall state the grounds on which it is based. A copy of a written motion shall be served on the prosecuting attorney. When the court sets a time for the hearing thereon, the clerk may notify counsel for the respective parties or the attorney for the defendant may serve notice of hearing on the prosecuting officer.

(e) Custody Pending Motion. Until the motion is disposed of, a defendant who is not already at liberty on bail shall remain in custody and not be allowed liberty on bail unless the court on good cause shown (if the offense for which the defendant is convicted is bailable) permits the defendant to be released on bail until the motion is disposed of. If the defendant is already at liberty on bail that is deemed by the court to be good and sufficient, it may permit the defendant to continue at large on such bail until the motion for new trial is heard and disposed of.

Rule 3.600

Grounds for New Trial

(a) Grounds for Granting. The court shall grant a new trial if any of the following grounds is established.

(1) The jurors decided the verdict by lot.

(2) The verdict is contrary to law or the weight of the evidence.

(3) New and material evidence, which, if introduced at the trial would probably have changed the verdict or finding of the court, and which the defendant could not with reasonable diligence have discovered and produced at the trial, has been discovered.

(b) Grounds for Granting if Prejudice Established. The court shall grant a new trial if any of the following grounds is established, providing substantial rights of the defendant were prejudiced thereby.

(1) The defendant was not present at any proceeding at which the defendant’s presence is required by these rules.

(2) The jury received any evidence out of court, other than that resulting from an authorized

view of the premises.

(3) The jurors, after retiring to deliberate upon the verdict, separated without leave of court.

(4) Any juror was guilty of misconduct.

(5) The prosecuting attorney was guilty of misconduct.

(6) The court erred in the decision of any matter of law arising during the course of the trial.

(7) The court erroneously instructed the jury on a matter of law or refused to give a proper instruction requested by the defendant.

(8) For any other cause not due to the defendant's own fault, the defendant did not receive a fair and impartial trial.

(c) Evidence. When a motion for new trial calls for a decision on any question of fact, the court may consider evidence on the motion by affidavit or otherwise.

Rule 3.610

Motion for Arrest of Judgment; Grounds

The court shall grant a motion in arrest of judgment only on 1 or more of the following grounds:

(a) The indictment or information on which the defendant was tried is so defective that it will not support a judgment of conviction.

(b) The court is without jurisdiction of the cause.

(c) The verdict is so uncertain that it does not appear therefrom that the jurors intended to convict the defendant of an offense of which the defendant could be convicted under the indictment or information under which the defendant was tried.

(d) The defendant was convicted of an offense for which the defendant could not be convicted under the indictment or information under which the defendant was tried.

Rule 3.620

When Evidence Sustains Only Conviction of Lesser Offense

When the offense is divided into degrees or necessarily includes lesser offenses and the court, on a motion for new trial, is of the opinion that the evidence does not sustain the verdict but is

sufficient to sustain a finding of guilt of a lesser degree or of a lesser offense necessarily included in the one charged, the court shall not grant a new trial but shall find or adjudge the defendant guilty of the lesser degree or lesser offense necessarily included in the charge, unless a new trial is granted by reason of some other prejudicial error.

Rule 3.630

Sentence Before or After Motion Filed

The court in its discretion may sentence the defendant either before or after the filing of a motion for new trial or arrest of judgment.

Rule 3.640

Effect of Granting New Trial

When a new trial is granted, the new trial shall proceed in all respects as if no former trial had occurred except that when an offense is divided into degrees or the charge includes a lesser offense, and the defendant has been found guilty of a lesser degree or lesser included offense, the defendant cannot thereafter be prosecuted for a higher degree of the same offense or for a higher offense than that of which the defendant was convicted.

Rule 3.650

Judgment Defined

The term “judgment” means the adjudication by the court that the defendant is guilty or not guilty.

Rule 3.670

Rendition of Judgment

If the defendant is found guilty, a judgment of guilty and, if the defendant has been acquitted, a judgment of not guilty shall be rendered in open court and in writing, signed by the judge, filed, and recorded. However, where allowed by law, the judge may withhold an adjudication of guilt if the judge places the defendant on probation.

When a judge renders a final judgment of conviction, withholds adjudication of guilt after a verdict of guilty, imposes a sentence, grants probation, or revokes probation, the judge shall

forthwith inform the defendant concerning the rights of appeal therefrom, including the time allowed by law for taking an appeal. Within 15 days after the signed written judgment and sentence is filed with the clerk of court, the clerk of the court shall serve on counsel for the defendant and counsel for the state a copy of the judgment of conviction and sentence entered, noting thereon the date of service by a certificate of service. If it is the practice of the trial court or the clerk of court to hand deliver copies of the judgment and sentence at the time of sentencing and copies are in fact hand delivered at that time, hand delivery shall be noted in the court file, but no further service shall be required and the certificate of service need not be included on the hand-delivered copy.

Rule 3.680

Judgment On Informal Verdict

If a verdict is rendered from which it can be clearly understood that the jurors intended to acquit the defendant, a judgment of not guilty shall be rendered thereon even though the verdict is defective. No judgment of guilty shall be rendered on a verdict unless the jurors clearly express in it a finding of guilt of the defendant.

Rule 3.690

Judgment of Not Guilty; Defendant Discharged and Sureties Exonerated

When a judgment of not guilty is entered, the defendant, if in custody, shall be immediately discharged unless the defendant is in custody on some other charge. If the defendant is at large on bail, the defendant’s sureties shall be exonerated and, if money or bonds have been deposited as bail, the money or bonds shall be refunded.

Rule 3.691

Post-Trial Release

(a) When Authorized. All persons who have been adjudicated guilty of the commission of any offense, not capital, may be released, pending review of the conviction, at the discretion of either the trial or appellate court, applying the principles enunciated in Younghans v. State, 90 So. 2d 308 (Fla. 1956), provided that no person may be admitted to bail on appeal from a conviction of a felony unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. However, in no case shall bail be granted if such person has previously been convicted of a felony, the commission of which occurred prior to the

commission of the subsequent felony, and the person's civil rights have not been restored or if other felony charges are pending against the person and probable cause has been found that the person has committed the felony or felonies at the time the request for bail is made.

(b) Written Findings. In any case in which the court has the discretion to release the defendant pending review of the conviction and, after the defendant's conviction, denies release, it shall state in writing its reasons for the denial.

(c) Review of Denial. An order by a trial court denying bail to a person pursuant to the provisions of subdivision (a) may be reviewed by motion to the appellate court and the motion shall be advanced on the calendar of the appellate court for expeditious review.

(d) Conditions of Release. If the defendant is released after conviction and on appeal, the condition shall be: (1) the defendant will duly prosecute the appeal; (2) the defendant will surrender himself or herself in execution of the judgment or sentence on its being affirmed or modified or on the appeal being dismissed; or in case the judgment is reversed and the cause remanded for a new trial, the defendant will appear in the court to which the cause may be remanded for a new trial, that the defendant will appear in the court to which the cause may be remanded and submit to the orders and process thereof and will not depart the jurisdiction of the court without leave.

(e) Approval of Bond. The court shall approve the sufficiency and adequacy of the bond, its security, and sureties, prior to the release of the defendant.

Rule 3.692

Petition to Seal or Expunge

(a) Requirements of Petition.

(1) All relief sought by reason of sections 943.0585–943.059, Florida Statutes, shall be by written petition, filed with the clerk. The petition shall state the grounds on which it is based and the official records to which it is directed and shall be supported by an affidavit of the party seeking relief, which affidavit shall state with particularity the statutory grounds and the facts in support of the motion. A petition seeking to seal or expunge nonjudicial criminal history records must be accompanied by a certificate of eligibility issued to the petitioner by the Florida Department of Law Enforcement. A copy of the completed petition and affidavit shall be served on the prosecuting attorney and the arresting authority. Notice and hearing shall be as provided in rule 3.590(c).

(2) All relief sought by reason of section 943.0583, Florida Statutes, shall be by written petition, filed with the clerk. The petition shall state the grounds on which it is based and the

official records to which it is directed; shall be supported by the petitioner's sworn statement attesting that the petitioner is eligible for such an expunction; and to the best of his or her knowledge or belief that the petitioner does not have any other petition to expunge or any petition to seal pending before any court; and shall be accompanied by official documentation of the petitioner's status as a victim of human trafficking, if any exists. A petition to expunge, filed under section 943.0583, Florida Statutes, is not required to be accompanied by a certificate of eligibility from the Florida Department of Law Enforcement. A copy of the completed petition, sworn statement, and any other official documentation of the petitioner's status as a victim of human trafficking, shall be served on the prosecuting attorney and the arresting authority. Notice and hearing shall be as provided in rule 3.590(c).

(b) State's Response; Evidence. The state may traverse or demur to the petition and affidavit. The court may receive evidence on any issue of fact necessary to the decision of the petition.

(c) Written Order. If the petition is granted, the court shall enter its written order so stating and further setting forth the records and agencies or departments to which it is directed.

(d) Copies of Order. On the receipt of an order sealing or expunging nonjudicial criminal history records, the clerk shall furnish a certified copy thereof to each agency or department named therein except the court.

(e) Clerk's Duties. In regard to the official records of the court, including the court file of the cause, the clerk shall:

(1) remove from the official records of the court, excepting the court file, all entries and records subject to the order, provided that, if it is not practical to remove the entries and records, the clerk shall make certified copies thereof and then expunge by appropriate means the original entries and records;

(2) seal the entries and records, or certified copies thereof, together with the court file and retain the same in a nonpublic index, subject to further order of the court (see Johnson v. State, 336 So. 2d 93 (Fla. 1976));

(3) in multi-defendant cases, make a certified copy of the contents of the court file that shall be sealed under subdivision (2). Thereafter, all references to the petitioner shall be expunged from the original court file.

(f) Costs. All costs of certified copies involved herein shall be borne by the movant, unless the movant is indigent.

Rule 3.700

Sentence Defined; Pronouncement and Entry; Sentencing Judge

(a) Sentence Defined. The term sentence means the pronouncement by the court of the penalty imposed on a defendant for the offense of which the defendant has been adjudged guilty.

(b) Pronouncement and Entry. Every sentence or other final disposition of the case shall be pronounced in open court, including, if available at the time of sentencing, the amount of jail time credit the defendant is to receive. The final disposition of every case shall be entered in the minutes in courts in which minutes are kept and shall be docketed in courts that do not maintain minutes.

[Editor's Note: See Grossman v. State, 525 So. 2d 833 (Fla. 1988), for pronouncement procedure when defendant is sentenced to death.]

(c) Sentencing Judge.

(1) Noncapital Cases. In any case, other than a capital case, in which it is necessary that sentence be pronounced by a judge other than the judge who presided at trial or accepted the plea, the sentencing judge shall not pass sentence until the judge becomes acquainted with what transpired at the trial, or the facts, including any plea discussions, concerning the plea and the offense.

(2) Capital Cases. In any capital case in which it is necessary that sentence be pronounced by a judge other than the judge who presided at the capital trial, the sentencing judge shall conduct a new sentencing proceeding before a jury prior to passing sentence.

Rule 3.701

Sentencing Guidelines

(a) Use with Forms. This rule is to be used in conjunction with forms 3.988(a)–(i).

(b) Statement of Purpose. The purpose of sentencing guidelines is to establish a uniform set of standards to guide the sentencing judge in the sentence decision-making process. The guidelines represent a synthesis of current sentencing theory and historic sentencing practices throughout the state. Sentencing guidelines are intended to eliminate unwarranted variation in the sentencing process by reducing the subjectivity in interpreting specific offense-related and offender-related criteria and in defining their relative importance in the sentencing decision. The sentencing guidelines embody the following principles:

(1) Sentencing should be neutral with respect to race, gender, and social and economic status.

(2) The primary purpose of sentencing is to punish the offender. Rehabilitation and other traditional considerations continue to be desired goals of the criminal justice system but must assume a subordinate role.

(3) The penalty imposed should be commensurate with the severity of the convicted offense and the circumstances surrounding the offense.

(4) The severity of the sanction should increase with the length and nature of the offender's criminal history.

(5) The sentence imposed by the sentencing judge should reflect the length of time to be served, shortened only by the application of gain time.

(6) While the sentencing guidelines are designed to aid the judge in the sentencing decision and are not intended to usurp judicial discretion, departures from the presumptive sentences established in the guidelines shall be articulated in writing and made when circumstances or factors reasonably justify the aggravation or mitigation of the sentence. The level of proof necessary to establish facts supporting a departure from a sentence under the guidelines is a preponderance of the evidence.

(7) Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those persons convicted of more serious offenses or those who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.

(c) Offense Categories. Offenses have been grouped into 9 offense categories encompassing the following statutes:

Category 1: Murder, manslaughter: Chapter 782 (except subsection 782.04(1)(a)), subsection 316.193(3)(c)3, and subsection 327.351(2).

Category 2: Sexual offenses: Section 775.22, chapters 794 and 800, section 826.04, and section 491.0112.

Category 3: Robbery: Section 812.13, and sections 812.133 and 812.135.

Category 4: Violent personal crimes: Section 231.06, chapters 784 and 836, section 843.01, and subsection 381.411(4).

Category 5: Burglary: Chapter 810, section 817.025, and subsection 806.13(3).

Category 6: Thefts, forgery, fraud: Sections 192.037 and 206.56, chapters 322 and 409, section 370.142, section 415.111, chapter 443, section 493.3175, sections 494.0018, 496.413, and 496.417, chapter 509, subsection 517.301(1)(a), subsections 585.145(3) and 585.85(2), section 687.146, and chapters 812 (except section 812.13), 815, 817, 831, and 832.

Category 7: Drugs: Section 499.005 and chapter 893.

Category 8: Weapons: Chapter 790 and section 944.40.

Category 9: All other felony offenses.

(d) General Rules and Definitions.

(1) One guideline scoresheet shall be utilized for each defendant covering all offenses pending before the court for sentencing. The state attorney's office will prepare the scoresheets and present them to defense counsel for review as to accuracy in all cases unless the judge directs otherwise. The sentencing judge shall approve all scoresheets.

(2) "Conviction" means a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

(3) "Primary offense" is defined as the offense at conviction that, when scored on the guidelines scoresheet, recommends the most severe sanction. In the case of multiple offenses, the primary offense is determined in the following manner:

(A) A separate guidelines scoresheet shall be prepared scoring each offense at conviction as the "primary offense at conviction" with the other offenses at conviction scored as "additional offenses at conviction."

(B) The guidelines scoresheet that recommends the most severe sentence range shall be the scoresheet to be utilized by the sentencing judge pursuant to these guidelines.

(4) All other offenses for which the offender is convicted and that are pending before the court for sentencing at the same time shall be scored as additional offenses based on their degree and the number of counts of each.

(5) "Prior record" refers to any past criminal conduct on the part of the offender, resulting in conviction, prior to the commission of the primary offense. Prior record includes all prior Florida, federal, out-of-state, military, and foreign convictions, as well as convictions for violation of municipal or county ordinances that bring within the municipal or county code the violation of a state statute or statutes. Provided, however, that:

(A) Entries in criminal histories that show no disposition, disposition unknown, arrest only, or other nonconviction disposition shall not be scored.

(B) When scoring federal, foreign, military, or out-of-state convictions, assign the score for the analogous or parallel Florida statute.

(C) When unable to determine whether an offense at conviction is a felony or a misdemeanor, the offense should be scored as a misdemeanor. When the degree of the felony is ambiguous or impossible to determine, score the offense as a third-degree felony.

(D) Prior record shall include criminal traffic offenses, which shall be scored as misdemeanors.

(E) Convictions that do not constitute violations of a parallel or analogous state criminal statute shall not be scored.

(F) An offender's prior record shall not be scored if the offender has maintained a conviction-free record for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense.

(G) All prior juvenile dispositions that are the equivalent of convictions as defined in subdivision (d)(2), occurring within 3 years of the commission of the primary offense and that would have been criminal if committed by an adult, shall be included in prior record.

(6) "Legal status at time of offense" is defined as follows: Offenders on parole, probation, or community control; offenders in custody serving a sentence; escapees; fugitives who have fled to avoid prosecution or who have failed to appear for a criminal judicial proceeding or who have violated conditions of a supersedeas bond; and offenders in pretrial intervention or diversion programs. Legal status points are to be assessed where these forms of legal constraint existed at the time of the commission of offenses scored as primary or additional offenses at conviction. Legal status points are to be assessed only once whether there are one or more offenses at conviction.

(7) Victim injury shall be scored for each victim physically injured during a criminal episode or transaction, and for each count resulting in such injury whether there are one or more victims.

(8) The recommended sentences provided in the guideline grids are assumed to be appropriate for the composite score of the offender. A range is provided to permit some discretion. The permitted ranges allow the sentencing judge additional discretion when the particular circumstances of a crime or defendant make it appropriate to increase or decrease the recommended sentence without the requirement of finding reasonable justification to do so and without the requirement of a written explanation.

(9) For those offenses having a mandatory penalty, a scoresheet should be completed and the guideline sentence calculated. If the recommended sentence is less than the mandatory penalty,

the mandatory sentence takes precedence. If the guideline sentence exceeds the mandatory sentence, the guideline sentence should be imposed.

(10) If the composite score for a defendant charged with a single offense indicates a guideline sentence that exceeds the maximum sentence provided by statute for that offense, the statutory maximum sentence should be imposed.

(11) Departures from the recommended or permitted guideline sentence should be avoided unless there are circumstances or factors that reasonably justify aggravating or mitigating the sentence. Any sentence outside the permitted guideline range must be accompanied by a written statement delineating the reasons for the departure. Reasons for deviating from the guidelines shall not include factors relating to prior arrests without conviction or the instant offenses for which convictions have not been obtained.

(12) A sentence must be imposed for each offense. However, the total sentence cannot exceed the total guideline sentence unless a written reason is given. Where the offender is being sentenced for a capital felony and other noncapital felonies that arose out of the same criminal episode or transaction, the sentencing court may impose any sentence authorized by law for the noncapital felonies.

(13) Community control is a form of intensive supervised custody in the community involving restriction of the freedom of the offender. When community control is imposed, it shall not exceed the term provided by general law.

(14) Sentences imposed after revocation of probation or community control must be in accordance with the guidelines. The sentence imposed after revocation of probation or community control may be included within the original cell (guidelines range) or may be increased to the next higher cell (guidelines range) without requiring a reason for departure.

(15) Categories 3, 5, and 6 contain an additional factor to be scored under the heading of Prior Record: Prior convictions for similar offenses. Prior convictions scored under this factor should be calculated in addition to the general prior record score. Scoring is limited to prior felony convictions included within the category.

Rule 3.702

Sentencing Guidelines (1994)

(a) Use. This rule is to be used in conjunction with the forms located at rule 3.990. This rule is intended to implement the 1994 revised sentencing guidelines in strict accordance with chapter 921, Florida Statutes, as revised by chapter 93-406, Laws of Florida.

(b) Purpose and Construction. The purpose of the 1994 revised sentencing guidelines and the principles they embody are set out in subsection 921.001(4). Existing caselaw construing the application of sentencing guidelines that is in conflict with the provisions of this rule or the statement of purpose or the principles embodied by the 1994 sentencing guidelines set out in subsection 921.001(4) is superseded by the operation of this rule.

(c) Offense Severity Ranking. Felony offenses subject to the 1994 revised sentencing guidelines are listed in a single offense severity ranking chart located at section 921.0012. The offense severity ranking chart employs 10 offense levels, ranked from least severe to most severe. Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense. Felony offenses not listed in section 921.0012 are to be assigned a severity level as described in section 921.0013.

(d) General Rules and Definitions.

(1) A comprehensive guidelines scoresheet shall be prepared for each defendant covering all offenses pending before the court for sentencing, including offenses for which the defendant has been adjudicated an habitual felony offender or an habitual violent felony offender. The office of the state attorney or the probation services office, or both where appropriate, will prepare the scoresheets and present them to defense counsel for review as to accuracy. Where the defendant is alleged to have violated probation or community control and probation services will recommend revocation, probation services shall prepare a comprehensive guidelines scoresheet for use at sentencing after revocation of probation or community control. The sentencing judge shall review the scoresheet for accuracy.

(2) “Conviction” means a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

(3) “Primary offense” is the offense pending for sentencing that results in the highest number of total sentence points. Only one offense may be scored as the primary offense.

(4) “Additional offense” is any offense, other than the primary offense, pending before the court for sentencing. Sentence points for additional offenses are determined by the severity level and the number of offenses at a particular severity level. Misdemeanors are scored at level “M” regardless of degree.

(5) “Victim injury” is scored for physical injury or death suffered by a person as a direct result of any offense pending before the court for sentencing. If an offense pending before the court for sentencing involves sexual penetration, victim injury is to be scored. If an offense pending before the court for sentencing involves sexual contact, but no penetration, victim injury shall be scored. If the victim of an offense involving sexual penetration or sexual contact without

penetration suffers any physical injury as a direct result of an offense pending before the court for sentencing, that physical injury is to be scored separately and in addition to any points scored for the sexual contact or sexual penetration.

Victim injury shall be scored for each victim physically injured and for each offense resulting in physical injury whether there are one or more victims. However, if the victim injury is the result of a crime of which the defendant has been acquitted, it shall not be scored.

(6) Attempts, conspiracies, and solicitations charged under chapter 777 are scored at severity levels below the level at which the completed offense is located. Attempts and solicitations are scored 2 severity levels below the completed offense. Criminal conspiracies are scored 1 severity level below the completed offense.

(7) "Total offense score" results from adding the sentence points for primary offense, additional offense, and victim injury.

(8) "Prior record" refers to any conviction for an offense committed by the defendant prior to the commission of the primary offense. Prior record shall include convictions for offenses committed by the defendant as an adult or as a juvenile, convictions by federal, out-of-state, military, or foreign courts, and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law. Federal, out-of-state, military, or foreign convictions are scored at the severity level at which the analogous or parallel Florida crime is located.

(A) Convictions for offenses committed more than 10 years prior to the date of the commission of the primary offense are not scored as prior record if the defendant has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or other sanction, which-ever is later, to the date of the commission of the primary offense.

(B) Juvenile dispositions of offenses committed by the defendant within 3 years prior to the date of the commission of the primary offense are scored as prior record if the offense would have been a crime if committed by an adult. Juvenile dispositions of sexual offenses committed by the defendant more than 3 years prior to the date of the primary offense are to be scored as prior record if the defendant has not maintained a conviction-free record, either as an adult or as a juvenile, for a period of 3 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of commission of the primary offense.

(C) Entries in criminal histories that show no disposition, disposition unknown, arrest only, or a disposition other than conviction shall not be scored. Criminal history records expunged or sealed under section 943.058 or other provisions of law, including former sections 893.14 and

901.33, shall be scored as prior record where the defendant whose record has been expunged or sealed is before the court for sentencing.

(D) Any uncertainty in the scoring of the defendant's prior record shall be resolved in favor of the defendant, and disagreement as to the propriety of scoring specific entries in the prior record shall be resolved by the sentencing judge.

(E) When unable to determine whether the conviction to be scored as prior record is a felony or a misdemeanor, the conviction should be scored as a misdemeanor. When the degree of felony is ambiguous or the severity level cannot be deter-mined, the conviction should be scored at severity level 1.

(9) "Legal status violations" occur when a defendant, while under any of the forms of legal status listed in subsection 921.0011(3), commits an offense that results in conviction. Legal status violations receive a score of 4 sentence points and are scored when the offense committed while under legal status is before the court for sentencing. Points for a legal status violation are to be assessed only once regardless of the existence of more than one form of legal status at the time an offense is committed or the number of offenses committed while under any form of legal status.

(10) "Release program violations" occur when the defendant is found to have violated a condition of a release program designated in subsection 921.0011(6). Six points shall be assessed for each violation up to a maximum of 18 points in the case of multiple violations. Where there are multiple violations, points in excess of 6 may be assessed only for each successive violation that follows the reinstatement or modification of the release program and are not to be assessed for violation of several conditions of a single release program order.

(11) "Total prior record score" results from adding sentence points for prior record, legal status violations, and release program violations.

(12) Possession of a firearm, destructive device, semiautomatic weapon, or a machine gun during the commission or attempt to commit a crime will result in additional sentence points. Eighteen sentence points shall be assessed where the defendant is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(2) while having in his or her possession a firearm as defined in subsection 790.001(6) or a destructive device as defined in subsection 790.001(4). Twenty-five sentence points shall be assessed where the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(2) while having in his or her possession a semiautomatic weapon as defined in subsection 775.087(2) or a machine gun as defined in subsection 790.001(9).

(13) "Subtotal sentence points" result from adding the total offense score, the total prior

record score, and any additional points for possession of a firearm, destructive device, semiautomatic weapon, or machine gun.

(14) If the primary offense is drug trafficking under section 893.135, the subtotal sentence points may be multiplied, at the discretion of the sentencing court, by a factor of 1.5. If the primary offense is a violation of the Law Enforcement Protection Act under subsections 775.0823(2), (3), (4), or (5), the subtotal sentence points shall be multiplied by a factor of 2. If the primary offense is a violation of subsection 775.087(2)(a)(2) or subsections 775.0823(6) or (7), the subtotal sentence points shall be multiplied by a factor of 1.5. If both enhancements are applicable, only the enhancement with the higher multiplier is to be used.

(15) "Total sentence points" result from the enhancement, if applicable, of the subtotal sentence points. If no enhancement is applicable, the subtotal sentence points are the total sentence points.

(16) "Presumptive sentence" is determined by the total sentence points. If the total sentence points are less than or equal to 40, the recommended sentence, absent a departure, shall not be state prison. However, the sentencing court may increase sentence points less than or equal to 40 by up to and including 15 percent to arrive at total sentence points in excess of 40. If the total sentence points are greater than 40 but less than or equal to 52, the decision to sentence the defendant to state prison or a nonstate prison sanction is left to the discretion of the sentencing court. If the total sentence points are greater than 52, the sentence, absent a departure, must be to state prison.

A state prison sentence is calculated by deducting 28 points from the total sentence points where total sentence points exceed 40. The resulting number represents state prison months. State prison months may be increased or decreased by up to and including 25 percent at the discretion of the sentencing court. State prison months may not be increased where the sentencing court has exercised discretion to increase total sentence points under 40 points to achieve a state prison sentence. The sentence imposed must be entered on the score-sheet.

(17) For those offenses having a mandatory penalty, a scoresheet should be completed and the guidelines presumptive sentence calculated. If the presumptive sentence is less than the mandatory penalty, the mandatory sentence takes precedence. If the presumptive sentence exceeds the mandatory sentence, the presumptive sentence should be imposed.

(18) Departure from the recommended guidelines sentence provided by the total sentence points should be avoided unless there are circumstances or factors that reasonably justify aggravating or mitigating the sentence. A state prison sentence that deviates from the recommended prison sentence by more than 25 percent, a state prison sentence where the total sentence points are equal to or less than 40, or a sentence other than state prison where the total sentence points are greater than 52 must be accompanied by a written statement

delineating the reasons for departure. Circumstances or factors that can be considered include, but are not limited to, those listed in subsections 921.0016(3) and (4). Reasons for departing from the recommended guidelines sentence shall not include circumstances or factors relating to prior arrests without conviction or charged offenses for which convictions have not been obtained.

(A) If a sentencing judge imposes a sentence that departs from the recommended guidelines sentence, the reasons for departure shall be orally articulated at the time sentence is imposed. Any departure sentence must be accompanied by a written statement, signed by the sentencing judge, delineating the reasons for departure. The written statement shall be filed in the court file within 15 days of the date of sentencing. A written transcription of orally stated reasons for departure articulated at the time sentence was imposed is sufficient if it is signed by the sentencing judge and filed in the court file within 15 days of the date of sentencing. The sentencing judge may also list the written reasons for departure in the space provided on the guidelines scoresheet and shall sign the scoresheet.

(B) The written statement delineating the reasons for departure shall be made a part of the record. The written statement, if it is a separate document, must accompany the guidelines scoresheet required to be provided to the Department of Corrections pursuant to subsection 921.0014(5).

(19) The sentencing court shall impose or suspend sentence for each separate count, as convicted. The total sentence shall be within the guidelines sentence unless a departure is ordered.

If a split sentence is imposed, the incarcerative portion of the sentence must not deviate more than 25 percent from the recommended guidelines prison sentence. The total sanction (incarceration and community control or probation) shall not exceed the term provided by general law or the guidelines recommended sentence where the provisions of subsection 921.001(5) apply.

(20) Sentences imposed after revocation of probation or community control must be in accordance with the guidelines. Cumulative incarceration imposed after revocation of probation or community control is subject to limitations imposed by the guidelines. A violation of probation or community control may not be the basis for a departure sentence.

Rule 3.703

Sentencing Guidelines (1994 As Amended)

(a) Use. This rule is to be used in conjunction with the forms located at rule 3.991. This rule

implements the 1994 sentencing guidelines, as amended, in strict accordance with chapter 921, Florida Statutes. This rule applies to offenses committed on or after October 1, 1995, or as otherwise indicated.

(b) Purpose and Construction. The purpose of the 1994 sentencing guidelines and the principles they embody are set out in subsection 921.001(4). Existing caselaw construing the application of sentencing guidelines that is in conflict with the provisions of this rule or the statement of purpose or the principles embodied by the 1994 sentencing guidelines set out in subsection 921.001(4) is superseded by the operation of this rule.

(c) Offense Severity Ranking.

(1) Felony offenses subject to the 1994 sentencing guidelines, as amended, are listed in a single offense severity ranking chart located at section 921.0012. The offense severity ranking chart employs 10 offense levels, ranked from least severe to most severe. Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense. The numerical statutory reference in the left column of the chart and the felony degree designations in the middle column of the chart determine whether felony offenses are specifically listed in the offense severity ranking chart and the appropriate severity level. The language in the right column is merely descriptive.

(2) Felony offenses not listed in section 921.0012 are to be assigned a severity level in accordance with section 921.0013, as follows:

(A) A felony of the third degree within offense level 1.

(B) A felony of the second degree within offense level 4.

(C) A felony of the first degree within offense level 7.

(D) A felony of the first degree punishable by life within offense level 9.

(E) A life felony within offense level 10.

An offense does not become unlisted and subject to the provisions of section 921.0013, because of a reclassification of the degree of felony pursuant to section 775.0845, section 775.087, section 775.0875 or section 794.023.

(d) General Rules and Definitions.

(1) One or more sentencing guidelines scoresheets shall be prepared for each offender covering all offenses pending before the court for sentencing, including offenses for which the offender has been adjudicated an habitual felony offender, an habitual violent felony offender or

violent career criminal. The office of the state attorney or the Department of Corrections, or both where appropriate, will prepare the scoresheets and present them to defense counsel for review as to accuracy. The Department of Corrections shall prepare sentencing guidelines scoresheets if the offender is alleged to have violated probation or community control and revocation is recommended.

(2) One scoresheet shall be prepared for all offenses committed under any single version or revision of the guidelines, pending before the court for sentencing.

(3) If an offender is before the court for sentencing for more than one felony and the felonies were committed under more than one version or revision of the guidelines, separate scoresheets must be prepared and used at sentencing. The sentencing court may impose such sentence concurrently or consecutively.

(4) The sentencing judge shall review the scoresheet for accuracy and sign it.

(5) Felonies, except capital felonies, with continuing dates of enterprise are to be sentenced under the guidelines in effect on the beginning date of the criminal activity.

(6) "Conviction" means a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

(7) "Primary offense" is the offense pending for sentencing that results in the highest number of total sentence points. Only one offense may be scored as the primary offense.

(8) "Additional offense" is any offense, other than the primary offense, pending before the court for sentencing. Sentence points for additional offenses are determined by the severity level and the number of offenses at a particular severity level. Misdemeanors are scored at level "M" regardless of degree.

(9) "Victim injury" is scored for physical injury or death suffered by a person as a direct result of any offense pending before the court for sentencing. Except as otherwise provided by law, the sexual penetration and sexual contact points will be scored as follows. Sexual penetration points are scored if an offense pending before the court for sentencing involves sexual penetration. Sexual contact points are scored if an offense pending before the court for sentencing involves sexual contact, but no penetration. If the victim of an offense involving sexual penetration or sexual contact without penetration suffers any physical injury as a direct result of an offense pending before the court for sentencing, that physical injury is to be scored in addition to any points scored for the sexual contact or sexual penetration.

Victim injury shall be scored for each victim physically injured and for each offense resulting in physical injury whether there are one or more victims. However, victim injury shall not be scored for an offense for which the offender has not been convicted.

Victim injury resultant from one or more capital felonies before the court for sentencing is not to be included upon any scoresheet prepared for non-capital felonies also pending before the court for sentencing. This in no way prohibits the scoring of victim injury as a result from the non-capital felonies before the court for sentencing.

(10) Unless specifically provided otherwise by statute, attempts, conspiracies, and solicitations are indicated in the space provided on the guidelines scoresheet and are scored at one severity level below the completed offense.

Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 1 and 2 are to be scored as misdemeanors. Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 3, 4, 5, 6, 7, 8, 9, and 10 are to be scored as felonies one offense level beneath the incomplete or inchoate offense.

(11) An increase in offense severity level may result from a reclassification of felony degrees pursuant to sections 775.0845, 775.087, 775.0875, or 794.023. Any such increase should be indicated in the space provided on the sentencing guidelines scoresheet.

(12) A single assessment of thirty prior serious felony points is added if the offender has a primary offense or any additional offense ranked in level 8, 9, or 10 and one or more prior serious felonies. A "prior serious felony" is an offense in the offender's prior record ranked in level 8, 9, or 10 and for which the offender is serving a sentence of confinement, supervision or other sanction or for which the offender's date of release from confinement, supervision or other sanction, whichever is later is within 3 years before the date the primary offense or any additional offenses were committed. Out of state convictions wherein the analogous or parallel Florida offenses are located in offense severity level 8, 9, or 10 are to be considered prior serious felonies.

(13) If the offender has one or more prior capital felonies, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. Out-of-state convictions wherein the analogous or parallel Florida offenses are capital offenses are to be considered capital offenses for purposes of operation of this section.

(14) "Total offense score" is the sum of the sentence points for primary offense, any additional offenses and victim injury.

(15) "Prior record" refers to any conviction for an offense committed by the offender prior to the commission of the primary offense, excluding any additional offenses pending before the court for sentencing. Prior record shall include convictions for offenses committed by the offender as an adult or as a juvenile, convictions by federal, out-of-state, military, or foreign courts and convictions for violations of county or municipal ordinances that incorporate by

reference a penalty under state law. Federal, out-of-state, military, or foreign convictions are scored at the severity level at which the analogous or parallel Florida crime is located.

(A) Convictions for offenses committed more than 10 years prior to the date of the commission of the primary offense are not scored as prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or other sanction, whichever is later, to the date of the commission of the primary offense.

(B) Juvenile dispositions of offenses committed by the offender within 3 years prior to the date of the commission of the primary offense are scored as prior record if the offense would have been a crime if committed by an adult. Juvenile dispositions of sexual offenses committed by the offender more than 3 years prior to the date of the primary offense are to be scored as prior record if the offender has not maintained a conviction-free record, either as an adult or as a juvenile, for a period of 3 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of commission of the primary offense.

(C) Entries in criminal histories that show no disposition, disposition unknown, arrest only, or a disposition other than conviction are not scored. Criminal history records expunged or sealed under section 943.058 or other provisions of law, including former sections 893.14 and 901.33, are scored as prior record where the offender whose record has been expunged or sealed is before the court for sentencing.

(D) Any uncertainty in the scoring of the offender's prior record shall be resolved in favor of the offender and disagreement as to the propriety of scoring specific entries in the prior record shall be resolved by the sentencing judge.

(E) When unable to determine whether the conviction to be scored as prior record is a felony or a misdemeanor, the conviction should be scored as a misdemeanor. When the degree of felony is ambiguous or the severity level cannot be deter-mined, the conviction should be scored at severity level 1.

(16) "Legal status points" are assessed when an offender:

(A) Escapes from incarceration;

(B) Flees to avoid prosecution;

(C) Fails to appear for a criminal proceeding;

(D) Violates any condition of a supersedeas bond;

(E) Is incarcerated;

(F) Is under any form of a pretrial intervention or diversion program; or

(G) Is under any form of court-imposed or post-prison release community supervision and commits an offense that results in conviction. Legal status violations receive a score of 4 sentence points and are scored when the offense committed while under legal status is before the court for sentencing. Points for a legal status violation are to be assessed only once regardless of the existence of more than one form of legal status at the time an offense is committed or the number of offenses committed while under any form of legal status.

(17) Community sanction violation points occur when the offender is found to have violated a condition of:

(A) Probation;

(B) Community Control; or

(C) Pretrial Intervention or diversion.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six community sanction violation points shall be assessed for each violation or if the violation results from a new felony conviction, 12 community sanction violation points shall be assessed. Where there are multiple violations, points may be assessed only for each successive violation that follows a continuation of supervision, or modification or revocation of the community sanction before the court for sentencing and are not to be assessed for violation of several conditions of a single community sanction. Multiple counts of community sanction violations before the sentencing court shall not be the basis for multiplying the assessment of community sanction violation points.

(18) “Total prior record score” is the sum of all sentence points for prior record.

(19) Possession of a firearm, semiautomatic firearm, or a machine gun during the commission or attempt to commit a crime will result in additional sentence points. Eighteen sentence points are assessed if the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(2) while having in his or her possession a firearm as defined in subsection 790.001(6). Twenty-five sentence points are assessed if the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(3) while having in his or her possession a semiautomatic firearm as defined in subsection 775.087(3) or a machine gun as defined in subsection 790.001(9). Only one assessment of either 18 or 25 points shall apply.

(20) “Subtotal sentence points” are the sum of the total offense score, the total prior record

score, any legal status points, community sanction points, prior serious felony points, prior capital felony points or points for possession of a firearm or semi-automatic weapon.

(21) If the primary offense is drug trafficking under section 893.135 ranked in offense severity level 7 or 8, the subtotal sentence points may be multiplied, at the discretion of the sentencing court, by a factor of 1.5.

(22) If the primary offense is a violation of the Law Enforcement Protection Act under subsection 775.0823(2), the subtotal sentence points are multiplied by a factor of 2.5. If the primary offense is a violation of subsection 775.0823(3), (4), (5), (6), (7), or (8) the subtotal sentence points are multiplied by a factor of 2.0. If the primary offense is a violation of the Law Enforcement Protection Act under subsection 775.0823(9) or (10) or section 784.07(3) or section 775.0875(1), the subtotal sentence points are multiplied by a factor of 1.5.

(23) If the primary offense is grand theft of the third degree of a motor vehicle and the offender's prior record includes three or more grand thefts of the third degree of a motor vehicle, the subtotal sentence points are multiplied by 1.5.

(24) If the offender is found to be a member of a criminal street gang pursuant to section 874.04, at the time of the commission of the primary offense, the subtotal sentence points are multiplied by 1.5.

(25) If the primary offense is determined to be a crime of domestic violence as defined in section 741.28 and to have been committed in the presence of a child who is related by blood or marriage to the victim or perpetrator and who is under the age of 16, the subtotal sentence points are multiplied, at the discretion of the court, by 1.5.

(26) "Total sentence points" are the subtotal sentence points or the enhanced subtotal sentence points.

(27) "Presumptive sentence" is determined by the total sentence points. A person sentenced for a felony committed on or after July 1, 1997, who has at least one prior felony conviction and whose recommended sentence is any nonstate prison sanction may be sentenced to community control or a term of incarceration not to exceed 22 months. A person sentenced for a felony committed on or after July 1, 1997, who has at least one prior felony conviction and whose minimum recommended sentence is less than 22 months in state prison may be sentenced to a term of incarceration not to exceed 22 months.

In all other cases, if the total sentence points are less than or equal to 40, the recommended sentence, absent a departure, shall not be state prison. The court may impose any nonstate prison sanction authorized by law, including community control. However, the sentencing court may increase sentence points less than or equal to 40 by up to and including 15% to arrive at

total sentence points in excess of 40. If the total sentence points are greater than 40 but less than or equal to 52, the decision to sentence the defendant to state prison or a nonstate prison sanction is left to the discretion of the sentencing court. If the total sentence points are greater than 52, the sentence, absent a departure, must be to state prison.

A state prison sentence is calculated by deducting 28 points from the total sentence points where total sentence points exceed 40. The resulting number represents state prison months. State prison months may be increased or decreased by up to and including 25% at the discretion of the sentencing court. State prison months may not be increased where the sentencing court has exercised discretion to increase total sentence points under 40 points to achieve a state prison sentence. The sentence imposed must be entered on the scoresheet.

If the total sentence points are equal to or greater than 363, the court may sentence the offender to life imprisonment.

(28) If the recommended sentence under the sentencing guidelines exceeds the maximum sentence authorized for the pending felony offenses, the guidelines sentence must be imposed, absent a departure. Such downward departure must be equal to or less than the maximum sentence authorized by section 775.082.

(29) For those offenses having a mandatory penalty, a scoresheet should be completed and the guidelines presumptive sentence calculated. If the presumptive sentence is less than the mandatory penalty, the mandatory sentence takes precedence. If the presumptive sentence exceeds the mandatory sentence, the presumptive sentence should be imposed.

(30) Departure from the recommended guidelines sentence provided by the total sentence points should be avoided unless there are circumstances or factors that reasonably justify aggravating or mitigating the sentence. A state prison sentence that deviates from the recommended prison sentence by more than 25%, a state prison sentence where the total sentence points are equal to or less than 40, or a sentence other than state prison where the total sentence points are greater than 52 must be accompanied by a written statement delineating the reasons for departure. Circumstances or factors that can be considered include, but are not limited to, those listed in subsections 921.0016(3) and (4). Reasons for departing from the recommended guidelines sentence shall not include circumstances or factors relating to prior arrests without conviction or charged offenses for which convictions have not been obtained.

(A) If a sentencing judge imposes a sentence that departs from the recommended guidelines sentence, the reasons for departure shall be orally articulated at the time sentence is imposed. Any departure sentence must be accompanied by a written statement, signed by the sentencing judge, delineating the reasons for departure. The written statement shall be filed in the court file within 7 days after the date of sentencing. A written transcription of orally stated reasons

for departure articulated at the time sentence was imposed is sufficient if it is signed by the sentencing judge and filed in the court file within 7 days after the date of sentencing. The sentencing judge may also list the written reasons for departure in the space provided on the guidelines scoresheet and shall sign the scoresheet.

(B) The written statement delineating the reasons for departure shall be made a part of the record. The written statement, if it is a separate document, must accompany the guidelines scoresheet required to be provided to the Department of Corrections pursuant to subsection 921.0014(5).

(31) The sentencing court shall impose or suspend sentence for each separate count, as convicted. The total sentence shall be within the guidelines sentence unless a departure is ordered.

If a split sentence is imposed, the incarcerative portion of the sentence must not deviate more than 25 percent from the recommended guidelines prison sentence. The total sanction (incarceration and community control or probation) shall not exceed the term provided by general law or the guidelines recommended sentence where the provisions of subsection 921.001(5) apply.

(32) Sentences imposed after revocation of probation or community control must be in accordance with the guidelines. Cumulative incarceration imposed after revocation of probation or community control is subject to limitations imposed by the guidelines. A violation of probation or community control may not be the basis for a departure sentence.

Rule 3.704

The Criminal Punishment Code

(a) Use. This rule is to be used in conjunction with the forms located at rule 3.992. This rule implements the 1998 Criminal Punishment Code, in compliance with chapter 921, Florida Statutes. This rule applies to offenses committed on or after October 1, 1998, or as otherwise required by law.

(b) Purpose and Construction. The purpose of the 1998 Criminal Punishment Code and the principles it embodies are set out in subsection 921.002(1), Florida Statutes. Existing case law construing the application of sentencing guidelines will continue as precedent unless in conflict with the provisions of this rule or the 1998 Criminal Punishment Code.

(c) Offense Severity Ranking.

(1) Felony offenses subject to the 1998 Criminal Punishment Code are listed in a single

offense severity ranking chart located at section 921.0022, Florida Statutes. The offense severity ranking chart employs 10 offense levels, ranked from least severe to most severe. Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. The numerical statutory reference in the left column of the chart and the felony degree designations in the middle column of the chart determine whether felony offenses are specifically listed in the offense severity ranking chart and the appropriate severity level. The language in the right column is merely descriptive.

(2) Felony offenses not listed in section 921.0022 are assigned a severity level in accordance with section 921.0023, Florida Statutes, as follows:

(A) A felony of the third degree within offense level 1.

(B) A felony of the second degree within offense level 4.

(C) A felony of the first degree within offense level 7.

(D) A felony of the first degree punishable by life within offense level 9.

(E) A life felony within offense level 10.

An offense does not become unlisted and subject to the provisions of section 921.0023 because of a reclassification of the degree of felony under section 775.0845, section 775.087, section 775.0875 or section 794.023, Florida Statutes, or any other law that provides an enhanced penalty for a felony offense.

(d) General Rules and Definitions.

(1) One or more Criminal Punishment Code scoresheets must be prepared for each offender covering all offenses pending before the court for sentencing, including offenses for which the offender may qualify as an habitual felony offender, an habitual violent felony offender, a violent career criminal, or a prison releasee reoffender. The office of the state attorney must prepare the scoresheets and present them to defense counsel for review as to accuracy. If sentences are imposed under section 775.084, or section 775.082(9), Florida Statutes, and the Criminal Punishment Code, a scoresheet listing only those offenses sentenced under the Criminal Punishment Code must be filed in addition to any sentencing documents filed under section 775.084 or section 775.082(9).

(2) One scoresheet must be prepared for all offenses committed under any single version or revision of the guidelines or Criminal Punishment Code pending before the court for sentencing.

(3) If an offender is before the court for sentencing for more than one felony and the felonies

were committed under more than one version or revision of the guidelines or Criminal Punishment Code, separate scoresheets must be prepared and used at sentencing. The sentencing court may impose such sentence concurrently or consecutively.

(4) The sentencing judge must review the scoresheet for accuracy and sign it.

(5) Felonies, except capital felonies, with continuing dates of enterprise are to be sentenced under the guidelines or Criminal Punishment Code in effect on the beginning date of the criminal activity.

(6) "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(7) "Primary offense" means the offense at conviction pending before the court for sentencing for which the total sentence points recommend a sanction that is as severe as, or more severe than, the sanction recommended for any other offense committed by the offender and pending before the court at sentencing. Only one count of one offense before the court for sentencing shall be classified as the primary offense.

(8) "Additional offense" means any offense other than the primary offense for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense.

(9) "Victim injury" is scored for physical injury or death suffered by a person as a direct result of any offense pending before the court for sentencing. Except as otherwise provided by law, the sexual penetration and sexual contact points will be scored as follows. Sexual penetration points are scored if an offense pending before the court for sentencing involves sexual penetration. Sexual contact points are scored if an offense pending before the court for sentencing involves sexual contact, but no penetration. If the victim of an offense involving sexual penetration or sexual contact without penetration suffers any physical injury as a direct result of an offense pending before the court for sentencing, that physical injury must be scored in addition to any points scored for the sexual contact or sexual penetration.

Victim injury must be scored for each victim physically injured and for each offense resulting in physical injury whether there are one or more victims. However, victim injury must not be scored for an offense for which the offender has not been convicted.

Victim injury resulting from one or more capital offenses before the court for sentencing must not be included upon any scoresheet prepared for non-capital offenses also pending before the court for sentencing. This does not prohibit the scoring of victim injury as a result of the non-capital offense or offenses before the court for sentencing.

(10) Unless specifically provided otherwise by statute, attempts, conspiracies, and solicitations

must be indicated in the space provided on the Criminal Punishment Code scoresheet and must be scored at one severity level below the completed offense.

Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 1 and 2 must be scored as misdemeanors. Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 3, 4, 5, 6, 7, 8, 9, and 10 must be scored as felonies one offense level beneath the incomplete or inchoate offense.

(11) An increase in offense severity level may result from a reclassification of felony degrees under sections 775.0845, 775.087, 775.0875, or 794.023. Any such increase must be indicated in the space provided on the Criminal Punishment Code scoresheet.

(12) A single assessment of thirty prior serious felony points is added if the offender has a primary offense or any additional offense ranked in level 8, 9, or 10 and one or more prior serious felonies. A 'prior serious felony' is an offense in the offender's prior record ranked in level 8, 9, or 10 and for which the offender is serving a sentence of confinement, supervision or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offenses were committed. Out of state convictions wherein the analogous or parallel Florida offenses are located in offense severity level 8, 9, or 10 must be considered prior serious felonies.

(13) If the offender has one or more prior capital felonies, points must be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. Out-of-state convictions wherein the analogous or parallel Florida offenses are capital offenses must be considered capital offenses for purposes of operation of this section.

(14) "Prior record" refers to any conviction for an offense committed by the offender prior to the commission of the primary offense. Prior record includes convictions for offenses committed by the offender as an adult or as a juvenile, convictions by federal, out of state, military, or foreign courts and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law. Federal, out of state, military or foreign convictions are scored at the severity level at which the analogous or parallel Florida crime is located.

(A) Convictions for offenses committed more than 10 years before the date of the commission of the primary offense must not be scored as prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or other sanction, whichever is later, to the date of the commission of the primary offense.

(B) Juvenile dispositions of offenses committed by the offender within 5 years before the date

of the commission of the primary offense must be scored as prior record if the offense would have been a crime if committed by an adult. Juvenile dispositions of sexual offenses committed by the offender more than 5 years before the date of the primary offense must be scored as prior record if the offender has not maintained a conviction-free record, either as an adult or as a juvenile, for a period of 5 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of commission of the primary offense.

(C) Entries in criminal histories that show no disposition, disposition unknown, arrest only, or a disposition other than conviction must not be scored. Criminal history records expunged or sealed under section 943.058, Florida Statutes, or other provisions of law, including former sections 893.14 and 901.33, Florida Statutes, must be scored as prior record where the offender whose record has been expunged or sealed is before the court for sentencing.

(D) Any uncertainty in the scoring of the offender's prior record must be resolved in favor of the offender and disagreement as to the propriety of scoring specific entries in the prior record must be resolved by the sentencing judge.

(E) When unable to determine whether the conviction to be scored as prior record is a felony or a misdemeanor, the conviction must be scored as a misdemeanor. When the degree of felony is ambiguous or the severity level cannot be determined, the conviction must be scored at severity level 1.

(15) "Legal status points" are assessed when an offender:

(A) Escapes from incarceration;

(B) Flees to avoid prosecution;

(C) Fails to appear for a criminal proceeding;

(D) Violates any condition of a supersedeas bond;

(E) Is incarcerated;

(F) Is under any form of a pretrial intervention or diversion program; or

(G) Is under any form of court-imposed or post-prison release community supervision and commits an offense that results in conviction. Legal status violations receive a score of 4 sentence points and are scored when the offense committed while under legal status is before the court for sentencing. Points for a legal status violation must only be assessed once regardless of the existence of more than one form of legal status at the time an offense is committed or the number of offenses committed while under any form of legal status.

(16) Community sanction violation points occur when the offender is found to have violated a condition of:

(A) Probation;

(B) Community Control; or

(C) Pretrial intervention or diversion.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six community sanction violation points must be assessed for each violation or if the violation results from a new felony conviction, 12 community sanction violation points must be assessed. For violations occurring on or after March 12, 2007, if the community sanction violation that is not based upon a failure to pay fines, costs, or restitution is committed by a violent felony offender of special concern as defined in s. 948.06, twelve community sanction violation points must be assessed or if the violation results from a new felony conviction, 24 community sanction points must be assessed. Where there are multiple violations, points may be assessed only for each successive violation that follows a continuation of supervision, or modification or revocation of the community sanction before the court for sentencing and are not to be assessed for violation of several conditions of a single community sanction. Multiple counts of community sanction violations before the sentencing court may not be the basis for multiplying the assessment of community sanction violation points.

(17) Possession of a firearm, semiautomatic firearm, or a machine gun during the commission or attempt to commit a crime will result in additional sentence points. Eighteen sentence points are assessed if the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(2) while having in his or her possession a firearm as defined in subsection 790.001(6), Florida Statutes. Twenty-five sentence points are assessed if the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(3) while having in his or her possession a semiautomatic firearm as defined in subsection 775.087(3) or a machine gun as defined in subsection 790.001(9). Only one assessment of either 18 or 25 points can be made.

(18) "Subtotal sentence points" are the sum of the primary offense points, the total additional offense points, the total victim injury points, the total prior record points, any legal status points, community sanction points, prior serious felony points, prior capital felony points and points for possession of a firearm or semiautomatic weapon.

(19) If the primary offense is drug trafficking under section 893.135, Florida Statutes, ranked in offense severity level 7 or 8, the subtotal sentence points may be multiplied, at the discretion of the sentencing court, by a factor of 1.5.

(20) If the primary offense is a violation of the Law Enforcement Protection Act under subsection 775.0823(2), (3), or (4), Florida Statutes, the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of subsection 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of section 784.07(3) or 775.0875(1) or the Law Enforcement Protection Act under subsection 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

(21) If the primary offense is grand theft of the third degree of a motor vehicle and the offender's prior record includes three or more grand thefts of the third degree of a motor vehicle, the subtotal sentence points are multiplied by 1.5.

(22) If the offender is found to have committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang under section 874.04, Florida Statutes, at the time of the commission of the primary offense, the subtotal sentence points are multiplied by 1.5.

(23) If the primary offense is a crime of domestic violence as defined in section 741.28, Florida Statutes, which was committed in the presence of a child under 16 years of age who is a family household member as defined in section 741.28(2) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

(24) "Total sentence points" are the subtotal sentence points or the enhanced subtotal sentence points.

(25) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months must be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points must be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing must be the lowest permissible sentence up to and including the statutory maximum, as defined in section 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the Code exceeds the statutory maximum sentence as provided in section 775.082, the sentence required by the Code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. The sentence imposed must be entered on the scoresheet.

(26) For those offenses having a mandatory minimum sentence, a scoresheet must be

completed and the lowest permissible sentence under the Code calculated. If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the Criminal Punishment Code and any mandatory minimum penalties apply. Mandatory minimum sentences must be recorded on the scoresheet.

(27) Any downward departure from the lowest permissible sentence, as calculated according to the total sentence points under section 921.0024, Florida Statutes, is prohibited unless there are circumstances or factors that reasonably justify the downward departure. Circumstances or factors that can be considered include, but are not limited to, those listed in subsection 921.0026(2), Florida Statutes.

(A) If a sentencing judge imposes a sentence that is below the lowest permissible sentence, it is a departure sentence and must be accompanied by a written statement by the sentencing court delineating the reasons for the departure, filed within 7 days after the date of sentencing. A written transcription of orally stated reasons for departure articulated at the time sentence was imposed is sufficient if it is filed by the court within 7 days after the date of sentencing. The sentencing judge may also list the written reasons for departure in the space provided on the Criminal Punishment Code scoresheet.

(B) The written statement delineating the reasons for departure must be made a part of the record. The written statement, if it is a separate document, must accompany the scoresheet required to be provided to the Department of Corrections under subsection 921.0024(6).

If a split sentence is imposed, the total sanction (incarceration and community control or probation) must not exceed the term provided by general law or the maximum sentence under the Criminal Punishment Code.

(28) If the lowest permissible sentence under the criminal punishment code is a state prison sanction but the total sentencing points do not exceed 48 points (or 54 points if six of those points are for a violation of probation, community control, or other community supervision that does not involve a new crime), the court may sentence the defendant to probation, community control, or community supervision with mandatory participation in a prison diversion program, as provided for in s. 921.00241, Florida Statutes, if the defendant meets the requirements for that program as set forth in section 921.00241.

(29) If the total sentence points equal 22 or less, the court must sentence the offender to a nonstate prison sanction unless it makes written findings that a nonstate prison sanction could present a danger to the public.

(30) Sentences imposed after revocation of probation or community control must be imposed according to the sentencing law applicable at the time of the commission of the original offense.

Rule 3.710

Presentence Report

(a) Cases In Which Court Has Discretion. In all cases in which the court has discretion as to what sentence may be imposed, the court may refer the case to the Department of Corrections for investigation and recommendation. No sentence or sentences other than probation shall be imposed on any defendant found guilty of a first felony offense or found guilty of a felony while under the age of 18 years, until after such investigation has first been made and the recommendations of the Department of Corrections received and considered by the sentencing judge.

(b) Capital Defendant Who Refuses To Present Mitigation Evidence. Should a defendant in a capital case choose not to challenge the death penalty and refuse to present mitigation evidence, the court shall refer the case to the Department of Corrections for the preparation of a presentence report. The report shall be comprehensive and should include information such as previous mental health problems (including hospitalizations), school records, and relevant family background.

Rule 3.711

Presentence Report: When Prepared

(a) Except as provided in subdivision (b), the sentencing court shall not authorize the commencement of the presentence investigation until there has been a finding of guilt.

(b) The sentencing court may authorize the commencement of the presentence investigation prior to finding of guilt if:

(1) the defendant has consented to such action; and

(2) nothing disclosed by the presentence investigation comes to the attention of the prosecution, the court, or the jury prior to an adjudication of guilt. Upon motion of the defense and prosecution, the court may examine the presentence investigation prior to the entry of a plea.

Rule 3.712

Presentence Report: Disclosure

The presentence investigation shall not be a public record and shall be available only to the

following persons under the following stated conditions:

(a) To the sentencing court to assist it in determining an appropriate sentence.

(b) To persons or agencies having a legitimate professional interest in the information that it would contain.

(c) To reviewing courts if relevant to an issue on which an appeal has been taken.

(d) To the parties as rule 3.713 provides.

Rule 3.713

Presentence Investigation Disclosure: Parties

(a) The trial judge may disclose any of the contents of the presentence investigation to the parties prior to sentencing. Any information so disclosed to one party shall be disclosed to the opposing party.

(b) The trial judge shall disclose all factual material, including but not limited to the defendant's education, prior occupation, prior arrests, prior convictions, military service, and the like, to the defendant and the state a reasonable time prior to sentencing. If any physical or mental evaluations of the defendant have been made and are to be considered for the purposes of sentencing or release, such reports shall be disclosed to counsel for both parties.

(c) On motion of the defendant or the prosecutor or on its own motion, the sentencing court may order the defendant to submit to a mental or physical examination that would be relevant to the sentencing decision. Copies of the examination or any other examination to be considered for the purpose of sentencing shall be disclosed to counsel for the parties subject to the limitation of rule 3.713(b).

Rule 3.720

Sentencing Hearing

As soon as practicable after the determination of guilt and after the examination of any presentence reports, the sentencing court shall order a sentencing hearing. At the hearing:

(a) The court shall inform the defendant of the finding of guilt against the defendant and of the judgment and ask the defendant whether there is any legal cause to show why sentence should not be pronounced. The defendant may allege and show as legal cause why sentence should not be pronounced only:

(1) that the defendant is insane;

(2) that the defendant has been pardoned of the offense for which he or she is about to be sentenced;

(3) that the defendant is not the same person against whom the verdict or finding of the court or judgment was rendered; or

(4) if the defendant is a woman and sentence of death is to be pronounced, that she is pregnant.

(b) The court shall entertain submissions and evidence by the parties that are relevant to the sentence.

(c) In cases where guilt was determined by plea, the court shall inform itself, if not previously informed, of the existence of plea discussions or agreements and the extent to which they involve recommendations as to the appropriate sentence.

(d)(1) If the accused was represented by a public defender or other court appointed counsel, the court shall notify the accused of the imposition of a lien pursuant to section 938.29, Florida Statutes. The amount of the lien shall be given and a judgment entered in that amount against the accused. Notice of the accused's right to a hearing to contest the amount of the lien shall be given at the time of sentence.

(2) If the accused requests a hearing to contest the amount of the lien, the court shall set a hearing date within 30 days of the date of sentencing.

Rule 3.721

Record of The Proceedings

The sentencing court shall ensure that a record of the entire sentencing proceeding is made and preserved in such a manner that it can be transcribed as needed.

Rule 3.730

Issuance of Capias When Necessary to Bring Defendant Before Court

Whenever the court deems it necessary to do so in order to procure the presence of the defendant before it for the adjudication of guilt or the pronouncement of sentence, or both, when the defendant is not in custody, it shall direct the clerk to issue immediately or when directed by the prosecuting attorney a capias for the arrest of the defendant. Subsequent

capiases may be issued from time to time by direction of the court or the prosecuting attorney.

Rule 3.750

Procedure When Pardon Is Alleged As Cause for Not Pronouncing Sentence

When the cause alleged for not pronouncing sentence is that the defendant has been pardoned for the offense for which the defendant is about to be sentenced, the court, if necessary, shall postpone the pronouncement of sentence for the purpose of hearing evidence on the allegation. If the court decides that the allegation is true, it shall discharge the defendant from custody unless the defendant is in custody on some other charge. If, however, it decides that the allegation is not true, it shall proceed to pronounce sentence.

Rule 3.760

Procedure When Nonidentity Is Alleged As Cause for Not Pronouncing Sentence

When the cause alleged for not pronouncing sentence is that the person brought before the court to be sentenced is not the same person against whom the verdict, finding of the court, or judgment was rendered, the court, if necessary, shall postpone the pronouncement of sentence for the purpose of hearing evidence on the allegation. If the court decides that the allegation is true, it shall discharge the person from custody unless the person is in custody on some other charge. If, however, it decides that the allegation is not true, it shall proceed to pronounce sentence.

Rule 3.770

Procedure When Pregnancy Is Alleged As Cause for Not Pronouncing Death Sentence

When pregnancy of a female defendant is alleged as the cause for not pronouncing the death sentence, the court shall postpone the pronouncement of sentence until after it has decided the truth of that allegation. If necessary in order to arrive at such a decision, it shall immediately fix a time for a hearing to determine whether the defendant is pregnant and shall appoint not exceeding 3 competent disinterested physicians to examine the defendant as to her alleged pregnancy and to testify at the hearing as to whether she is pregnant. Other evidence regarding whether the defendant is pregnant may be introduced at the hearing by either party. If the court decides that the defendant is not pregnant, it shall proceed to pronounce sentence. If it decides that she is pregnant, it shall commit her to prison until it appears that she is not pregnant and shall then pronounce sentence upon her.

Rule 3.780

Sentencing Hearing for Capital Cases

(a) Evidence. In all proceedings based on section 921.141, Florida Statutes, the state and defendant will be permitted to present evidence of an aggravating or mitigating nature, consistent with the requirements of the statute and the notice requirements of Florida Rule of Criminal Procedure 3.181. Each side will be permitted to cross-examine the witnesses presented by the other side. The state will present evidence first.

(b) Rebuttal. The trial judge shall permit rebuttal testimony.

(c) Opening Statement and Closing Argument. Both the state and the defendant will be given an equal opportunity for one opening statement and one closing argument. The state will proceed first.

Rule 3.781

Sentencing Hearing to Consider the Imposition of a Life Sentence for Juvenile Offenders

(a) Application. The courts shall use the following procedures in sentencing a juvenile offender for an offense which was committed after July 1, 2014, if the conviction may result in a sentence of life imprisonment or a term of years equal to life imprisonment, or for resentencing any juvenile offender whose sentence is determined to be unconstitutional pursuant to the United States Supreme Court's decision in Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012) or Graham v. Florida, 560 U.S. 48 (2010).

(b) Procedure; Evidentiary Hearing. After a determination of guilt for an offense punishable under sections 775.082(1)(b), 775.082(3)(a)5., 775.082(3)(b)2., or 775.082(3)(c), Florida Statutes, and after the examination of any presentence reports, the sentencing court shall order a sentencing hearing to be held pursuant to rules 3.720 and 3.721. The sentencing court shall allow the state and defendant to present evidence relevant to the offense, the defendant's youth, and attendant circumstances, including, but not limited to those enumerated in section 921.1401(2), Florida Statutes. Additionally, the court shall allow the state and the defendant to present evidence relevant to whether or not the defendant killed, intended to kill, or attempted to kill the victim.

(c) Findings.

(1) The court shall make specific findings on the record that all relevant factors have been reviewed and considered by the court prior to imposing a sentence of life imprisonment or a term of years equal to life imprisonment. The court shall make written findings as to whether the defendant is eligible for a sentence review hearing under sections 921.1402(2)(a), (2)(b), or (2)(c), Florida Statutes, based on whether the defendant killed, attempted to kill, or intended to kill the victim.

(2) A defendant who is convicted of an offense punishable under section 775.082(1)(b)1., Florida Statutes, shall not be eligible for a sentence review hearing if the trial court finds that the defendant has previously been convicted of one of the enumerated offenses, or conspiracy to commit one of the enumerated offenses, found in section 921.1402(2)(a), Florida Statutes.

(3) A copy of the written findings shall be made a part of the commitment packet for the Department of Corrections.

Rule 3.790

Probation and Community Control

(a) Suspension of the Pronouncement and Imposition of Sentence; Probation or Community Control. Pronouncement and imposition of sentence of imprisonment shall not be made on a defendant who is to be placed on probation, regardless of whether the defendant has been adjudicated guilty. An order of the court placing a person on probation or community control shall place the probationer under the authority of the Department of Corrections to be supervised as provided by law. The court shall specify the length of time during which the defendant is to be supervised.

(b) Revocation of Probation or Community Control; Judgment; Sentence.

(1) Generally. Except as otherwise provided in subdivisions (b)(2) and (b)(3) below, when a probationer or a community controllee is brought before a court of competent jurisdiction charged with a violation of probation or community control, the court shall advise the person of the charge and, if the charge is admitted to be true, may immediately enter an order revoking, modifying, or continuing the probation or community control. If the violation of probation or community control is not admitted by the probationer or community controllee, the court may commit the person or release the person with or without bail to await further hearing or it may dismiss the charge of violation of probation or community control. If the charge is not admitted by the probationer or community controllee and if it is not dismissed, the court, as soon as practicable, shall give the probationer or community controllee an opportunity to be fully heard in person, by counsel, or both. After the hearing, the court may enter an order revoking, modifying, or continuing the probation or community control. Following a revocation of

probation or community control, the trial court shall adjudicate the defendant guilty of the crime forming the basis of the probation or community control if no such adjudication has been made previously. Pronouncement and imposition of sentence then shall be made on the defendant.

(2) Lunsford Act Proceedings. When a probationer or community controllee is arrested for violating his or her probation or community control in a material respect and is under supervision for any criminal offense proscribed in chapter 794, Florida Statutes, section 800.04(4), Florida Statutes, section 800.04(5), Florida Statutes, section 800.04(6), Florida Statutes, section 827.071, Florida Statutes, or section 847.0145, Florida Statutes, or is a registered sexual predator or a registered sexual offender, or is under supervision for a criminal offense for which, but for the effective date, he or she would meet the registration criteria of section 775.21, Florida Statutes, section 943.0435, Florida Statutes, or section 944.607, Florida Statutes, the court must make a finding that the probationer or community controllee is not a danger to the public prior to release with or without bail.

(A) The hearing to determine whether the defendant is a danger to the public shall be conducted by a court of competent jurisdiction no sooner than 24 hours after arrest. The time for conducting the hearing may be extended at the request of the accused, or at the request of the state upon a showing of good cause.

(B) At the hearing, the defendant shall have the right to be heard in person or through counsel, to present witnesses and evidence, and to cross-examine witnesses.

(C) In determining the danger posed by the defendant’s release, the court may consider:

(i) the nature and circumstances of the violation and any new offenses charged;

(ii) the defendant’s past and present conduct, including convictions of crimes;

(iii) any record of arrests without conviction for crimes involving violence or sexual crimes;

(iv) any other evidence of allegations of unlawful sexual conduct or the use of violence by the defendant;

(v) the defendant’s family ties, length of residence in the community, employment history, and mental condition;

(vi) the defendant’s history and conduct during the probation or community control supervision from which the violation arises and any other previous supervisions, including disciplinary records of previous incarcerations;

(vii) the likelihood that the defendant will engage again in a criminal course of conduct;

(viii) the weight of the evidence against the defendant; and

(ix) any other facts the court considers relevant.

(3) Anti-Murder Act Proceedings. The provisions of this subdivision shall control over any conflicting provisions in subdivision (b)(2). When a probationer or community controllee is arrested for violating his or her probation or community control in a material respect and meets the criteria for a violent felony offender of special concern, or for certain other related categories of offender, as set forth in section 948.06(8), Florida Statutes, the defendant shall be brought before the court that granted the probation or community control and, except when the alleged violation is based solely on the defendant's failure to pay costs, fines, or restitution, shall not be granted bail or any other form of pretrial release prior to the resolution of the probation or community control violation hearing.

(A) The court shall not dismiss the probation or community control violation warrant pending against the defendant without holding a recorded violation hearing at which both the state and the accused are represented.

(B) If, after conducting the hearing, the court determines that the defendant has committed a violation of probation or community control other than a failure to pay costs, fines, or restitution, the court shall make written findings as to whether the defendant poses a danger to the community. In determining the danger to the community posed by the defendant's release, the court shall base its findings on one or more of the following:

(i) The nature and circumstances of the violation and any new offenses charged;

(ii) The defendant's present conduct, including criminal convictions;

(iii) The defendant's amenability to nonincarcerative sanctions based on his or her history and conduct during the probation or community control supervision from which the violation hearing arises and any other previous supervisions, including disciplinary records of previous incarcerations;

(iv) The weight of the evidence against the defendant; and

(v) Any other facts the court considers relevant.

(C) If the court finds that the defendant poses a danger to the community, the court shall revoke probation or community control and sentence the defendant up to the statutory maximum, or longer if permitted by law.

(D) If the court finds that the defendant does not pose a danger to the community, the court may revoke, modify, or continue the probation or community control or may place the

probationer into community control as provided in section 948.06, Florida Statutes.

Rule 3.800

Correction, Reduction, and Modification of Sentences

(a) Correction.

(1) Generally. A court may at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it in a sentencing scoresheet, when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief, provided that a party may not file a motion to correct an illegal sentence under this subdivision during the time allowed for the filing of a motion under subdivision (b)(1) or during the pendency of a direct appeal.

(2) Successive Motions. A court may dismiss a second or successive motion if the court finds that the motion fails to allege new or different grounds for relief and the prior determination was on the merits. When a motion is dismissed under this subdivision, a copy of that portion of the files and records necessary to support the court's ruling must accompany the order dismissing the motion.

(3) Sexual Predator Designation. A defendant may seek correction of an allegedly erroneous sexual predator designation under this subdivision, but only when it is apparent from the face of the record that the defendant did not meet the criteria for designation as a sexual predator.

(4) Appeals. All orders denying or dismissing motions under subdivision (a) must include a statement that the defendant has the right to appeal within 30 days of rendition of the order.

(b) Motion to Correct Sentencing Error. A motion to correct any sentencing error, including an illegal sentence or incorrect jail credit, may be filed as allowed by this subdivision. This subdivision shall not be applicable to those cases in which the death sentence has been imposed and direct appeal jurisdiction is in the supreme court under article V, section 3(b)(1) of the Florida Constitution. The motion must identify the error with specificity and provide a proposed correction. A response to the motion may be filed within 15 days, either admitting or contesting the alleged error. Motions may be filed by the state under this subdivision only if the correction of the sentencing error would benefit the defendant or to correct a scrivener's error.

(1) Motion Before Appeal. During the time allowed for the filing of a notice of appeal of a sentence, a defendant or the state may file a motion to correct a sentencing error.

(A) This motion shall stay rendition under Florida Rule of Appellate Procedure 9.020(i).

(B) Unless the trial court determines that the motion can be resolved as a matter of law without a hearing, it shall hold a calendar call no later than 20 days from the filing of the motion, with notice to all parties, for the express purpose of either ruling on the motion or determining the need for an evidentiary hearing. If an evidentiary hearing is needed, it shall be set no more than 20 days from the date of the calendar call. Within 60 days from the filing of the motion, the trial court shall file an order ruling on the motion. A party may file a motion for rehearing of any signed, written order entered under subdivisions (a) and (b) of this rule within 15 days of the date of service of the order or within 15 days of the expiration of the time period for filing an order if no order is filed. A response may be filed within 10 days of service of the motion. The trial court's order disposing of the motion for rehearing shall be filed within 15 days of the response but not later than 40 days from the date of the order of which rehearing is sought. A timely filed motion for rehearing shall toll rendition of the order subject to appellate review and the order shall be deemed rendered upon the filing of a signed, written order denying the motion for rehearing.

(2) Motion Pending Appeal. If an appeal is pending, a defendant or the state may file in the trial court a motion to correct a sentencing error. The motion may be filed by appellate counsel and must be served before the party's first brief is served. A notice of pending motion to correct sentencing error shall be filed in the appellate court, which notice automatically shall extend the time for the filing of the brief until 10 days after the clerk of circuit court transmits the supplemental record under Florida Rule of Appellate Procedure 9.140(f)(6).

(A) The motion shall be served on the trial court and on all trial and appellate counsel of record. Unless the motion expressly states that appellate counsel will represent the movant in the trial court, trial counsel will represent the movant on the motion under Florida Rule of Appellate Procedure 9.140(d). If the state is the movant, trial counsel will represent the defendant unless appellate counsel for the defendant notifies trial counsel and the trial court that he or she will represent the defendant on the state's motion.

(B) The trial court shall resolve this motion in accordance with the procedures in subdivision (b)(1)(B), 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.

(C) In accordance with Florida Rule of Appellate Procedure 9.140(f)(6), the clerk of circuit court shall supplement the appellate record with the motion, the order, any amended sentence, and, if designated, a transcript of any additional portion of the proceedings.

(c) Reduction and Modification. A court may reduce or modify to include any of the provisions of chapter 948, Florida Statutes, a legal sentence imposed by it, sua sponte, or upon motion

filed, within 60 days after the imposition, or within 60 days after receipt by the court of a mandate issued by the appellate court on affirmance of the judgment and/or sentence on an original appeal, or within 60 days after receipt by the court of a certified copy of an order of the appellate court dismissing an original appeal from the judgment and/or sentence, or, if further appellate review is sought in a higher court or in successively higher courts, within 60 days after the highest state or federal court to which a timely appeal has been taken under authority of law, or in which a petition for certiorari has been timely filed under authority of law, has entered an order of affirmance or an order dismissing the appeal and/or denying certiorari. If review is upon motion, the trial court shall have 90 days from the date the motion is filed or such time as agreed by the parties or as extended by the trial court to enter an order ruling on the motion. This subdivision shall not be applicable to those cases in which the death sentence is imposed or those cases in which the trial judge has imposed the minimum mandatory sentence or has no sentencing discretion.

Rule 3.801

Correction of Jail Credit

(a) Correction of Jail Credit. A court may correct a final sentence that fails to allow a defendant credit for all of the time he or she spent in the county jail before sentencing as provided in section 921.161, Florida Statutes.

(b) Time Limitations. No motion shall be filed or considered pursuant to this rule if filed more than 1 year after the sentence becomes final.

(c) Contents of Motion. The motion shall be under oath and include:

(1) a brief statement of the facts relied on in support of the motion;

(2) the dates, location of incarceration, and total time for credit already provided;

(3) the dates, location of incarceration, and total time for credit the defendant contends was not properly awarded;

(4) whether any other criminal charges were pending at the time of the incarceration noted in subdivision (c)(3), and if so, the location, case number, and resolution of the charges; and

(5) whether the defendant waived any county jail credit at the time of sentencing, and if so, the number of days waived.

(d) Successive Motions. No successive motions for jail credit will be considered.

(e) Incorporation of Portions of Florida Rule of Criminal Procedure 3.850. The following

subdivisions of Florida Rule of Criminal Procedure 3.850 apply to proceedings under this rule: 3.850(e), (f), (j), (k), and (n).

Rule 3.802

Review of Sentences for Juvenile Offenders

(a) Application. A juvenile offender, as defined in section 921.1402(1), Florida Statutes, may seek a modification of sentence pursuant to section 921.1402, Florida Statutes, by submitting an application to the trial court requesting a sentence review hearing.

(b) Time for Filing. An application for sentence review may not be filed until the juvenile offender becomes eligible pursuant to section 921.1402(2), Florida Statutes. A juvenile offender becomes eligible:

(1) after 25 years, if the juvenile offender is sentenced to life under section 775.082(1)(b)1., Florida Statutes, or to a term of more than 25 years under sections 775.082(3)(a)5.a. or 775.082(3)(b)2.a., Florida Statutes; or

(2) after 20 years, if the juvenile offender is sentenced to a term of 20 years or more under section 775.082(3)(c), Florida Statutes; or

(3) after 15 years, if the juvenile offender is sentenced to a term of more than 15 years under sections 775.082(1)(b)2., 775.082(3)(a)5.b., or 775.082(3)(b)2.b., Florida Statutes.

(c) Contents of Application. The application must state that the juvenile offender is eligible for sentence review and include:

(1) a copy of the judgment and sentence, or a statement containing the following:

(A) the date of sentencing;

(B) the offense for which the defendant was sentenced; and

(C) the sentence imposed;

(2) the nature of the relief sought;

(3) whether a previous application has been filed, the date of filing of the application, and the disposition of that application;

(4) a brief statement outlining the facts in support of the application; and

(5) if the application is being filed by a juvenile offender sentenced to life pursuant to section 775.082(1)(b)1., Florida Statutes, a statement certifying that the applicant has not been previously convicted of one of the offenses enumerated in sections 921.1402(2)(a)1.–(2)(a)10., Florida Statutes, or conspiracy to commit one of offenses enumerated in sections 921.1402(2)(a)1.–(2)(a)10., Florida Statutes, in a separate criminal transaction or episode than that which resulted in the sentence under section 775.082(1)(b)1., Florida Statutes.

(d) Procedure; Evidentiary Hearing; Disposition. Upon application from an eligible juvenile offender, the trial court shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. If the application, files, and records in the case conclusively show that the applicant does not qualify as a juvenile offender under section 921.1402(1), Florida Statutes, or that the application is premature, the court may deny the application without a hearing, and shall attach such documents to the order. If an application is denied as premature, the denial shall be without prejudice.

(1) At the sentence review hearing, the court shall consider the following factors when determining if it is appropriate to modify the juvenile offender's sentence:

(A) whether the juvenile offender demonstrates maturity and rehabilitation;

(B) whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing;

(C) the opinion of the victim or the victim's next of kin;

(D) whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person;

(E) whether the juvenile offender has shown sincere and sustained remorse for the criminal offense;

(F) whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior;

(G) whether the juvenile offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available;

(H) whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense;

(I) the results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation; and

(J) any other factor the court deems appropriate.

(2) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation, or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

(e) Successive Applications. A second or successive application shall be denied without a hearing, except under the following circumstances:

(1) the initial application was denied as premature; or

(2) pursuant to section 921.1402(2)(d), Florida Statutes, the initial application was submitted by a juvenile offender sentenced to a term of 20 years or more under section 775.082(3)(c), Florida Statutes, and more than 10 years has elapsed since the initial sentence review hearing.

(f) Jurisdiction. The sentencing court shall retain original jurisdiction for the duration of the sentence for the purpose of a sentence review hearing.

(g) Right to Counsel. A juvenile offender who is eligible for a sentence review hearing under section 921.1402(5), Florida Statutes, is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

Rule 3.810

Commitment of Defendant; Duty of Sheriff

On pronouncement of a sentence imposing a penalty other than a fine only or death, the court shall, unless the execution of the sentence is suspended or stayed, and, in such case, on termination of the suspension or stay, forthwith commit the defendant to the custody of the sheriff under a commitment to which shall be attached a certified copy of the sentence and, unless both are contained in the same instrument if the sentence is imprisonment in the state prison, a certified copy of the judgment of conviction and a certified copy of the indictment or information, and the sheriff shall thereupon, within a reasonable time, if the sheriff is not the proper official to execute the sentence, transfer the defendant, together with the commitment and attached certified copies, to the custody of the official whose duty it is to execute the sentence and shall take from that person a receipt for the defendant and make a return thereof to the court.

Rule 3.811

Insanity At Time of Execution: Capital Cases

(a) Insanity to Be Executed. A person under sentence of death shall not be executed while insane to be executed.

(b) Insanity Defined. A person under sentence of death is insane for purposes of execution if the person lacks the mental capacity to understand the fact of the impending execution and the reason for it.

(c) Stay of Execution. No motion for a stay of execution pending hearing, based on grounds of the prisoner's insanity to be executed, shall be entertained by any court until such time as the Governor of Florida shall have held appropriate proceedings for determining the issue pursuant to the appropriate Florida Statutes.

(d) Motion for Stay after Governor's Determination of Sanity to Be Executed. On determination of the Governor of Florida, subsequent to the signing of a death warrant for a prisoner under sentence of death and pursuant to the applicable Florida Statutes relating to insanity at time of execution, that the prisoner is sane to be executed, counsel for the prisoner may move for a stay of execution and a hearing based on the prisoner's insanity to be executed.

(1) The motion shall be filed in the circuit court of the circuit in which the execution is to take place and shall be heard by one of the judges of that circuit or such other judge as shall be assigned by the chief justice of the supreme court to hear the motion. The state attorney of the circuit shall represent the State of Florida in any proceedings held on the motion.

(2) The motion shall be in writing and shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the prisoner is insane to be executed.

(3) Counsel for the prisoner shall file, along with the motion, all reports of experts that were submitted to the governor pursuant to the statutory procedure for executive determination of sanity to be executed. If any of the evidence is not available to counsel for the prisoner, counsel shall attach to the motion an affidavit so stating, with an explanation of why the evidence is unavailable.

(4) Counsel for the prisoner and the state may submit such other evidentiary material and written submissions including reports of experts on behalf of the prisoner as shall be relevant to determination of the issue.

(5) A copy of the motion and all supporting documents shall be served on the Florida Department of Legal Affairs and the state attorney of the circuit in which the motion has been

filed.

(e) Order Granting. If the circuit judge, upon review of the motion and submissions, has reasonable grounds to believe that the prisoner is insane to be executed, the judge shall grant a stay of execution and may order further proceedings which may include a hearing pursuant to rule 3.812.

Rule 3.812

Hearing On Insanity At Time of Execution: Capital Cases

(a) Hearing on Insanity to Be Executed. The hearing on the prisoner's insanity to be executed shall not be a review of the governor's determination, but shall be a hearing de novo.

(b) Issue at Hearing. At the hearing the issue shall be whether the prisoner presently meets the criteria for insanity at time of execution, that is, whether the prisoner lacks the mental capacity to understand the fact of the pending execution and the reason for it.

(c) Procedure. The court may do any of the following as may be appropriate and adequate for a just resolution of the issues raised:

(1) require the presence of the prisoner at the hearing;

(2) appoint no more than 3 disinterested mental health experts to examine the prisoner with respect to the criteria for insanity to be executed and to report their findings and conclusions to the court; or

(3) enter such other orders as may be appropriate to effectuate a speedy and just resolution of the issues raised.

(d) Evidence. At hearings held pursuant to this rule, the court may admit such evidence as the court deems relevant to the issues, including but not limited to the reports of expert witnesses, and the court shall not be strictly bound by the rules of evidence.

(e) Order. If, at the conclusion of the hearing, the court shall find, by clear and convincing evidence, that the prisoner is insane to be executed, the court shall enter its order continuing the stay of the death warrant; otherwise, the court shall deny the motion and enter its order dissolving the stay of execution.

RULE 3.820. HABEAS CORPUS

(a) Custody Pending Appeal of Order of Denial. When a defendant has been sentenced, and is actually serving the sentence, and has not appealed from the judgment or sentence, but seeks a

release from imprisonment by habeas corpus proceedings, and the writ has been discharged after it has been issued, the custody of the prisoner shall not be disturbed, pending review by the appellate court.

(b) Custody Pending Appeal of Order Granting. Pending review of a decision discharging a prisoner on habeas corpus, the prisoner shall be discharged on bail, with sureties to be approved as other bail bonds are approved for the prisoner’s appearance to answer and abide by the judgment of the appellate court.

Rule 3.820

Habeas Corpus

(a) Custody Pending Appeal of Order of Denial. When a defendant has been sentenced, and is actually serving the sentence, and has not appealed from the judgment or sentence, but seeks a release from imprisonment by habeas corpus proceedings, and the writ has been discharged after it has been issued, the custody of the prisoner shall not be disturbed, pending review by the appellate court.

(b) Custody Pending Appeal of Order Granting. Pending review of a decision discharging a prisoner on habeas corpus, the prisoner shall be discharged on bail, with sureties to be approved as other bail bonds are approved for the prisoner's appearance to answer and abide by the judgment of the appellate court.

Rule 3.830

Direct Criminal Contempt

A criminal contempt may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. The judgment of guilt of contempt shall include a recital of those facts on which the adjudication of guilt is based. Prior to the adjudication of guilt the judge shall inform the defendant of the accusation against the defendant and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of contempt by the court and sentenced therefor. The defendant shall be given the opportunity to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the judge and entered of record. Sentence shall be pronounced in open court.

Rule 3.840

Indirect Criminal Contempt

A criminal contempt, except as provided in rule 3.830 concerning direct contempts, shall be prosecuted in the following manner:

(a) Order to Show Cause. The judge, on the judge's own motion or on affidavit of any person having knowledge of the facts, may issue and sign an order directed to the defendant, stating the essential facts constituting the criminal contempt charged and requiring the defendant to appear before the court to show cause why the defendant should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of the defense after service of the order on the defendant.

(b) Motions; Answer. The defendant, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer the order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. A defendant's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

(c) Order of Arrest; Bail. The judge may issue an order of arrest of the defendant if the judge has reason to believe the defendant will not appear in response to the order to show cause. The defendant shall be admitted to bail in the manner provided by law in criminal cases.

(d) Arraignment; Hearing. The defendant may be arraigned at the time of the hearing, or prior thereto at the defendant's request. A hearing to determine the guilt or innocence of the defendant shall follow a plea of not guilty. The judge may conduct a hearing without assistance of counsel or may be assisted by the prosecuting attorney or by an attorney appointed for that purpose. The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and testify in his or her own defense. All issues of law and fact shall be heard and determined by the judge.

(e) Disqualification of Judge. If the contempt charged involves disrespect to or criticism of a judge, the judge shall disqualify himself or herself from presiding at the hearing. Another judge shall be designated by the chief justice of the supreme court.

(f) Verdict; Judgment. At the conclusion of the hearing the judge shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the defendant has been found and adjudicated guilty.

(g) Sentence; Indirect Contempt. Prior to the pronouncement of sentence, the judge shall

inform the defendant of the accusation and judgment against the defendant and inquire as to whether the defendant has any cause to show why sentence should not be pronounced. The defendant shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the defendant.

Rule 3.850

Motion to Vacate, Set Aside, or Correct Sentence

(a) Grounds for Motion. The following grounds may be claims for relief from judgment or release from custody by a person who has been tried and found guilty or has entered a plea of guilty or nolo contendere before a court established by the laws of Florida:

(1) The judgment was entered or sentence was imposed in violation of the Constitution or laws of the United States or the State of Florida.

(2) The court did not have jurisdiction to enter the judgment.

(3) The court did not have jurisdiction to impose the sentence.

(4) The sentence exceeded the maximum authorized by law.

(5) The plea was involuntary.

(6) The judgment or sentence is otherwise subject to collateral attack.

(b) Time Limitations. A motion to vacate a sentence that exceeds the limits provided by law may be filed at any time. No other motion shall be filed or considered pursuant to this rule if filed more than 2 years after the judgment and sentence become final unless it alleges that

(1) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, and the claim is made within 2 years of the time the new facts were or could have been discovered with the exercise of due diligence, or

(2) the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively, and the claim is made within 2 years of the date of the mandate of the decision announcing the retroactivity, or

(3) the defendant retained counsel to timely file a 3.850 motion and counsel, through neglect, failed to file the motion. A claim based on this exception shall not be filed more than 2 years after the expiration of the time for filing a motion for postconviction relief.

(c) Contents of Motion. The motion must be under oath stating that the defendant has read the motion or that it has been read to him or her, that the defendant understands its content, and that all of the facts stated therein are true and correct. The motion must also include an explanation of:

(1) the judgment or sentence under attack and the court that rendered the same;

(2) whether the judgment resulted from a plea or a trial;

(3) whether there was an appeal from the judgment or sentence and the disposition thereof;

(4) whether a previous postconviction motion has been filed, and if so, how many;

(5) if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions;

(6) the nature of the relief sought; and

(7) a brief statement of the facts and other conditions relied on in support of the motion.

This rule does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence. If the defendant is filing a newly discovered evidence claim based on recanted trial testimony or on a newly discovered witness, the defendant shall include an affidavit from that person as an attachment to his or her motion. For all other newly discovered evidence claims, the defendant shall attach an affidavit from any person whose testimony is necessary to factually support the defendant's claim for relief. If the affidavit is not attached to the motion, the defendant shall provide an explanation why the required affidavit could not be obtained.

(d) Form of Motion. Motions shall be typewritten or hand-written in legible printed lettering, in blue or black ink, double-spaced, with margins no less than 1 inch on white 8 1/2-by-11 inch paper. No motion, including any memorandum of law, shall exceed 50 pages without leave of the court upon a showing of good cause.

(e) Amendments to Motion. When the court has entered an order under subdivision (f)(2) or (f)(3), granting the defendant an opportunity to amend the motion, any amendment to the motion must be served within 60 days. A motion may otherwise be amended at any time prior to either the entry of an order disposing of the motion or the entry of an order pursuant to subdivision (f)(5) or directing that an answer to the motion be filed pursuant to (f)(6), whichever occurs first. Leave of court is required for the filing of an amendment after the entry of an order pursuant to subdivision (f)(5) or (f)(6). Notwithstanding the timeliness of an amendment, the court need not consider new factual assertions contained in an amendment unless the amendment is under oath. New claims for relief contained in an amendment need not be

considered by the court unless the amendment is filed within the time frame specified in subdivision (b).

(f) Procedure; Evidentiary Hearing; Disposition. On filing of a motion under this rule, the clerk shall forward the motion and file to the court. Disposition of the motion shall be in accordance with the following procedures, which are intended to result in a single, final, appealable order that disposes of all claims raised in the motion.

(1) Untimely and Insufficient Motions. If the motion is insufficient on its face, and the time to file a motion under this rule has expired prior to the filing of the motion, the court shall enter a final appealable order summarily denying the motion with prejudice.

(2) Timely but Insufficient Motions. If the motion is insufficient on its face, and the motion is timely filed under this rule, the court shall enter a nonfinal, nonappealable order allowing the defendant 60 days to amend the motion. If the amended motion is still insufficient or if the defendant fails to file an amended motion within the time allowed for such amendment, the court, in its discretion, may permit the defendant an additional opportunity to amend the motion or may enter a final, appealable order summarily denying the motion with prejudice.

(3) Timely Motions Containing Some Insufficient Claims. If the motion sufficiently states one or more claims for relief and it also attempts but fails to state additional claims, and the motion is timely filed under this rule, the court shall enter a nonappealable order granting the defendant 60 days to amend the motion to sufficiently state additional claims for relief. Any claim for which the insufficiency has not been cured within the time allowed for such amendment shall be summarily denied in an order that is a nonfinal, nonappealable order, which may be reviewed when a final, appealable order is entered.

(4) Motions Partially Disposed of by the Court Record. If the motion sufficiently states one or more claims for relief but the files and records in the case conclusively show that the defendant is not entitled to relief as to one or more claims, the claims that are conclusively refuted shall be summarily denied on the merits without a hearing. A copy of that portion of the files and records in the case that conclusively shows that the defendant is not entitled to relief as to one or more claims shall be attached to the order summarily denying these claims. The files and records in the case are the documents and exhibits previously filed in the case and those portions of the other proceedings in the case that can be transcribed. An order that does not resolve all the claims is a nonfinal, nonappealable order, which may be reviewed when a final, appealable order is entered.

(5) Motions Conclusively Resolved by the Court Record. If the motion is legally sufficient but all grounds in the motion can be conclusively resolved either as a matter of law or by reliance upon the records in the case, the motion shall be denied without a hearing by the entry of a final order. If the denial is based on the records in the case, a copy of that portion of the files and

records that conclusively shows that the defendant is entitled to no relief shall be attached to the final order.

(6) Motions Requiring a Response from the State Attorney. Unless the motion, files, and records in the case conclusively show that the defendant is entitled to no relief, the court shall order the state attorney to file, within the time fixed by the court, an answer to the motion. The answer shall respond to the allegations contained in the defendant's sufficiently pleaded claims, describe any matters in avoidance of the sufficiently pleaded claims, state whether the defendant has used any other available state postconviction remedies including any other motion under this rule, and state whether the defendant has previously been afforded an evidentiary hearing.

(7) Appointment of Counsel. The court may appoint counsel to represent the defendant under this rule. The factors to be considered by the court in making this determination include: the adversary nature of the proceeding, the complexity of the proceeding, the complexity of the claims presented, the defendant's apparent level of intelligence and education, the need for an evidentiary hearing, and the need for substantial legal research.

(8) Disposition by Evidentiary Hearing.

(A) If an evidentiary hearing is required, the court shall grant a prompt hearing and shall cause notice to be served on the state attorney and the defendant or defendant's counsel, and shall determine the issues, and make findings of fact and conclusions of law with respect thereto.

(B) At an evidentiary hearing, the defendant shall have the burden of presenting evidence and the burden of proof in support of his or her motion, unless otherwise provided by law.

(C) The order issued after the evidentiary hearing shall resolve all the claims raised in the motion and shall be considered the final order for purposes of appeal.

(g) Defendant's Presence Not Required. The defendant's presence shall not be required at any hearing or conference held under this rule except at the evidentiary hearing on the merits of any claim.

(h) Successive Motions.

(1) A second or successive motion must be titled: "Second or Successive Motion for Postconviction Relief."

(2) A second or successive motion is an extraordinary pleading. Accordingly, a court may dismiss a second or successive motion if the court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different

grounds are alleged, the judge finds that the failure of the defendant or the attorney to assert those grounds in a prior motion constituted an abuse of the procedure or there was no good cause for the failure of the defendant or defendant's counsel to have asserted those grounds in a prior motion. When a motion is dismissed under this subdivision, a copy of that portion of the files and records necessary to support the court's ruling shall accompany the order denying the motion.

(i) Service on Parties. The clerk of the court shall promptly serve on the parties a copy of any order entered under this rule, noting thereon the date of service by an appropriate certificate of service.

(j) Rehearing. Any party may file a motion for rehearing of any order addressing a motion under this rule within 15 days of the date of service of the order. A motion for rehearing is not required to preserve any issue for review in the appellate court. A motion for rehearing must be based on a good faith belief that the court has overlooked a previously argued issue of fact or law or an argument based on a legal precedent or statute not available prior to the court's ruling. A response may be filed within 10 days of service of the motion. The trial court's order disposing of the motion for rehearing shall be filed within 15 days of the response but not later than 40 days from the date of the order of which rehearing is sought.

(k) Appeals. An appeal may be taken to the appropriate appellate court only from the final order disposing of the motion. All final orders denying motions for postconviction relief shall include a statement that the defendant has the right to appeal within 30 days of the rendition of the order. All nonfinal, nonappealable orders entered pursuant to subdivision (f) should include a statement that the defendant has no right to appeal the order until entry of the final order.

(l) Belated Appeals and Discretionary Review. Pursuant to the procedures outlined in Florida Rule of Appellate Procedure 9.141, a defendant may seek a belated appeal or discretionary review.

(m) Habeas Corpus. An application for writ of habeas corpus on behalf of a prisoner who is authorized to apply for relief by motion pursuant to this rule shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court that sentenced the applicant or that the court has denied the applicant relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of the applicant's detention.

(n) Certification of Defendant; Sanctions. No motion may be filed pursuant to this rule unless it is filed in good faith and with a reasonable belief that it is timely, has potential merit, and does not duplicate previous motions that have been disposed of by the court.

(1) By signing a motion pursuant to this rule, the defendant certifies that: the defendant has read the motion or that it has been read to the defendant and that the defendant understands its

content; the motion is filed in good faith and with a reasonable belief that it is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court; and, the facts contained in the motion are true and correct.

(2) The defendant shall either certify that the defendant can understand English or, if the defendant cannot understand English, that the defendant has had the motion translated completely into a language that the defendant understands. The motion shall contain the name and address of the person who translated the motion and that person shall certify that he or she provided an accurate and complete translation to the defendant. Failure to include this information and certification in a motion shall be grounds for the entry of an order dismissing the motion pursuant to subdivision (f)(1), (f)(2), or (f)(3).

(3) Conduct prohibited under this rule includes, but is not limited to, the following: the filing of frivolous or malicious claims; the filing of any motion in bad faith or with reckless disregard for the truth; the filing of an application for habeas corpus subject to dismissal pursuant to subdivision (m); the willful violation of any provision of this rule; and the abuse of the legal process or procedures governed by this rule.

The court, upon its own motion or on the motion of a party, may determine whether a motion has been filed in violation of this rule. The court shall issue an order setting forth the facts indicating that the defendant has or may have engaged in prohibited conduct. The order shall direct the defendant to show cause, within a reasonable time limit set by the court, why the court should not find that the defendant has engaged in prohibited conduct under this rule and impose an appropriate sanction. Following the issuance of the order to show cause and the filing of any response by the defendant, and after such further hearing as the court may deem appropriate, the court shall make a final determination of whether the defendant engaged in prohibited conduct under this subsection.

(4) If the court finds by the greater weight of the evidence that the defendant has engaged in prohibited conduct under this rule, the court may impose one or more sanctions, including:

(A) contempt as otherwise provided by law;

(B) assessing the costs of the proceeding against the defendant;

(C) dismissal with prejudice of the defendant’s motion;

(D) prohibiting the filing of further pro se motions under this rule and directing the clerk of court to summarily reject any further pro se motion under this rule;

(E) requiring that any further motions under this rule be signed by a member in good standing of The Florida Bar, who shall certify that there is a good faith basis for each claim asserted in the motion; and/or

(F) if the defendant is a prisoner, a certified copy of the order be forwarded to the appropriate institution or facility for consideration of disciplinary action against the defendant, including forfeiture of gain time pursuant to Chapter 944, Florida Statutes.

(5) If the court determines there is probable cause to believe that a sworn motion contains a false statement of fact constituting perjury, the court may refer the matter to the state attorney.

Rule 3.851

Collateral Relief After Death Sentence Has Been Imposed and Affirmed On Direct Appeal

(a) Scope. This rule shall apply to all postconviction proceedings that commence upon issuance of the appellate mandate affirming the death sentence to include all motions and petitions for any type of postconviction or collateral relief brought by a defendant in state custody who has been sentenced to death and whose conviction and death sentence have been affirmed on direct appeal. It shall apply to all postconviction motions filed on or after January 1, 2015, by defendants who are under sentence of death. Motions pending on that date are governed by the version of this rule in effect immediately prior to that date.

(b) Appointment of Postconviction Counsel.

(1) Upon the issuance of the mandate affirming a judgment and sentence of death on direct appeal, the Supreme Court of Florida shall at the same time issue an order appointing the appropriate office of the Capital Collateral Regional Counsel or directing the trial court to immediately appoint counsel from the Registry of Attorneys maintained by the Justice Administrative Commission. The name of Registry Counsel shall be filed with the Supreme Court of Florida.

(2) Within 30 days of the issuance of the mandate, the Capital Collateral Regional Counsel or Registry Counsel shall file either a notice of appearance or a motion to withdraw in the trial court. Motions to withdraw filed more than 30 days after the issuance of the mandate shall not be entertained unless based on a conflict of interest as set forth in section 27.703, Florida Statutes.

(3) Within 15 days after Capital Collateral Regional Counsel or Registry Counsel files a motion to withdraw, the chief judge or assigned judge shall rule on the motion and appoint new postconviction counsel if necessary. The appointment of new collateral counsel shall be from the Registry of attorneys maintained by the Justice Administrative Commission unless the case is administratively transferred to another Capital Collateral Regional Counsel.

(4) In every capital postconviction case, one lawyer shall be designated as lead counsel for the defendant. The lead counsel shall be the defendant’s primary lawyer in all state court

litigation. No lead counsel shall be permitted to appear for a limited purpose on behalf of a defendant in a capital postconviction proceeding.

(5) After the filing of a notice of appearance, Capital Collateral Regional Counsel, Registry Counsel, or a private attorney shall represent the defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or carried out, regardless of whether another attorney represents the defendant in a federal court.

(6) A defendant who has been sentenced to death may not represent himself or herself in a capital postconviction proceeding in state court. The only bases for a defendant to seek to dismiss postconviction counsel in state court shall be pursuant to statute due to actual conflict or subdivision (i) of this rule.

(c) Preliminary Procedures.

(1) Judicial Assignment and Responsibilities. Within 30 days of the issuance of mandate affirming a judgment and sentence of death on direct appeal, the chief judge shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital proceedings. The assigned judge is responsible for case management to ensure compliance with statutes, rules, and administrative orders that impose processing steps, time deadlines, and reporting requirements for capital postconviction litigation. From the time of assignment, the judge must issue case management orders for every step of the capital postconviction process, including at the conclusion of all hearings and conferences.

(2) Status Conferences. The assigned judge shall conduct a status conference not later than 90 days after the judicial assignment, and shall hold status conferences at least every 90 days thereafter until the evidentiary hearing has been completed or the motion has been ruled on without a hearing. The attorneys, with leave of the trial court, may appear electronically at the status conferences. Requests to appear electronically shall be liberally granted. Pending motions, disputes involving public records, or any other matters ordered by the court shall be heard at the status conferences.

(3) Defendant’s Presence Not Required. The defendant’s presence shall not be required at any hearing or conference held under this rule, except at the evidentiary hearing on the merits of any claim and at any hearing involving conflict with or removal of collateral counsel.

(4) Duties of Defense Counsel. Within 45 days of appointment of postconviction counsel, the defendant’s trial counsel shall provide to postconviction counsel a copy of the original file including all work product not otherwise subject to a protective order and information pertaining to the defendant’s capital case which was created and obtained during the representation of the defendant. Postconviction counsel shall maintain the confidentiality of all confidential information received. Postconviction counsel shall bear the costs of any copying.

The defendant's trial counsel must retain the defendant's original file.

(5) Record on Appeal. The Clerk of the Supreme Court of Florida shall promptly deliver the record on appeal to the records repository after the appointment of postconviction counsel.

(d) Time Limitation.

(1) Any motion to vacate judgment of conviction and sentence of death shall be filed by the defendant within 1 year after the judgment and sentence become final. For the purposes of this rule, a judgment is final:

(A) on the expiration of the time permitted to file in the United States Supreme Court a petition for writ of certiorari seeking review of the Supreme Court of Florida decision affirming a judgment and sentence of death (90 days after the opinion becomes final); or

(B) on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.

(2) No motion shall be filed or considered pursuant to this rule if filed beyond the time limitation provided in subdivision (d)(1) unless it alleges:

(A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or

(B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or

(C) postconviction counsel, through neglect, failed to file the motion.

(3) All petitions for extraordinary relief in which the Supreme Court of Florida has original jurisdiction, including petitions for writs of habeas corpus, shall be filed simultaneously with the initial brief filed on behalf of the death-sentenced defendant in the appeal of the circuit court's order on the initial motion for postconviction relief filed under this rule.

(4) If the governor signs a death warrant before the expiration of the time limitation in subdivision (d)(1), the Supreme Court of Florida, on a defendant's request, will grant a stay of execution to allow any postconviction relief motions to proceed in a timely and orderly manner.

(5) An extension of time may be granted by the Supreme Court of Florida for the filing of postconviction pleadings if the defendant's counsel makes a showing that due to exceptional circumstances, counsel was unable to file the postconviction pleadings within the 1–year period established by this rule.

(e) Contents of Motion.

(1) Initial Motion. A motion filed under this rule is an initial postconviction motion if no state court has previously ruled on a postconviction motion challenging the same judgment and sentence. An initial motion and memorandum of law filed under this rule shall not exceed 75 pages exclusive of the attachments. Each claim or subclaim shall be separately pled and shall be sequentially numbered beginning with claim number 1. If upon motion or upon the court's own motion, a judge determines that this portion of the rule has not been followed, the judge shall give the movant 30 days to amend. If no amended motion is filed, the judge shall deem the non-compliant claim, subclaim, and/or argument waived. Attachments shall include, but are not limited to, the judgment and sentence. The memorandum of law shall set forth the applicable case law supporting the granting of relief as to each separately pled claim. This rule does not authorize relief based upon claims that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence. If claims that were raised on appeal or should have or could have been raised on appeal are contained in the motion, the memorandum of law shall contain a brief statement explaining why these claims are being raised on postconviction relief. The motion need not be under oath or signed by the defendant but shall include:

(A) a description of the judgment and sentence under attack and the court that rendered the same;

(B) a statement of each issue raised on appeal and the disposition thereof;

(C) the nature of the relief sought;

(D) a detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought;

(E) a detailed allegation as to the basis for any purely legal or constitutional claim for which an evidentiary hearing is not required and the reason that this claim could not have been or was not raised on direct appeal; and

(F) a certification from the attorney that he or she has discussed the contents of the motion fully with the defendant, that he or she has complied with Rule 4-1.4 of the Rules of Professional Conduct, and that the motion is filed in good faith.

(2) Successive Motion. A motion filed under this rule is successive if a state court has previously ruled on a postconviction motion challenging the same judgment and sentence. A claim raised in a successive motion shall be dismissed if the trial court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits; or, if new and different grounds are alleged, the trial court finds that the failure to assert those grounds in a prior motion constituted an abuse of the procedure; or, if the trial court finds there was no good cause for failing to assert those grounds in a prior motion; or, if the trial court finds the claim

fails to meet the time limitation exceptions set forth in subdivision (d)(2)(A), (d)(2)(B), or (d)(2)(C).

A successive motion shall not exceed 25 pages, exclusive of attachments, and shall include:

(A) all of the pleading requirements of an initial motion under subdivision (e)(1);

(B) the disposition of all previous claims raised in postconviction proceedings and the reason or reasons the claim or claims raised in the present motion were not raised in the former motion or motions;

(C) if based upon newly discovered evidence, Brady v. Maryland, 373 U.S. 83 (1963), or Giglio v. United States, 405 U.S. 150 (1972), the following:

(i) the names, addresses, and telephone numbers of all witnesses supporting the claim;

(ii) a statement that the witness will be available, should an evidentiary hearing be scheduled, to testify under oath to the facts alleged in the motion or affidavit;

(iii) if evidentiary support is in the form of documents, copies of all documents shall be attached, including any affidavits obtained; and

(iv) as to any witness or document listed in the motion or attachment to the motion, a statement of the reason why the witness or document was not previously available.

(f) Procedure; Evidentiary Hearing; Disposition.

(1) Filing and Service. All pleadings in the postconviction proceeding shall be filed with the clerk of the trial court and served on the assigned judge, opposing party, and the attorney general. Upon the filing of any original court document in the postconviction proceeding, the clerk of the trial court shall determine that the assigned judge has received a copy. All motions other than the postconviction motion itself shall be accompanied by a notice of hearing.

(2) Duty of Clerk. A motion filed under this rule shall be immediately delivered to the chief judge or the assigned judge along with the court file.

(3) Answer.

(A) Answer to the Initial Motion. Within 60 days of the filing of an initial motion, the state shall file its answer. The answer and accompanying memorandum of law shall not exceed 75 pages, exclusive of attachments and exhibits. The answer shall address the legal insufficiency of any claim in the motion, respond to the allegations of the motion, and address any procedural bars. The answer shall use the same claim numbering system contained in the defendant’s initial motion. As to any claims of legal insufficiency or procedural bar, the state shall include a short

statement of any applicable case law.

(B) Answer to a Successive Motion. Within 20 days of the filing of a successive motion, the state shall file its answer. The answer shall not exceed 25 pages, exclusive of attachments and exhibits. The answer shall use the same claim numbering system contained in the defendant's motion. The answer shall specifically respond to each claim in the motion and state the reason(s) that an evidentiary hearing is or is not required.

(4) Amendments. A motion filed under this rule may not be amended unless good cause is shown. A copy of the claim sought to be added must be attached to the motion to amend. The trial court may in its discretion grant a motion to amend provided that the motion to amend was filed at least 45 days before the scheduled evidentiary hearing. Granting a motion under this subdivision shall not be a basis for granting a continuance of the evidentiary hearing unless a manifest injustice would occur if a continuance was not granted. If amendment is allowed, the state shall file an amended answer within 20 days after the judge allows the motion to be amended.

(5) Case Management Conference; Evidentiary Hearing.

(A) Initial Postconviction Motion. No later than 90 days after the state files its answer to an initial motion, the trial court shall hold a case management conference. At the case management conference, the defendant shall disclose all documentary exhibits that he or she intends to offer at the evidentiary hearing and shall file and serve an exhibit list of all such exhibits and a witness list with the names and addresses of any potential witnesses. All expert witnesses shall be specifically designated on the witness list and copies of all expert reports shall be attached. Within 60 days after the case management conference, the state shall disclose all documentary exhibits that it intends to offer at the evidentiary hearing and shall file and serve an exhibit list of all such exhibits and a witness list with the names and addresses of any potential witnesses. All expert witnesses shall be specifically designated on the witness list and copies of all expert reports shall be attached. At the case management conference, the trial court shall:

(i) schedule an evidentiary hearing, to be held within 150 days, on claims listed by the defendant as requiring a factual determination;

(ii) hear argument on any purely legal claims not based on disputed facts; and

(iii) resolve disputes arising from the exchange of information under this subdivision.

(B) Successive Postconviction Motion. Within 30 days after the state files its answer to a successive motion for postconviction relief, the trial court shall hold a case management conference. At the case management conference, the trial court also shall determine whether an

evidentiary hearing should be held and hear argument on any purely legal claims not based on disputed facts. If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing. If the trial court determines that an evidentiary hearing should be held, the court shall schedule the hearing to be held within 90 days. If a death warrant has been signed, the trial court shall expedite these time periods in accordance with subdivision (h) of this rule.

(C) Extension of Time to Hold Evidentiary Hearing. The trial court also may for good cause extend the time for holding an evidentiary hearing for up to 90 days.

(D) Taking Testimony. Upon motion, or upon its own motion and without the consent of any party, the court may permit a witness to testify at the evidentiary hearing by contemporaneous video communication equipment that makes the witness visible to all parties during the testimony. There must be appropriate safeguards for the court to maintain sufficient control over the equipment and the transmission of the testimony so the court may stop the communication to accommodate objections or prevent prejudice. If testimony is taken through video communication equipment, there must be a notary public or other person authorized to administer oaths in the witness's jurisdiction who is present with the witness and who administers the oath consistent with the laws of the jurisdiction where the witness is located. The cost for the use of video communication equipment is the responsibility of either the requesting party or, if upon its own motion, the court.

(E) Procedures After Evidentiary Hearing. Immediately following an evidentiary hearing, the trial court shall order a transcript of the hearing, which shall be filed within 10 days if real-time transcription was utilized, or within 45 days if real-time transcription was not utilized. The trial judge may permit written closing arguments instead of oral closing arguments. If the trial court permits the parties to submit written closing arguments, the arguments shall be filed by both parties within 30 days of the filing of the transcript of the hearing. No answer or reply arguments shall be allowed. Written arguments shall be in compliance with the requirements for briefs in rule 9.210(a)(1) and (a)(2), shall not exceed 60 pages without leave of court, and shall include proposed findings of facts and conclusions of law, with citations to authority and to appropriate portions of the transcript of the hearing.

(F) Rendition of the Order. If the court does not permit written closing arguments, the court shall render its order within 30 days of the filing of the transcript of the hearing. If the court permits written closing arguments, the court shall render its order within 30 days of the filing of the last written closing argument and no later than 60 days from the filing of the transcript of the hearing. The court shall rule on each claim considered at the evidentiary hearing and all other claims raised in the motion, making detailed findings of fact and conclusions of law with respect to each claim, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review. The order issued after the evidentiary hearing shall

resolve all the claims raised in the motion and shall be considered the final order for purposes of appeal. The clerk of the trial court shall promptly serve upon the parties and the attorney general a copy of the final order, with a certificate of service.

(6) Experts and Other Witnesses. All expert witnesses who will testify at the evidentiary hearing must submit written reports, which shall be disclosed to opposing counsel as provided in subdivision (f)(5)(A). If the defendant intends to offer expert testimony of his or her mental status, the state shall be entitled to have the defendant examined by its own mental health expert. If the defendant fails to cooperate with the state's expert, the trial court may, in its discretion, proceed as provided in rule 3.202(e).

(7) Rehearing. Motions for rehearing shall be filed within 15 days of the rendition of the trial court's order and a response thereto filed within 10 days thereafter. A motion for rehearing shall be based on a good faith belief that the court has overlooked a previously argued issue of fact or law or an argument based on a legal precedent or statute not available prior to the court's ruling. The trial court's order disposing of the motion for rehearing shall be rendered not later than 30 days from the filing of the motion for rehearing. If no order is filed within 30 days from the filing of the motion for rehearing, the motion is deemed denied. A motion for rehearing is not required to preserve any issue for review.

(8) Appeals. Any party may appeal a final order entered on a defendant's motion for rule 3.851 relief by filing a notice of appeal with the clerk of the lower tribunal within 30 days of the rendition of the order to be reviewed. Pursuant to the procedures outlined in Florida Rule of Appellate Procedure 9.142, a defendant under sentence of death may petition for a belated appeal.

(g) Incompetence to Proceed in Capital Collateral Proceedings.

(1) A death-sentenced defendant pursuing collateral relief under this rule who is found by the court to be mentally incompetent shall not be proceeded against if there are factual matters at issue, the development or resolution of which require the defendant's input. However, all collateral relief issues that involve only matters of record and claims that do not require the defendant's input shall proceed in collateral proceedings notwithstanding the defendant's incompetency.

(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.

(3) If, at any stage of a postconviction proceeding, the court determines that there are reasonable grounds to believe that a death-sentenced defendant is incompetent to proceed and that factual matters are at issue, the development or resolution of which require the defendant's

input, a judicial determination of incompetency is required.

(4) The motion for competency examination shall be in writing and shall allege with specificity the factual matters at issue and the reason that competent consultation with the defendant is necessary with respect to each factual matter specified. To the extent that it does not invade the lawyer-client privilege with collateral counsel, the motion shall contain a recital of the specific observations of, and conversations with, the death-sentenced defendant that have formed the basis of the motion.

(5) If the court finds that there are reasonable grounds to believe that a death-sentenced defendant is incompetent to proceed in a postconviction proceeding in which factual matters are at issue, the development or resolution of which require the defendant's input, the court shall order the defendant examined by no more than 3, nor fewer than 2, experts before setting the matter for a hearing. The court may seek input from the death-sentenced defendant's counsel and the state attorney before appointment of the experts.

(6) The order appointing experts shall:

(A) identify the purpose of the evaluation and specify the area of inquiry that should be addressed;

(B) specify the legal criteria to be applied; and

(C) specify the date by which the report shall be submitted and to whom it shall be submitted.

(7) Counsel for both the death-sentenced defendant and the state may be present at the examination, which shall be conducted at a date and time convenient for all parties and the Department of Corrections.

(8) On appointment by the court, the experts shall examine the death-sentenced defendant with respect to the issue of competence to proceed, as specified by the court in its order appointing the experts to evaluate the defendant, and shall evaluate the defendant as ordered.

(A) The experts first shall consider factors related to the issue of whether the death-sentenced defendant meets the criteria for competence to proceed, that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational as well as factual understanding of the pending collateral proceedings.

(B) In considering the issue of competence to proceed, the experts shall consider and include in their report:

(i) the defendant's capacity to understand the adversary nature of the legal process and the

collateral proceedings;

(ii) the defendant's ability to disclose to collateral counsel facts pertinent to the postconviction proceeding at issue; and

(iii) any other factors considered relevant by the experts and the court as specified in the order appointing the experts.

(C) Any written report submitted by an expert shall:

(i) identify the specific matters referred for evaluation;

(ii) describe the evaluative procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(iii) state the expert's clinical observations, findings, and opinions on each issue referred by the court for evaluation, and indicate specifically those issues, if any, on which the expert could not give an opinion; and

(iv) identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.

(9) If the experts find that the death-sentenced defendant is incompetent to proceed, the experts shall report on any recommended treatment for the defendant to attain competence to proceed. In considering the issues relating to treatment, the experts shall report on:

(A) the mental illness or intellectual disability causing the incompetence;

(B) the treatment or treatments appropriate for the mental illness or intellectual disability of the defendant and an explanation of each of the possible treatment alternatives in order of choices; and

(C) the likelihood of the defendant attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future.

(10) Within 30 days after the experts have completed their examinations of the death-sentenced defendant, the court shall schedule a hearing on the issue of the defendant's competence to proceed.

(11) If, after a hearing, the court finds the defendant competent to proceed, or, after having found the defendant incompetent, finds that competency has been restored, the court shall enter its order so finding and shall proceed with a postconviction motion. The defendant shall have 60 days to amend his or her rule 3.851 motion only as to those issues that the court found

required factual consultation with counsel.

(12) If the court does not find the defendant incompetent, the order shall contain:

(A) findings of fact relating to the issues of competency;

(B) copies of the reports of the examining experts; and

(C) copies of any other psychiatric, psychological, or social work reports submitted to the court relative to the mental state of the death-sentenced defendant.

(13) If the court finds the defendant incompetent or finds the defendant competent subject to the continuation of appropriate treatment, the court shall follow the procedures set forth in rule 3.212(c), except that, to the extent practicable, any treatment shall take place at a custodial facility under the direct supervision of the Department of Corrections.

(h) After Death Warrant Signed.

(1) Judicial Assignment. The chief judge of the circuit shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital cases as soon as notification of the death warrant is received.

(2) Calendar Advancement. Proceedings after a death warrant has been issued shall take precedence over all other cases. The assigned judge shall make every effort to resolve scheduling conflicts with other cases including cancellation or rescheduling of hearings or trials and requesting senior judge assistance.

(3) Schedule of Proceedings. The time limitations in this rule shall not apply after a death warrant has been signed. All motions shall be heard expeditiously considering the time limitations set by the date of execution and the time required for appellate review.

(4) Location of Hearings. The location of hearings after a death warrant is signed shall be determined by the trial judge considering the availability of witnesses or evidence, the security problems involved in the case, and any other factor determined by the trial court.

(5) Postconviction Motions. All motions filed after a death warrant is issued shall be considered successive motions and subject to the content requirement of subdivision (e)(2) of this rule.

(6) Case Management Conference. The assigned judge shall schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been signed. During the case management conference the court shall set a time for filing a postconviction motion and shall schedule a hearing to determine whether an evidentiary hearing should be held and hear argument on any purely legal claims not based on disputed

facts. If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing. If the trial court determines that an evidentiary hearing should be held, the court shall schedule the hearing to be held as soon as reasonably possible considering the time limitations set by the date of execution and the time required for appellate review.

(7) Reporting. The assigned judge shall require the proceedings conducted under death warrant to be reported using the most advanced and accurate technology available in general use at the location of the hearing. The proceedings shall be transcribed expeditiously considering the time limitations set by the execution date.

(8) Procedures After Hearing. The court shall obtain a transcript of all proceedings and shall render its order as soon as possible after the hearing is concluded. A copy of the final order shall be electronically transmitted to the Supreme Court of Florida and to the attorneys of record.

(9) Transmittal of Record. The record shall be immediately delivered to the clerk of the Supreme Court of Florida by the clerk of the trial court or as ordered by the assigned judge. The record shall also be electronically transmitted if the technology is available. A notice of appeal shall not be required to transmit the record.

(i) Dismissal of Postconviction Proceedings.

(1) This subdivision applies only when a defendant seeks both to dismiss pending postconviction proceedings and to discharge collateral counsel.

(2) If the defendant files the motion pro se, the Clerk of the Court shall serve copies of the motion on counsel of record for both the defendant and the state. Counsel of record may file responses within 10 days.

(3) The trial judge shall review the motion and the responses and schedule a hearing. The defendant, collateral counsel, and the state shall be present at the hearing.

(4) The judge shall examine the defendant at the hearing and shall hear argument of the defendant, collateral counsel, and the state. No fewer than 2 or more than 3 qualified experts shall be appointed to examine the defendant if the judge concludes that there are reasonable grounds to believe the defendant is not mentally competent for purposes of this rule. The experts shall file reports with the court setting forth their findings. Thereafter, the court shall conduct an evidentiary hearing and enter an order setting forth findings of competency or incompetency.

(5) If the defendant is found to be incompetent for purposes of this rule, the court shall deny the motion without prejudice.

(6) If the defendant is found to be competent for purposes of this rule, the court shall conduct a complete (Durocher/Faretta) inquiry to determine whether the defendant knowingly, freely and voluntarily wants to dismiss pending postconviction proceedings and discharge collateral counsel.

(7) If the court determines that the defendant has made the decision to dismiss pending postconviction proceedings and discharge collateral counsel knowingly, freely, and voluntarily, the court shall enter an order dismissing all pending postconviction proceedings and discharging collateral counsel. But if the court determines that the defendant has not made the decision to dismiss pending postconviction proceedings and discharge collateral counsel knowingly, freely, and voluntarily, the court shall enter an order denying the motion without prejudice.

(8) If the court grants the motion:

(A) a copy of the motion, the order, and the transcript of the hearing or hearings conducted on the motion shall be forwarded to the Clerk of the Supreme Court of Florida within 30 days; and

(B) discharged counsel shall, within 10 days after issuance of the order, file with the clerk of the circuit court 2 copies of a notice seeking review in the Supreme Court of Florida, and shall, within 20 days after the filing of the transcript, serve an initial brief. Both the defendant and the state may serve responsive briefs. Briefs shall be served as prescribed by rule 9.210.

(9) If the court denies the motion, the defendant may seek review as prescribed by Florida Rule of Appellate Procedure 9.142(b).

(j) Attorney General Notification to Clerk. The Office of the Attorney General shall notify the clerk of the supreme court when it believes the defendant has completed his or her direct appeal, initial postconviction proceeding in state court, and habeas corpus proceeding and appeal therefrom in federal court. The Office of the Attorney General shall serve a copy of the notification on defendant’s counsel of record.

Rule 3.852

Capital Postconviction Public Records Production

(a) Applicability and Scope.

(1) This rule is applicable only to the production of public records for capital postconviction defendants and does not change or alter the time periods specified in Florida Rule of Criminal Procedure 3.851. Furthermore, this rule does not affect, expand, or limit the production of

public records for any purposes other than use in a proceeding held pursuant to rule 3.850 or rule 3.851.

(2) This rule shall not be a basis for renewing requests that have been initiated previously or for relitigating issues pertaining to production of public records upon which a court has ruled prior to October 1, 1998.

(3) This rule is to be used in conjunction with the forms found at Florida Rule of Criminal Procedure 3.993.

(b) Definitions.

(1) "Public records" has the meaning set forth in section 119.011, Florida Statutes.

(2) "Trial court" means:

(A) the judge who entered the judgment and imposed the sentence of death; or

(B) the judge assigned by the chief judge.

(3) "Records repository" means the location designated by the secretary of state pursuant to section 27.7081, Florida Statutes, for archiving capital postconviction public records.

(4) "Collateral counsel" means a capital collateral regional counsel from one of the three regions in Florida; a private attorney who has been appointed to represent a capital defendant for postconviction litigation; or a private attorney who has been hired by the capital defendant or who has agreed to work pro bono for a capital defendant for postconviction litigation.

(5) "Agency" means an entity or individual as defined in section 119.011, Florida Statutes, that is subject to the requirements of producing public records for inspection under section 119.07, Florida Statutes.

(6) "Index" means a list of the public records included in each container of public records sent to the records repository.

(c) Filing and Service.

(1) The original of all notices, requests, or objections filed under this rule must be filed with the clerk of the trial court. Copies must be served on the trial court, the attorney general, the state attorney, collateral counsel, and any affected person or agency, unless otherwise required by this rule.

(2) Service shall be made pursuant to Florida Rule of Criminal Procedure 3.030.

(3) In all instances requiring written notification or request, the party who has the obligation

of providing a notification or request shall provide proof of receipt.

(4) Persons and agencies receiving postconviction public records notifications or requests pursuant to this rule are not required to furnish records filed in a trial court prior to the receipt of the notice.

(d) Action Upon Issuance of Mandate.

(1) Within 15 days after receiving written notification of the Supreme Court of Florida's mandate affirming the sentence of death, the attorney general shall file with the trial court a written notice of the mandate and serve a copy of it upon the state attorney who prosecuted the case, the Department of Corrections, and the defendant's trial counsel. The notice to the state attorney shall direct the state attorney to submit public records to the records repository within 90 days after receipt of written notification and to notify each law enforcement agency involved in the investigation of the capital offense, with a copy to the trial court, to submit public records to the records repository within 90 days after receipt of written notification. The notice to the Department of Corrections shall direct the department to submit public records to the records repository within 90 days after receipt of written notification. The attorney general shall make a good faith effort to assist in the timely production of public records and written notices of compliance by the state attorney and the Department of Corrections with copies to the trial court.

(2) Within 90 days after receiving written notification of issuance of the Supreme Court of Florida's mandate affirming a death sentence, the state attorney shall provide written notification to the attorney general and to the trial court of the name and address of any additional person or agency that has public records pertinent to the case.

(3) Within 90 days after receiving written notification of issuance of the Supreme Court of Florida's mandate affirming a death sentence, the defendant's trial counsel shall provide written notification to the attorney general and to the trial court of the name and address of any person or agency with information pertinent to the case which has not previously been provided to collateral counsel.

(4) Within 15 days after receiving written notification of any additional person or agency pursuant to subdivision (d)(2) or (d)(3) of this rule, the attorney general shall notify all persons or agencies identified pursuant to subdivisions (d)(2) or (d)(3), with a copy to the trial court, that these persons or agencies are required by law to copy, index, and deliver to the records repository all public records pertaining to the case that are in their possession. The person or agency shall bear the costs related to copying, indexing, and delivering the records. The attorney general shall make a good faith effort to assist in the timely production of public records and a written notice of compliance by each additional person or agency with a copy to the trial court.

(e) Action Upon Receipt of Notice of Mandate.

(1) Within 15 days after receipt of a written notice of the mandate from the attorney general, the state attorney shall provide written notification to each law enforcement agency involved in the specific case to submit public records to the records repository within 90 days after receipt of written notification. A copy of the notice shall be served upon the defendant's trial counsel and the trial court. The state attorney shall make a good faith effort to assist in the timely production of public records and a written notice of compliance by each law enforcement agency with a copy to the trial court.

(2) Within 90 days after receipt of a written notice of the mandate from the attorney general, the state attorney shall copy, index, and deliver to the records repository all public records, in a current, nonproprietary technology format, that were produced in the state attorney's investigation or prosecution of the case. The state attorney shall bear the costs. The state attorney shall also provide written notification to the attorney general and the trial court of compliance with this section, including certifying that, to the best of the state attorney's knowledge or belief, all public records in the state attorney's possession have been copied, indexed, and delivered to the records repository as required by this rule.

(3) Within 90 days after receipt of written notification of the mandate from the attorney general, the Department of Corrections shall copy, index, and deliver to the records repository all public records, in a current, nonproprietary technology format, determined by the department to be relevant to the subject matter of a proceeding under rule 3.851, unless such copying, indexing, and delivering would be unduly burdensome. To the extent that the records determined by the department to be relevant to the subject matter of a proceeding under rule 3.851 are the defendant's medical, psychological, substance abuse, or psychiatric records, upon receipt of express consent by the defendant or pursuant to the authority of a court of competent jurisdiction, the department shall provide a copy of the defendant's medical, psychological, substance abuse, and psychiatric records to the defendant's counsel of record. The department shall bear the costs. The secretary of the department shall provide written notification to the attorney general and the trial court of compliance with this section certifying that, to the best of the secretary of the department's knowledge or belief, all such public records in the possession of the secretary of the department have been copied, indexed, and delivered to the records repository.

(4) Within 90 days after receipt of written notification of the mandate from the state attorney, a law enforcement agency shall copy, index, and deliver to the records repository all public records, in a current, nonproprietary technology format, which were produced in the investigation or prosecution of the case. Each agency shall bear the costs. The chief law enforcement officer of each law enforcement agency shall provide written notification to the attorney general and the trial court of compliance with this section including certifying that, to

the best of the chief law enforcement officer's knowledge or belief, all such public records in possession of the agency or in possession of any employee of the agency, have been copied, indexed, and delivered to the records repository.

(5) Within 90 days after receipt of written notification of the mandate from the attorney general, each additional person or agency identified pursuant to subdivision (d)(2) or (d)(3) of this rule shall copy, index, and deliver to the records repository all public records, in a current, nonproprietary technology format, which were produced during the prosecution of the case. The person or agency shall bear the costs. The person or agency shall provide written notification to the attorney general and the trial court of compliance with this subdivision and shall certify, to the best of the person or agency's knowledge and belief, all such public records in the possession of the person or agency have been copied, indexed, and delivered to the records repository.

(f) Exempt or Confidential Public Records.

(1) Any public records delivered to the records repository pursuant to these rules that are confidential or exempt from the requirements of section 119.07, Florida Statutes, or article I, section 24(a), Florida Constitution, must be separately contained, without being redacted, and sealed. The outside of the container must clearly identify that the public record is confidential or exempt and that the seal may not be broken without an order of the trial court. The outside of the container must identify the nature of the public records and the legal basis for the exemption.

(2) Upon the entry of an appropriate court order, sealed containers subject to an inspection by the trial court shall be shipped to the clerk of court. The containers may be opened only for inspection by the trial court in camera. The moving party shall bear all costs associated with the transportation and inspection of such records by the trial court. The trial court shall perform the unsealing and inspection without ex parte communications and in accord with procedures for reviewing sealed documents.

(3) Collateral counsel must file a motion for in camera inspection within 30 days of receipt of the notice of delivery of the sealed records to the central records repository, or the in camera inspection will be deemed waived.

(g) Demand for Additional Public Records.

(1) Within 240 days after collateral counsel is appointed, retained, or appears pro bono, such counsel shall send a written demand for additional public records to each person or agency submitting public records or identified as having information pertinent to the case under subdivision (d) of this rule, with a copy to the trial court. However, if collateral counsel was appointed prior to October 1, 2001, then within 90 days after collateral counsel is appointed,

retained, or appears pro bono, such counsel shall send a written demand for additional public records to each person or agency submitting public records or identified as having information pertinent to the case under subdivision (d) of this rule.

(2) Within 90 days of receipt of the written demand, each person or agency notified under this subdivision shall deliver to the records repository any additional public records in the possession of the person or agency that pertain to the case and shall certify to the best of the person or agency's knowledge and belief that all additional public records have been delivered to the records repository or, if no additional public records are found, shall recertify that the public records previously delivered are complete. To the extent that the additional public records are the defendant's Department of Corrections' medical, psychological, substance abuse, or psychiatric records, upon receipt of express consent by the defendant or pursuant to the authority of a court of competent jurisdiction, the department shall provide a copy of the defendant's medical, psychological, substance abuse, and psychiatric records to the defendant's counsel of record. A copy of each person's or agency's certification shall be provided to the trial court.

(3) Within 60 days of receipt of the written demand, any person or agency may file with the trial court an objection to the written demand described in subdivision (g)(1). The trial court shall hear and rule on any objection no later than the next 90-day status conference after the filing of the objection, ordering a person or agency to produce additional public records if the court determines each of the following exists:

(A) Collateral counsel has made a timely and diligent search as provided in this rule.

(B) Collateral counsel's written demand identifies, with specificity, those additional public records that are not at the records repository.

(C) The additional public records sought are relevant to the subject matter of a proceeding under rule 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence.

(D) The additional public records request is not overly broad or unduly burdensome.

(h) Cases in Which Mandate was Issued Prior to Effective Date of Rule.

(1) If the mandate affirming a defendant's conviction and sentence of death was issued prior to October 1, 1998, and no initial public records requests have been made by collateral counsel by that date, the attorney general and the state attorney shall file notifications with the trial court as required by subdivisions (d) and (e) of this rule.

(2) If on October 1, 1998, a defendant is represented by collateral counsel and has initiated the public records process, collateral counsel shall, within 90 days after October 1, 1998, or

within 90 days after the production of records which were requested prior to October 1, 1998, whichever is later, file with the trial court and serve a written demand for any additional public records that have not previously been the subject of a request for public records. The request for these records shall be treated the same as a request pursuant to subdivisions (d)(3) and (d)(4) of this rule, and the records shall be copied, indexed, and delivered to the repository as required in subdivision (e)(5) of this rule.

(3) Within 10 days of the signing of a defendant's death warrant, collateral counsel may request in writing the production of public records from a person or agency from which collateral counsel has previously requested public records. A person or agency shall copy, index, and deliver to the repository any public record:

(A) that was not previously the subject of an objection;

(B) that was received or produced since the previous request; or

(C) that was, for any reason, not produced previously.

The person or agency providing the records shall bear the costs of copying, indexing, and delivering such records. If none of these circumstances exist, the person or agency shall file with the trial court and the parties an affidavit stating that no other records exist and that all public records have been produced previously. A person or agency shall comply with this subdivision within 10 days from the date of the written request or such shorter time period as is ordered by the court.

(4) In all instances in subdivision (h) which require written notification the receiving party shall provide proof of receipt by return mail or other carrier.

(i) Limitation on Postproduction Request for Additional Records.

(1) In order to obtain public records in addition to those provided under subdivisions (e), (f), (g), and (h) of this rule, collateral counsel shall file an affidavit in the trial court which:

(A) attests that collateral counsel has made a timely and diligent search of the records repository; and

(B) identifies with specificity those public records not at the records repository; and

(C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and

(D) shall be served in accord with subdivision (c)(1) of this rule.

(2) Within 30 days after the affidavit of collateral counsel is filed, the trial court may order a person or agency to produce additional public records only upon finding each of the following:

(A) collateral counsel has made a timely and diligent search of the records repository;

(B) collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository;

(C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and

(D) the additional records request is not overly broad or unduly burdensome.

(j) Authority of the Court. In proceedings under this rule the trial court may:

(1) compel or deny disclosure of records;

(2) conduct an in-camera inspection;

(3) extend the times in this rule upon a showing of good cause;

(4) require representatives from government agencies to appear at status conferences to address public records issues;

(5) impose sanctions upon any party, person, or agency affected by this rule including initiating contempt proceedings, taxing expenses, extending time, ordering facts to be established, and granting other relief; and

(6) resolve any dispute arising under this rule unless jurisdiction is in an appellate court.

(k) Scope of Production and Resolution of Production Issues.

(1) Unless otherwise limited, the scope of production under any part of this rule shall be that the public records sought are not privileged or immune from production and are either relevant to the subject matter of the proceeding under rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence.

(2) Any objections or motions to compel production of public records pursuant to this rule shall be filed within 30 days after the end of the production time period provided by this rule. Counsel for the party objecting or moving to compel shall file a copy of the objection or motion directly with the trial court. The trial court shall hold a hearing on the objection or motion on an expedited basis.

(l) Destruction of Records Repository Records. Sixty days after a capital sentence is carried

out, after a defendant is released from incarceration following the granting of a pardon or reversal of the sentence, or after a defendant has been resentenced to a term of years, the attorney general shall provide written notification of this occurrence to the secretary of state with service in accord with subdivision (c)(1). After the expiration of the 60 days, the secretary of state may then destroy the copies of the records held by the records repository that pertain to that case, unless an objection to the destruction is filed in the trial court and served upon the secretary of state and in accord with subdivision (c)(1). If no objection has been served within the 60–day period, the records may then be destroyed. If an objection is served, the records shall not be destroyed until a final disposition of the objection.

Rule 3.853

Motion for Postconviction Dna Testing

(a) Purpose. This rule provides procedures for obtaining DNA (deoxyribonucleic acid) testing under sections 925.11 and 925.12, Florida Statutes.

(b) Contents of Motion. The motion for postconviction DNA testing must be under oath and must include the following:

(1) a statement of the facts relied upon in support of the motion, including a description of the physical evidence containing DNA to be tested and, if known, the present location or last known location of the evidence and how it originally was obtained;

(2) a statement that the evidence was not previously tested for DNA, or a statement that the results of previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the movant is not the person who committed the crime;

(3) a statement that the movant is innocent and how the DNA testing requested by the motion will exonerate the movant of the crime for which the movant was sentenced, or a statement how the DNA testing will mitigate the sentence received by the movant for that crime;

(4) a statement that identification of the movant is a genuinely disputed issue in the case and why it is an issue or an explanation of how the DNA evidence would either exonerate the defendant or mitigate the sentence that the movant received;

(5) a statement of any other facts relevant to the motion; and

(6) a certificate that a copy of the motion has been served on the prosecuting authority.

(c) Procedure.

(1) Upon receipt of the motion, the clerk of the court shall file it and deliver the court file to the assigned judge.

(2) The court shall review the motion and deny it if it is facially insufficient. If the motion is facially sufficient, the prosecuting authority shall be ordered to respond to the motion within 30 days or such other time as may be ordered by the court.

(3) Upon receipt of the response of the prosecuting authority, the court shall review the response and enter an order on the merits of the motion or set the motion for hearing.

(4) In the event that the motion shall proceed to a hearing, the court may appoint counsel to assist the movant if the court determines that assistance of counsel is necessary and upon a determination of indigency pursuant to section 27.52, Florida Statutes.

(5) The court shall make the following findings when ruling on the motion:

(A) Whether it has been shown that physical evidence that may contain DNA still exists.

(B) Whether the results of DNA testing of that physical evidence likely would be admissible at trial and whether there exists reliable proof to establish that the evidence containing the tested DNA is authentic and would be admissible at a future hearing.

(C) Whether there is a reasonable probability that the movant would have been acquitted or would have received a lesser sentence if the DNA evidence had been admitted at trial.

(6) If the court orders DNA testing of the physical evidence, the cost of the testing may be assessed against the movant, unless the movant is indigent. If the movant is indigent, the state shall bear the cost of the DNA testing ordered by the court.

(7) The court-ordered DNA testing shall be ordered to be conducted by the Department of Law Enforcement or its designee, as provided by statute. However, the court, upon a showing of good cause, may order testing by another laboratory or agency certified by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or Forensic Quality Services, Inc. (FQS) if requested by a movant who can bear the cost of such testing.

(8) The results of the DNA testing ordered by the court shall be provided in writing to the court, the movant, and the prosecuting authority.

(d) Time Limitations. The motion for postconviction DNA testing may be filed or considered at any time following the date that the judgment and sentence in the case becomes final.

(e) Rehearing. The movant may file a motion for rehearing of any order denying relief within 15 days after service of the order denying relief. The time for filing an appeal shall be tolled until an order on the motion for rehearing has been entered.

(f) Appeal. An appeal may be taken by any adversely affected party within 30 days from the date the order on the motion is rendered. All orders denying relief must include a statement that the movant has the right to appeal within 30 days after the order denying relief is rendered.

Rule 3.984

Application for Criminal Indigent Status

IN THE CIRCUIT/COUNTY COURT OF THE _____ JUDICIAL CIRCUIT IN AND FOR _____ COUNTY, FLORIDA

STATE OF FLORIDA vs. CASE NO.

Defendant/Minor Child

APPLICATION FOR CRIMINAL INDIGENT STATUS

___ I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER

OR

____ I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender/court appointed lawyer and costs/due process services are not free. A judgment and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a $50.00 fee for each application filed.

If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case. If you are a parent/guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

1. **I have _____ dependents.** *(Do not include children not living at home and do not include a working spouse or yourself.)*
2. **I have a take home income of $**_____ paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly ( ) yearly

(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and

similar payments, ***minus*** *deductions required by law and other court ordered support payments)*

3. **I have other income** paid ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly ( ) yearly: *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No.")*

Social Security benefits..... Yes $_____ No

Unemployment compensation..... Yes $_____ No

Union Funds..... Yes $_____ No

Workers compensation..... Yes $_____ No

Retirement/pensions..... Yes $_____ No

Trusts or gifts..... . Yes $_____ No

Veterans' benefit..... Yes $_____ No

Child support or other regular support from family members/spouse..... Yes $_____ No

Rental income..... Yes $_____ No

Dividends or interest..... Yes $_____ No

Other kinds of income not on the list.... Yes $_____ No

4. **I have other assets:***(Circle "Yes" and fill in the value of the property, otherwise circle "No")*

Cash..... Yes $_____ No

Bank account(s)..... Yes $_____ No

Certificates of deposit or money market accounts..... Yes $_____ No

* Equity in Motor vehicles/Boats/ Other tangible property..... Yes $_____ No

Savings..... Yes $_____ No

Stocks/bonds..... Yes $_____ No

* Equity in Real estate (excluding homestead)..... Yes $_____ No

* include expectancy of an interest in such property

5. **I have a total amount of liabilities and debts in the amount of $.**
6. **I receive:***(Circle "Yes" or "No")*

Temporary Assistance for Needy Families-Cash Assistance..... Yes No

Poverty-related veterans' benefits..... Yes No

Supplemental Security Income (SSI)..... Yes No

7. **I have been released on bail in the amount of $_____. Cash ___ Surety ___ Posted by:** Self ___ Family ___ Other ____

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under section 27.52, Florida Statutes, commits a misdemeanor of the first degree, punishable as provided in section 775.082, Florida Statutes, or section 775.083, Florida Statutes. **I attest that the information I have provided on this Application is true and accurate.**

Signed this day of , 20 .

Date of Birth Signature of Applicant for Indigent Status

Last 4 Digits of Driver's License or ID Number Print full legal name Address City, State, Zip Phone number

CLERK'S DETERMINATION

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent

The Public Defender is hereby appointed to the case listed above until relieved by the Court.

Dated this day of , 20 .

Clerk of the Circuit Court

This form was completed Clerk/Deputy Clerk/Other with the assistance of authorized person

APPLICANTS FOUND NOT INDIGENT MAY SEEK REVIEW BY ASKING FOR A HEARING TIME. Sign here if you want the judge to review the clerk's decision of not indigent.

Rule 3.985

Standard Jury Instructions

The forms of Florida Standard Jury Instructions in Criminal Cases appearing on the court's website at www.floridasupremecourt.org/jury _instructions/instructions.shtml may be used by the trial judges of this state in charging the jury in every criminal case to the extent that the forms are applicable, unless the trial judge shall determine that an applicable form of instruction is erroneous or inadequate, in which event the judge shall modify or amend the form or give such other instruction as the trial judge shall determine to be necessary to instruct the jury accurately and sufficiently on the circumstances of the case; and, in such event, the trial judge shall state on the record or in a separate order the respect in which the judge finds the standard form erroneous or inadequate and the legal basis of the judge's finding. Similarly, in all circumstances in which the notes accompanying the Florida Standard Jury Instructions in Criminal Cases contain a recommendation that a certain type of instruction not be given, the trial judge may follow the recommendation unless the judge shall determine that the giving of such an instruction is necessary to instruct the jury accurately and sufficiently, in which event the judge shall give such instruction as the judge shall deem appropriate and necessary; and, in such event, the trial judge shall state on the record or in a separate order the legal basis of the determination that the instruction is necessary.

Rule 3.9855

Juror Voir Dire Questionnaire

JUROR VOIR DIRE QUESTIONNAIRE

1. Name and date of birth

2. What city, town or area of the county do you live in?

Zip code

3. Years of residence: In Florida

In this county

4. Former residence

5. Marital status (married, single, divorced, widow, or widower)

6. Your occupation and employer

7. If you are not now employed, give your last occupation and employer

8. If married, name and occupation of spouse

9. Have you ever served as a juror before? yes _____ no ____

If yes, civil ____ criminal ____

Did the jury reach a verdict? yes _____ no _____

Were you the foreperson? yes _____ no _____

10. If you have children, give the age, sex and occupation of those children

11. Are you either a close friend or relative of any law enforcement officer?

12. Have you, a close friend, or family member been the victim of a crime?

13. Have you, a close friend, or family member been arrested or accused of a crime?

Rule 3.986

Forms Related to Judgment and Sentence

JUROR VOIR DIRE QUESTIONNAIRE

1. Name and date of birth
2. What city, town or area of the county do you live in?

Zip code

3. Years of residence: In Florida

In this county

4. Former residence
5. Marital status (married, single, divorced, widow, or widower)
6. Your occupation and employer

7. If you are not now employed, give your last occupation and employer

8. If married, name and occupation of spouse

9. Have you ever served as a juror before? yes _____ no ____

If yes, civil ____ criminal ____

Did the jury reach a verdict? yes _____ no _____

Were you the foreperson? yes _____ no _____

10. If you have children, give the age, sex and occupation of those children
11. Are you either a close friend or relative of any law enforcement officer?

12. Have you, a close friend, or family member been the victim of a crime?
13. Have you, a close friend, or family member been arrested or accused of a crime?

RULE 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE

(a) Sufficiency of Forms. The forms as set forth below, or computer generated formats that duplicate these forms, shall be used by all courts. Variations from these forms do not void a judgment, sentence, order, or fingerprints that are otherwise sufficient.

(b) Form for Judgment.

Probation Violator Community Control Violator Retrial Resentence

In the Circuit Court,

Judicial Circuit, in and for

County, Florida

Division

Case Number

State of Florida

v.

Defendant

JUDGMENT

The defendant, , being personally before this court represented by , the attorney of record, and the state represented by , and having

been tried and found guilty by jury/by court of the following crime(s)

entered a plea of guilty to the following crime(s)

entered a plea of nolo contendere to the following crime(s)

Offense Degree Statute of Case OBTS

Count	Crime	Number(s)	Crime	Number	Number

and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

and being a qualified offender pursuant to section 943.325, Florida Statutes, the defendant shall be required to submit DNA samples as required by law.

and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

DONE AND ORDERED in open court in County, Florida, on .....(date).....

Judge

State of Florida

v.

Defendant Case Number

FINGERPRINTS OF DEFENDANT

1. Thumb	R. Index	R. Middle	R. Ring	R. Little
2. Thumb	L. Index	L. Middle	L. Ring	L. Little

Fingerprints taken by: (Name) (Title)

I HEREBY CERTIFY that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, , and that they were placed thereon by the defendant in my presence in open court this date.

Judge

(c) Form for Charges, Costs, and Fees.

In the Circuit Court,

Judicial Circuit, in and for

County, Florida

Division

Case Number

State of Florida

v.

Defendant

CHARGES/COSTS/FEES

The defendant is hereby ordered to pay the following sums if checked:

$50.00 pursuant to section 938.03, Florida Statutes (Crimes Compensation Trust Fund).

$3.00 as a court cost pursuant to section 938.01, Florida Statutes (Criminal Justice Trust Fund).

$2.00 as a court cost pursuant to section 938.15, Florida Statutes (Criminal Justice Education by Municipalities and Counties).

A fine in the sum of $ pursuant to section 775.0835, Florida Statutes. (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed. Fines imposed as part of a sentence to section 775.083, Florida Statutes, are to be recorded on the sentence page(s).)

A sum of $ pursuant to section 938.27, Florida Statutes (Prosecution/Investigative Costs).

A sum of $ pursuant to section 938.29, Florida Statutes (Public Defender/Appointed Counsel Fees).

Restitution in accordance with attached order.

$201 pursuant to section 938.08, Florida Statutes (Funding Programs in Domestic Violence).

A sum of $ for the cost of collecting the DNA sample required by section 943.325, Florida Statutes.

Other

DONE AND ORDERED in open court in County, Florida, on .....(date).....

Judge

(d) Form for Sentencing.

Defendant Case Number OBTS Number

SENTENCE

(As to Count)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, , and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable)

and the court having on .....(date)..... deferred imposition of sentence until this date

and the court having previously entered a judgment in this case on .....(date)..... now resentences the defendant

and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

It Is The Sentence Of The Court That:

The defendant pay a fine of $, pursuant to section 775.083, Florida Statutes, plus $ as the 5% surcharge required by section 938.04, Florida Statutes.

The defendant is hereby committed to the custody of the Department of Corrections.

The defendant is hereby committed to the custody of the Sheriff of County, Florida

The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable):

For a term of natural life.

For a term of .

Said SENTENCE SUSPENDED for a period of subject to conditions set forth in this order.

If "split" sentence complete the appropriate paragraph

Followed by a period of on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

However, after serving a period of imprisonment in the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS

(As to Count)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm

It is further ordered that the 3–year minimum imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking

It is further ordered that the mandatory minimum imprisonment provision of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance Within 1,000 Feet of School

It is further ordered that the 3–year minimum imprisonment provision of section

893.13(1)(c)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender

The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent Felony Offender

The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Law Enforcement Protection Act

It is further ordered that the defendant shall serve a minimum of years before release in accordance with section 775.0823, Florida Statutes. (Offenses committed before January 1, 1994.)

Capital Offense

It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes. (Offenses committed before October 1, 1995.)

Short-Barreled Rifle, Shotgun, Machine Gun

It is further ordered that the 5–year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count. (Offenses committed before January 1, 1994.)

Continuing Criminal Enterprise

It is further ordered that the 25–year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count. (Offenses committed before January 1, 1994.)

Taking a Law Enforcement Officer’s Firearm

It is further ordered that the 3–year mandatory minimum imprisonment provision of section 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

(Offenses committed before January 1, 1994.)

Sexual Offender/Sexual Predator Determinations:

Sexual Predator

The defendant is adjudicated a sexual predator as set forth in section 775.21, Florida Statutes.

Sexual Offender

The defendant meets the criteria for a sexual offender as set forth in section 943.0435(1)(a)1a., b., c., or d, Florida Statutes.

Age of Victim

The victim was years of age at the time of the offense.

Age of Defendant

The defendant was years of age at the time of the offense.

Relationship to Victim

The defendant is not the victim's parent or guardian.

Sexual Activity [Section 800.04(4), Florida Statutes]

The offense did did not involve sexual activity.

Use of Force or Coercion [Section 800.04(4), Florida Statutes]

The sexual activity described herein did did not involve the use of force or coercion.

Use of Force or Coercion/unclothed Genitals [Section 800.04(5), Florida Statutes]

The molestation did did not involve unclothed genitals or genital area.

The molestation did did not involve the use of force or coercion.

Other Provisions:

Criminal Gang Activity

The felony conviction is for an offense that was found, pursuant to section 874.04, Florida Statutes, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

Retention of Jurisdiction

The court retains jurisdiction over the defendant pursuant to section 947.16(4), Florida Statutes (1983).

Jail Credit

It is further ordered that the defendant shall be allowed a total of days as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED IN RESENTENCING AFTER VIOLATION OF PROBATION OR COMMUNITY CONTROL

It is further ordered that the defendant be allowed days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count . (Offenses committed before October 1, 1989.)

It is further ordered that the defendant be allowed days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on case/count . (Offenses committed between October 1, 1989, and December 31, 1993.)

The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(7), Florida Statutes.

The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1), Florida Stautes.)

It is further ordered that the defendant be allowed days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count . (Offenses committed on or after January 1, 1994.)

Consecutive/Concurrent as to Other Counts It is further ordered that the sentence imposed for this count shall run (check one) consecutive to concurrent with the sentence set forth in count of this case.

Consecutive/Concurrent as to Other Convictions It is further ordered that the composite term of

all sentences imposed for the counts specified in this order shall run (check one) consecutive to concurrent with (check one) the following:

any active sentence being served.

specific sentences:

In the event the above sentence is to the Department of Corrections, the Sheriff of County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

In imposing the above sentence, the court further recommends .

DONE AND ORDERED in open court at County, Florida, on .....(date).....

Judge

(e) Form for Order of Probation.

In the Court,

of County, Florida

Case Number

State of Florida

v.

Defendant

ORDER OF PROBATION

This cause coming on this day to be heard before me, and you, the defendant, , being now present before me, and you having

(check one)

entered a plea of guilty to

entered a plea of nolo contendere to

been found guilty by jury verdict of

been found guilty by the court trying the case without a jury of the offense(s) of

SECTION 1: Judgment Of Guilt

The Court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on probation for a period of under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on probation for a period of under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Probation During Portion Of Sentence

It is hereby ordered and adjudged that you be

committed to the Department of Corrections

confined in the County Jail

for a term of with credit for jail time. After you have served of the term you shall be placed on probation for a period of under the supervision of the Department of Corrections, subject to Florida law.

confined in the County Jail

for a term of with credit for jail time, as a special condition of probation.

It is further ordered that you shall comply with the following conditions of probation during the probationary period.

(1) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.

(2) You will pay the State of Florida the amount of $ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.

(3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.

(4) You will not possess, carry, or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.

(5) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation.

(6) You will not associate with any person engaged in any criminal activity.

(7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

(8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.

(9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site, or elsewhere, and you will comply with all instructions your officer may give you.

(10) You will pay restitution, costs, and/or fees in accordance with the attached orders.

(11) You will report in person within 72 hours of your release from confinement to the probation office in County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at .

(12) You shall submit to the drawing of blood or other biological specimens as required by section 943.325, Florida Statutes.

(13) You shall submit to the taking of a digitized photograph as required by section 948.03, Florida Statutes.

SPECIAL CONDITIONS

You must undergo a (drug/alcohol) evaluation and, if treatment is deemed necessary, you

must successfully complete the treatment.

You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.

You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.

You will not associate with during the period of probation.

You will not associate with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.

You will not contact during the period of probation.

You will attend and successfully complete an approved batterers' intervention program.

Other

(Use the space below for additional conditions as necessary.)

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

It is further ordered that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

It is further ordered that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on .....(date)......

Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

.....(date)..... Probationer

Instructed by

Original: Clerk of the Court Certified Copies:
Probationer Florida Department of
Corrections, Probation and Parole Service

(f) Form for Community Control.

In the Court,

of County, Florida

Case Number

State of Florida

v.

Defendant

ORDER OF COMMUNITY CONTROL

This cause coming on this day to be heard before me, and you, the defendant, , being now present before me, and you having

(check one)

entered a plea of guilty to

entered a plea of nolo contendere to

been found guilty by jury verdict of

been found guilty by the court trying the case without a jury of the offense(s) of

SECTION 1: Judgment of Guilt

The court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that you be placed on community control for a period of under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on Community Control for a period of under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Community Control During Portion Of Sentence

It is hereby ordered and adjudged that you be

committed to the Department of Corrections

confined in the County Jail

for a term of with credit for jail time. After you have served of the term, you shall be placed on community control for a period of under the supervision of the Department of Corrections, subject to Florida law.

confined in the County Jail

for a term of with credit for jail time, as a special condition of community control.

It is further ordered that you shall comply with the following conditions of community control during the community control period.

(1) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.

(2) You will pay the State of Florida the amount of $ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.

(3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.

(4) You will not possess, carry, or own any firearm. You will not possess, carry, or own other weapons without first procuring the consent of your officer.

(5) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your community control.

(6) You will not associate with any person engaged in any criminal activity.

(7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

(8) You will work diligently at a lawful occupation, advise your employer of your community control status, and support any dependents to the best of your ability as directed by your officer.

(9) You will promptly and truthfully answer all inquiries directed to you by the court or your officer and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.

(10) You will report to your officer at least 4 times a week, or, if unemployed full time, daily.

(11) You will perform hours of public service work as directed by your officer.

(12) You will remain confined to your approved residence except for one half hour before and after your approved employment, public service work, or any other special activities approved by your officer.

(13) You will pay restitution, costs, and/or fees in accordance with the attached orders.

(14) You will report in person within 72 hours of your release from confinement to the probation office in County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at .

(15) You shall submit to the drawing of blood or other biological specimens as required by section 943.325, Florida Statutes.

(16) You shall submit to the taking of a digitized photograph as required by section 948.101, Florida Statutes.

SPECIAL CONDITIONS

You must undergo a (drug/alcohol) evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.

You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.

You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.

You will not associate with during the period of community control.

You will not associate with other criminal gang members or associates, except as

authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.

You will not contact during the period of community control.

You will maintain an hourly accounting of all your activities on a daily log which you will submit to your officer on request.

You will participate in self-improvement programs as determined by the court or your officer.

You will submit to electronic monitoring of your whereabouts as required by the Florida Department of Corrections.

You will attend and successfully complete an approved batterers' intervention program.

Other

(Use the space below for additional conditions as necessary.)

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your community control, or may extend the period of community control as authorized by law, or may discharge you from further supervision or return you to a program of regular probation supervision. If you violate any of the conditions and sanctions of your community control, you may be arrested, and the court may adjudicate you guilty if adjudication of guilt was withheld, revoke your community control, and impose any sentence that it might have imposed before placing you on community control.

It is further ordered that when you have reported to your officer and have been instructed as to the conditions of community control, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

It is further ordered that the clerk of this court file this order in the clerk's office, and forthwith provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on .....(date).....

Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

.....(date)..... Community controller

Instructed by

Original: Clerk of the Court Certified Copies:
Community Controlee Florida Department of
Corrections, Probation and
Parole Service

(g) Form for Restitution Order.

In the Circuit Court,

Judicial Circuit, in and for

County, Florida

Division

Case Number

State of Florida

v.

Defendant

RESTITUTION ORDER

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Restitution is not ordered as it is not applicable.

Restitution is not ordered due to the financial resources of the defendant.

Restitution is not ordered due to .

Due to the financial resources of the defendant, restitution of a portion of the damages is ordered as prescribed below.

Restitution is ordered as prescribed below.

Restitution is ordered for the following victim. (Victim refers to the aggrieved party, aggrieved party's estate, or aggrieved party's next of kin if the aggrieved party is deceased as a result of the offense. In lieu of the victim's address, the address and phone number of the prosecuting attorney, victim's attorney, or victim advocate may be used.)

Name of victim Name of attorney or advocate if applicable

Address

City, State, and Zip Code

Phone Number (of prosecuting attorney, victim's attorney, or victim advocate)

The sum of $ for medical and related services and devices relating to physical, psychiatric, and psychological care, including non-medical care and treatment rendered in accordance with a recognized method of healing.

The sum of $ for necessary physical and occupational therapy and rehabilitation.

The sum of $ to reimburse the victim for income lost as a result of the offense.

The sum of $ for necessary funeral and related services if the offense resulted in bodily injury resulting in the death of the victim.

The sum of $ for damages resulting from the offense.

The sum of $ for

It is further ordered that the defendant fulfill restitution obligations in the following manner:

Total monetary restitution is determined to be $ to be paid at a rate of $ per (check one) month week other (specify) and is to be paid (check one) through the clerk of the circuit court, to the victim's designee, or through the Department of Corrections, with an additional 4% fee of $ for handling, processing, and forwarding the restitution to the victim(s).

For which sum let execution issue.

DONE AND ORDERED at County, Florida, on .....(date).....

Judge Original: Clerk of the Court Certified Copy: Victim

Rule 3.987

Motion for Postconviction Relief

MODEL FORM FOR USE IN MOTIONS FOR POSTCONVICTION RELIEF PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.850

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

State of Florida,)) v.) Criminal Division)) Case No.: (your name)) (the original case number)))

MOTION FOR POSTCONVICTION RELIEF

Instructions — Read Carefully

(1) This motion must be typewritten or hand-written in legible printed lettering, in blue or black ink, double-spaced, with margins no less than 1 inch on white 8 1/2 by 11 inch paper. No motion, including any memorandum of law, shall exceed 50 pages without leave of the court upon a showing of good cause. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) Additional pages are not permitted except with respect to the facts that you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted in support of your legal claims (as opposed to your factual claims), they should be submitted in the form of a separate memorandum of law. This memorandum should have the same caption as this motion.

(3) No filing fee is required when submitting a motion for postconviction relief.

(4) Only the judgment of one case may be challenged in a single motion for postconviction relief. If you seek to challenge judgments entered in different cases, or different courts, you must file separate motions as to each such case. The single exception to this is if you are challenging the judgments in the different cases that were consolidated for trial. In this event, show each case number involved in the caption.

(5) Your attention is directed to the fact that you must include all grounds for relief, and all facts that support such grounds, in the motion you file seeking relief from any judgment of conviction.

(6) Claims of newly discovered evidence must be supported by affidavits attached to your motion. If your newly discovered evidence claim is based on recanted trial testimony or a newly discovered witness, the attached affidavit must be from that witness. For all other newly discovered evidence claims, the attached affidavit must be from any person whose testimony is necessary to factually support your claim for relief. If the required affidavit is not attached to your motion, you must provide an explanation why the required affidavit could not be obtained.

(7) Your motion must also be submitted under oath and state as follows:

(a) that you are the defendant in the cause,

(b) that you understand English or, if you cannot understand English, that you have had the motion translated completely into a language that you understand, along with the name and address of the person who translated the motion and a certification from that person that he or she provided you with an accurate and complete translation,

(c) that you have either read your motion or had it read to you,

(d) that you understand all of its contents,

(e) that your motion is filed in good faith, with a reasonable belief that it is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court,

(f) that all of the facts stated in your motion are true and correct, and

(g) that you are subject to sanctions, whether imposed by the court or administratively by the Department of Corrections, including but not limited to forfeiture of gain time, if your motion is found to be frivolous, malicious, or otherwise made in bad faith or with reckless disregard for the truth.

(8) When the motion is fully completed, the original must be mailed to the clerk of the court whose address is (county where sentence was imposed) County Courthouse, (address of clerk), as stated in Florida Rule of Appellate Procedure 9.420.

MOTION

1. Name and location of the court that entered the judgment of conviction

under attack:

2. Date of judgment of conviction:
3. Length of sentence:
4. Nature of offense(s) involved (all counts):

5. What was your plea? (check only one)

(a) Not guilty

(b) Guilty

(c) Nolo contendere

(d) Not guilty by reason of insanity

If you entered one plea to one count and a different plea to another count, give details:

6. Kind of trial: (check only one)

(a) Jury

(b) Judge only without jury

7. Did you testify at the trial or at any pretrial hearing?

Yes No

If yes, list each such occasion:

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court:

(b) Result:

(c) Date of result:

(d) Citation (if known):

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc., with respect to this judgment in this court?

Yes No

11. If your answer to number 10 was “yes,” give the following information (applies only to proceedings in this court):

(a) (1) Nature of the proceeding:

(2) Grounds raised:

(3) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

(4) Result:

(5) Date of result:

(b) As to any second petition, application, motion, etc., give the same information:

(1) Nature of the proceeding:

(2) Grounds raised:

(3) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

(4) Result:

(5) Date of result:

12. Other than a direct appeal from the judgment of conviction and

sentence, have you previously filed any petitions, applications, motions, etc., with respect to this judgment in any other court?

Yes No

13. If your answer to number 12 was “yes,” give the following information:

(a) (1) Name of court:

(2) Nature of the proceeding:

(3) Grounds raised:

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

(5) Result:

(6) Date of result:

(b) As to any second petition, application, motion, etc., give the same information:

(1) Name of court:

(2) Nature of the proceeding:

(3) Grounds raised:

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

(5) Result:

(6) Date of result:

(c) As to any third petition, application, motion, etc., give the same information:

(1) Name of court:

(2) Nature of the proceeding:

(3) Grounds raised:

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes No

(5) Result:

(6) Date of result:

14. State concisely every ground on which you claim that the judgment or sentence is unlawful. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the facts supporting them.

For your information, the following is a list of the most frequently raised grounds for postconviction relief. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds that you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that your conviction or sentence is unlawful.

DO NOT CHECK ANY OF THESE LISTED GROUNDS. If you select one or more of these grounds for relief, you must allege facts. The motion will not be accepted by the court if you merely check (a) through (i).

(a) Conviction obtained by plea of guilty or nolo contendere that was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(c) Conviction obtained by a violation of the protection against double jeopardy.

(d) Denial of effective assistance of counsel.

(e) Denial of right of appeal.

(f) Lack of jurisdiction of the court to enter the judgment or impose sentence (such as an

unconstitutional statute).

(g) Sentence in excess of the maximum authorized by law.

(h) Newly discovered evidence.

(i) Changes in the law that would be retroactive.

1. Ground 1:

Supporting FACTS (tell your story briefly without citing cases or law):

1. Ground 2:

Supporting FACTS (tell your story briefly without citing cases or law):

1. Ground 3:

Supporting FACTS (tell your story briefly without citing cases or law):

1. Ground 4:

Supporting FACTS (tell your story briefly without citing cases or law):

15. If any of the grounds listed in 14 A, B, C, and D were not previously presented on your direct appeal, state briefly what grounds were not so presented and give your reasons they were not so presented:

16. Do you have any petition, application, appeal, motion, etc., now pending in any court, either state or federal, as to the judgment under attack?

Yes No

17. If your answer to number 16 was "yes," give the following information:

(a) Name of court:

(b) Nature of the proceeding:

(c) Grounds raised:

(d) Status of the proceedings:

18. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein.

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

(f) In any postconviction proceeding:

(g) On appeal from any adverse ruling in a postconviction proceeding:

WHEREFORE, movant requests that the court grant all relief to which the movant may be entitled in this proceeding, including but not limited to (here list the nature of the relief sought):

2. Such other and further relief as the court deems just and proper.

OATH

Under penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have a reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the court. I further certify that I understand English and have read the foregoing motion or had the motion read to me, or the foregoing motion was translated completely into a language which I understand and read to me by . . . . .(name). . . . ., whose address is . . . . .(address). . . . ., and whose certification of an accurate and complete translation is attached to this motion.

/s/

Name

DC#

Certificate of Mailing (Must use Certificate of Mailing OR Certificate of Service)

I certify that I placed this document in the hands of . . . . .(here insert name of institution official). . . . . for mailing to . . . . .(here insert name or names and addresses used for service). . . . . on . . . . .(date). . . . . .

/s/

Name

Address

DC#

Certificate of Service (Must use Certificate of Mailing OR Certificate of Service)

I certify that the foregoing document has been furnished to . . . . .(here insert name or names, addresses used for service and mailing addresses). . . . . by (e-mail) (delivery) (mail) (fax) on . . . . .(date). . . . . .

/s/ Attorney

Certificate of an Accurate and Complete Translation (To be used if translation of the motion was necessary.)

I certify that a complete and accurate translation of this motion was provided to the Defendant in this case on . . . . .(date). . . . . .

/s/

Name

Address

DC#

Rule 3.9875

Motion for Jail Credit

MODEL FORM FOR USE IN MOTIONS FOR CORRECTION OF JAIL CREDIT PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.801

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

State of Florida)) v.)) ,) (your name))) ,)

MOTION FOR CORRECTION OF JAIL CREDIT

INSTRUCTIONS FOR FILING MOTION FOR JAIL CREDIT PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.801 READ CAREFULLY

1. The attached motion is the only type of motion you are permitted to file to obtain in-state jail credit omitted from your final sentence. It may not be used to obtain out-of-state jail credit.
2. You must file this motion within 1 year of the date your sentence became final.
3. Only 1 motion may be filed to obtain jail credit omitted from your final sentence. No successive motion for jail credit from a final sentence will be considered.
4. You must complete the attached motion by filling in the blank spaces.
5. You must tell the truth and sign the attached motion. If you make a false statement of a material fact in your motion, you may be prosecuted for perjury.
6. You must file the attached motion in the court that imposed the sentence on which the jail credit was omitted.
7. You are not required to pay a filing fee to file the attached motion.

MOTION FOR CORRECTION OF JAIL CREDIT

(hereinafter "defendant"), in pro se fashion, respectfully moves this Honorable Court for jail credit pursuant to section 921.161(1), Florida Statutes, and Florida Rule of Criminal Procedure 3.801. In support of the motion, the defendant states the following in a question-and-answer format:

1. What is/are the FACT(S) that was/were omitted from any sentence(s) imposed in this case that entitle you to jail credit?
2. Is this the first motion you have filed requesting this jail credit? If you answered NO, how many prior motions have you filed? As to EACH motion, what was the result?
3. If you have already received jail credit on any sentence(s) imposed in this case, what was the total time for jail credit on each sentence?

What dates did this jail credit cover?

Where were you incarcerated?

4. What is the total time for jail credit that you are requesting in this motion that you have NOT YET RECEIVED on any sentence(s) imposed in this case?

What dates does this jail credit cover?

Where were you incarcerated?

Did you have any other charge(s) pending during this time frame?

If the answer is YES, as to EACH charge, what is the case number, name of county, and resolution of charge(s)?

5. Was your sentence the result of a trial or plea?

If your sentence was the result of a plea:

Was it a negotiated plea with the state or was it an open plea to the court?

Did you sign a written plea agreement?

Did you sign a written rights waiver form?

Did you waive any county jail credit as part of the plea?

If so, how many days did you agree to waive?

6. Under penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have a reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the court. I further certify that I understand English and have read the foregoing motion or had the motion read to me, or the foregoing motion was translated completely into a language which I understand

and read to me by .....(name)....., whose address is .....(address)....., and whose certification of an accurate and complete translation is attached to this motion.

WHEREFORE, the defendant respectfully moves the court to grant this motion for days of additional jail credit, for a total of days of credit.

/s/

Name

DC#

Certificate of Mailing (Must use Certificate of Mailing OR Certificate of Service)

I certify that I placed this document in the hands of .....(here insert name of institution official)..... for mailing to .....(here insert name or names and addresses used for service)..... on .....(date).....

/s/

Name

Address

DC#

Certificate of Service (Must use Certificate of Mailing OR Certificate of Service)

I certify that the foregoing document has been furnished to .....(here insert name or names, addresses used for service and mailing addresses)..... by (e-mail) (delivery) (mail) (fax) on .....(date).....

/s/ Attorney

Certificate of an Accurate and Complete Translation (To be used if translation of the motion was necessary.)

I certify that a complete and accurate translation of this motion was provided to the defendant in this case on .....(date).....

/s/

Name

Address

Rule 3.988

Sentencing Guidelines

Editor’s Note: Originally proposed by Sentencing Guidelines Commission and adopted by Supreme Court September 8, 1983 (439 So. 2d 848). For amendments see 451 So. 2d 824, 468 So. 2d 220, 482 So. 2d 311, 487 So. 2d 1045, 491 So. 2d 1128, 509 So. 2d 1088, 522 So. 2d 374, 544 So. 2d 198, 566 So. 2d 770, 576 So. 2d 1307, 589 So. 2d 271, 613 So. 2d 1307, and 628 So. 2d 1084.

Available on this web page: http://www.floridabar.org/tfb/TFBLegalRes.nsf/D64B801203BC919485256709006A561C/E1A89A0DC5248D1785256B2F006CCCEE?OpenDocument

Rule 3.989

Affidavit, Petition, and Order to Expunge or Seal Forms

(a) Affidavit in Support of Petition.

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

Case No.:

Division

State of Florida,)) Plaintiff,)) v.
)) ,)) Defendant/Petitioner)
)

AFFIDAVIT

State of Florida

County of

I, ...(name of defendant/petitioner)....., am the defendant/petitioner in the above-styled cause and I do hereby swear or affirm that:

1. I fully understand the meaning of all of the terms of this affidavit.

2. I have never been adjudicated guilty of a criminal offense or a comparable ordinance violation nor adjudicated delinquent for committing a felony or a misdemeanor specified in section 943.051(3)(b), Florida Statutes.

3. I was arrested on .....(date)....., by .....(arresting agency)....., and I have not been adjudicated guilty of, nor adjudicated delinquent for committing, any of the acts stemming from that arrest or the alleged criminal activity surrounding my arrest.

4. I am eligible for the relief requested, to the best of my knowledge and belief, and do not have any other petition to expunge or seal pending before any court.

5. I have never secured a prior records expunction or sealing under any law.

6. (For use in expunction petitions only.) My record of arrest for this date has been sealed for at least 10 years; or an indictment, information, or other charging document was not filed against me for the above criminal transaction; or an indictment, information, or other charging document filed against me was dismissed by the prosecutor or the court.

Petitioner

Sworn to and subscribed before me on .....(date).....

NOTARY PUBLIC, or other person authorized to administer an oath

Printed, typed, or stamped commissioned name of Notary Public

Personally known ..... or produced identification .....

Type of identification produced .....

My commission expires:

(b) Order to Expunge.

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

Case No.:

Division

State of Florida,)) Plaintiff,)) v.
)) ,)) Defendant/Petitioner.)
)

ORDER TO EXPUNGE UNDER SECTION 943.0585, FLORIDA STATUTES, AND FLORIDA RULE OF CRIMINAL PROCEDURE 3.692

THIS CAUSE having come on to be heard before me this date on a petition to expunge certain records of the petitioner's arrest on …..(date)….., by …..(arresting agency)….., for …..(charges)….., and the court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

1. The petitioner has never previously been adjudicated guilty of a criminal offense or a comparable ordinance violation nor adjudicated delinquent for committing a felony or a misdemeanor specified in section 943.051(3)(b), Florida Statutes.

2. The petitioner was not adjudicated guilty of nor adjudicated delinquent for committing any of the acts stemming from the arrest or criminal activity to which this expunction petition pertains.

3. The petitioner has not secured a prior records expunction or sealing.

4. This record has either been sealed for at least 10 years; or no indictment, information, or other charging document was ever filed in this case against the petitioner; or an indictment, information, or other charging document filed against the defendant was dismissed by the prosecutor or the court.

5. A Certificate of Eligibility issued by the Florida Department of Law Enforcement accompanied the petition for expunction of nonjudicial criminal history records. Whereupon it is

ORDERED AND ADJUDGED that the petition to expunge is granted. All court records pertaining

to the above-styled case shall be sealed in accordance with the procedures set forth in Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this order to the (check one) ..... state attorney, ... special prosecutor, ... statewide prosecutor, ...(arresting agency)....., and the Sheriff of ..... County, who will comply with the procedures set forth in section 943.0585, Florida Statutes, and appropriate regulations of the Florida Department of Law Enforcement, and who will further forward a copy of this order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that .....(arresting agency)..... shall expunge all information concerning indicia of arrest or criminal history record information regarding the arrest or alleged criminal activity to which this petition pertains in accordance with the procedures set forth in section 943.0585, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the .....

DONE AND ORDERED in Chambers at ..... County, Florida, on .....(date)......

Circuit Court Judge

(c) Order to Seal.

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

Case No.:

Division

State of Florida,)) Plaintiff,)) v.
)) ,)) Defendant/Petitioner.)
)

ORDER TO SEAL RECORDS UNDER SECTION 943.059, FLORIDA STATUTES, AND FLORIDA RULE OF CRIMINAL PROCEDURE 3.692

THIS CAUSE having come on to be heard before me this date on petitioner's petition to seal records concerning the petitioner's arrest on .....(date)....., by the .....(arresting agency)....., and the court having heard argument of counsel and being otherwise advised in the premises, the court hereby finds:

1. The petitioner has never been previously adjudicated guilty of a criminal offense or comparable ordinance violation nor adjudicated delinquent for committing a felony or a misdemeanor specified in section 943.051(3)(b), Florida Statutes.

2. The petitioner was not adjudicated guilty of nor adjudicated delinquent for committing any of the acts stemming from the arrest or criminal activity to which the instant petition pertains.

3. The petitioner has not secured a prior records expunction or sealing.

4. A Certificate of Eligibility issued by the Florida Department of Law Enforcement accompanied the instant petition for sealing nonjudicial criminal history records. Whereupon it is

ORDERED AND ADJUDGED that the petition to seal records is granted. All court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this order to the (check one) ..... state attorney, ... special prosecutor, ... statewide prosecutor, ...(arresting agency)....., and the ..... Sheriff of ..... County, who will comply with the procedures set forth in section 943.059, Florida Statutes, and appropriate regulations of the Florida Department of Law Enforcement, and who will further forward a copy of this order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that .....(arresting agency)..... shall seal all information concerning indicia of arrest or criminal history record information regarding the arrest or alleged criminal activity to which this petition pertains in accordance with the procedures set forth in section 943.059, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the .....

DONE AND ORDERED in Chambers at ..... County, Florida, on .....(date).....

Circuit Court Judge

(d) Petition to Expunge or Seal.

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

Case No.:

Division

State of Florida,)) Plaintiff,)) v.
)) ,)) Defendant/Petitioner)
)

PETITION TO EXPUNGE OR SEAL

The petitioner, ..., by and through the undersigned attorney, petitions this honorable court, under Florida Rule of Criminal Procedure 3.692 and section ..... 943.0585, or ..... section 943.059 Florida Statutes, to .....expunge/seal..... all criminal history record information in the custody of any criminal justice agency and the official records of the court concerning the petitioner's arrest on .....(date)....., by .....(arresting agency)....., for .....(charges)....., and as grounds therefor shows:

1. On .....(date)....., the petitioner, ..., a .....(race/sex)....., whose date of birth is .....(date of birth)....., was arrested by .....(arresting agency)....., and charged with .....(charges).....

2. The petitioner has not been adjudicated guilty of nor adjudicated guilty of committing any of the acts stemming from this arrest or alleged criminal activity.

3. The petitioner has not been previously adjudicated guilty of a criminal offense or a comparable ordinance violation nor adjudicated delinquent for committing a felony or a misdemeanor specified in section 943.051(3)(b), Florida Statutes.

4. The petitioner has not secured a prior records expunction or sealing under section

943.0585, or 943.059, Florida Statutes, former section 943.058, Florida Statutes, former section 893.14, Florida Statutes, or former section 901.33, Florida Statutes, or any other law, rule, or authority.

5. (To be used only when requesting expunction.) The petitioner's record has been sealed under section 943.059, Florida Statutes, former section 943.058, Florida Statutes, former section 893.14, Florida Statutes, or former section 901.33, Florida Statutes, for at least 10 years; or there has not been an indictment, information, or other charging document filed against the petitioner who is the subject of this criminal history record information; or an indictment, information, or other charging document filed against the petitioner who is the subject of this criminal history information was dismissed by the prosecutor or the court.

6. A Certificate of Eligibility for .....expunction/sealing..... of nonjudicial criminal history records issued by the Florida Department of Law Enforcement accompanies this petition.

WHEREFORE, the petitioner moves to .....expunge/seal..... any criminal history record information and any official court records regarding his/her arrest by .....(arresting agency)....., for .....(charges)....., on .....(date).....

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been served on .....(name of prosecuting authority)....., (check one) ..... State Attorney for the ..... Judicial Circuit, in and for ..... County, ... Special Prosecutor, ... Statewide Prosecutor); .....(arresting agency).....; ..... (Sheriff of county in which defendant was arrested, if different); and the Florida Department of Law Enforcement, on .....(date).....

Name:

Address:

City/State:

Telephone Number:

E-mail Address:

Fla. Bar No.:

(e) Petition to Expunge; Human Trafficking Victim.

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

Case No.:

Division

State of Florida,)) Plaintiff,)) v.
)) ,)) Defendant/Petitioner))

PETITION TO EXPUNGE/HUMAN TRAFFICKING VICTIM

The petitioner, ..., by and through the undersigned attorney, petitions this honorable court, under Florida Rule of Criminal Procedure 3.692 and section 943.0583, Florida Statutes, to expunge all criminal history record information in the custody of any criminal justice agency and the official records of the court concerning the petitioner's arrest and/or conviction on .....(date(s))....., by .....(arresting agency and/or prosecuting authority)....., for .....(charges and/or offenses)....., and as grounds therefor shows:

1. On .....(date(s))....., the petitioner, ..., a .....(race/sex)....., whose date of birth is .....(date of birth)....., was arrested by .....(arresting agency)....., and charged with .....(charges)..... or was convicted by .....(name of prosecuting authority)..... of .....(offenses)......

2. The petitioner has been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and has committed an offense, other than those offenses listed in 775.084(1)(b)1, which was committed as a part of a human trafficking scheme of which he/she was the victim or at the direction of an operator of the scheme as evidenced by the attached official documentation of his/her status, or may be shown by clear and convincing evidence presented to the Court.

WHEREFORE, the petitioner moves to expunge any criminal history record information and any official court records regarding his/her arrest and/or conviction by .....(arresting agency and/or name of prosecuting authority)....., for .....(charges and/or offenses)....., on .....(date(s))......

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been served on .....(name of prosecuting authority)....., (check one) ..... State Attorney for the ..... Judicial Circuit, in and for ..... County, ... Special Prosecutor, ... Statewide Prosecutor; .....(arresting agency).....; ..... (Sheriff of county in which defendant was arrested, if different); and the Florida Department of Law Enforcement, on .....(date)......

Name:

Address:

City/State:

Telephone Number:

E-mail Address:

Fla. Bar No.:

Personally known ……. or produced identification …….

Type of identification procedure …….

My commission expires:
(f) Affidavit in Support of Petition; Human Trafficking Victim.

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

Case No.:

Division

State of Florida,)) Plaintiff,)) v.
)) ,)) Defendant/Petitioner)
)

AFFIDAVIT/HUMAN TRAFFICKING VICTIM

State of Florida

County of _____

I, …..(name of defendant/petitioner)….., am the defendant/petitioner in the above-styled cause and I do hereby swear or affirm that:

1. I fully understand the meaning of all of the terms of this affidavit.

2. I have been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and have committed an offense, other than those offenses listed in 775.084(1)(b)1, which was committed as a part of a human trafficking scheme of which I was the victim or at the direction of an operator of the scheme.

3. I was arrested and/or convicted on .....(date(s))....., by .....(arresting agency and/or name of prosecuting authority)……

4. I am eligible for the relief requested, to the best of my knowledge and belief, and .....(do or do not)..... have any other petition to expunge or seal pending before any court.

Petitioner

Sworn to and subscribed before me on .....(date)……

NOTARY PUBLIC, or other person authorized to administer an oath

Printed, typed, or stamped commissioned name of Notary Public

Personally known ……. or produced identification …….

Type of identification produced ……

My commission expires:

(g) Order to Expunge; Human Trafficking Victim.

In the Circuit Court of the

Judicial Circuit,

in and for

County, Florida

Case No.:

Division

State of Florida,)) Plaintiff,)) v.
)) ,)) Defendant/Petitioner)
)

ORDER TO EXPUNGE, HUMAN TRAFFICKING VICTIM, UNDER SECTION 943.0583, FLORIDA STATUTES, AND FLORIDA RULE OF CRIMINAL PROCEDURE 3.692

THIS CAUSE, having come on to be heard before me this date upon a petition to expunge certain records of the petitioner's arrest and/or conviction on .....(date(s))....., by .....(arresting agency and/or name of prosecuting authority)....., for .....(charges and/or offenses)....., and the court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

The petitioner has been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and has committed an offense, other than those offenses listed in 775.084(1)(b)1, which was committed as a part of a human trafficking scheme of which he/she was the victim, or at the direction of an operator of the scheme. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

Whereupon it is

ORDERED AND ADJUDGED that the petition to expunge is granted. All court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this order to the (check one) ..... state attorney, ... special prosecutor, ... statewide prosecutor, ...(arresting agency)....., and the Sheriff of ..... County, who will comply with the procedures set forth in section 943.0583, Florida Statutes, and appropriate regulations of the Florida Department of Law Enforcement, and who will further forward a copy of this order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that .....(arresting agency)..... shall expunge all information concerning indicia of arrest, conviction, or criminal history record information regarding the arrest, conviction, or alleged criminal activity to which this petition pertains in accordance with the procedures set forth in section 943.0583, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the .....

DONE AND ORDERED in Chambers at ..... County, Florida, on .....(date)......

Circuit Court Judge

Rule 3.990

Sentencing Guidelines Scoresheet

Available on this web page: http://www.floridabar.org/tfb/TFBLegalRes.nsf/D64B801203BC919485256709006A561C/E1A89A0DC5248D1785256B2F006CCCEE?OpenDocument

Rule 3.991

Sentencing Guidelines Scoresheets (October 1, 1995)

Available on this web page: http://www.floridabar.org/tfb/TFBLegalRes.nsf/D64B801203BC919485256709006A561C/E1A89A0DC5248D1785256B2F006CCCEE?OpenDocument

RULE 3.992. CRIMINAL PUNISHMENT CODE SCORESHEET

(a) Criminal Punishment Code Scoresheet.

Available on this web page: http://www.dc.state.fl.us/pub/sen_cpcm/index.html

(b) Supplemental Criminal Punishment Code Scoresheet.

Available on this web page: http://www.floridabar.org/tfb/TFBLegalRes.nsf/D64B801203BC919485256709006A561C/E1A89A0DC5248D1785256B2F006CCCEE?OpenDocument

Rule 3.992

Criminal Punishment Code Scoresheet

(a) Criminal Punishment Code Scoresheet

Rule 3.992(a) Criminal Punishment Code Scoresheet

The Criminal Punishment Code Scoresheet Preparation Manual is available at:

https://www.dc.state.fl.us/pub/sen_cpcm/index.html

1. DATE OF SENTENCE	2. PREPARER'S NAME	3. COUNTY	4. SENTENCING JUDGE
5. NAME (LAST, FIRST, MI.I.)	6. DOB	8. RACE ¨ B ¨ W ¨ OTHER	10. PRIMARY OFF. DATE 12. PLEA ¨
	7. DC #	9. GENDER ¨ M ¨ F	11. PRIMARY DOCKET # TRIAL ¨

- **PRIMARY OFFENSE:** If Qualifier, please check ___A ___S ___C ___R (A=Attempt, S=Solicitation, C=Conspiracy, R=Reclassification)

FELONY DEGREE | F.S.# | DESCRIPTION | OFFENSE LEVEL | **POINTS**

_____/ _____/ _____/ _____

(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)

Prior capital felony ¨ | triples | Primary Offense | **I.** | points _____

II. **ADDITIONAL OFFENSE(S):** Supplemental page attached ¨

DOCKET# | FEL/MM DEGREE | F.S.# | OFFENSE | QUALIFY A S C R | COUNTS LEVEL | POINTS | TOTAL

_____/ _____/ _____/ _____ ¨ ¨ ¨ ¨ _____ x _____ = _____

DESCRIPTION _____

_____/ _____/ _____/ _____ ¨ ¨ ¨ ¨ _____ X _____ = _____

DESCRIPTION _____

_____/ _____/ _____/ _____ ¨ ¨ ¨ ¨ _____ X _____ = _____

DESCRIPTION_____

_____/ _____/ _____/ _____ ¨ ¨ ¨ ¨ _____ x _____ = _____

DESCRIPTION _____

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

Prior capital felony triples Additional Offense points ¨ Supplemental page points _____

I I .

_____

III. **VICTIM INJURY:**

		Number	Total			Number	Total
2nd Degree Murder	240 x	_____	= _____	Slight	4 x	_____	= _____
Death	120 x	_____	= _____	Sex Penetration	80 x	_____	= _____
Severe	40 x	_____	= _____	Sex Contact	40 x	_____	= _____
Moderate	18 x	_____	= _____				

III.

_____

IV. **PRIOR RECORD:** Supplemental page attached ¨

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
_____	_____/_____	¨¨¨¨¨		_____	_____	X _____	= _____
_____	_____/_____	¨¨¨¨¨		_____	_____	X _____	= _____
_____	_____/_____	¨¨¨¨¨		_____	_____	X _____	= _____
_____	_____/_____	¨¨¨¨¨		_____	_____	X _____	= _____
_____	_____/_____	¨¨¨¨¨¨		_____	_____	X _____	= _____

_____ _____/_____ ..... _____ _____ X _____ = _____

_____ _____/_____ ..... _____ _____ X _____ = _____

_____ _____/_____ ..... _____ _____ X _____ = _____

_____ _____/_____ ..... _____ _____ X _____ = _____

(Level = Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

Supplemental page points _____

IV.

_____

Page 1

Subtotal: _____

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committee on or after October 1, 1998 and subsequent revisions.

NAME (LAST, FIRST, MI) **DOCKET #**

Page 1

Subtotal: _____

V. Legal Status violation = 4 Points

o Escape o Fleeing o Failure to appear o Supersedeas bond o Incarceration o Pretrial intervention or diversion program

o Court imposed or post prison release community supervision resulting in a conviction

V. _____

VI. Community Sanction violation before the court for sentencing

o Probation o Community Control o Pretrial Intervention or diversion **VI.**

_____

o 6 points for any violation other than new felony conviction x _____ each successive violation OR

o New felony conviction = 12 points x _____ each successive violation if new offense results in conviction before or at same time as sentence for violation of probation OR

o 12 points x _____ each successive violation for a violent felony offender of special concern when the violation is not based solely on failure to pay costs, fines, or restitution OR

o New felony conviction = 24 points x _____ each successive violation for a violent felony offender of special concern if new offense results in a conviction before or at the same time for violation of probation

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 Points

VII. _____

VIII. Prior Serious Felony - 30 Points

VIII. _____

Subtotal Sentence Points

_____

IX. Enhancements (only if the primary offense qualifies for enhancement)

Law Enf. Protect.	Drug Trafficker	Motor Vehicle Theft	Criminal Gang Offense	Domestic Violence in the Presence of Related Child (offenses committed on or after 3/12/07)	Adult-on-Minor Sex Offense (offenses committed on or after 10/1/14)
__x 1.5 __ x 2.0 __ x 2.5	___ x 1.5	__ x 1.5	__ x 1.5	__ x 1.5	__x 2.0

Enhanced Subtotal Sentence Points **IX.**

_____

TOTAL SENTENCE POINTS **_____**

SENTENCE COMPUTATION

_ If total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction**.** If the total sentence points are 22 points or less, see Section 775.082(10), Florida Statutes, to determine if the court must sentence the offender to a non-state prison sanction.

· If total sentence points are greater than 44:

_____ minus 28 = _____ x .75 =_____

total sentence points lowest permissible prison sentence in months

If total sentence points are 60 points or less and court makes findings pursuant to both Florida Statute 948.20 and 397.334(3), the court may place the

Dn defendant into a treatment-based drug court program.

· The maximum sentence is up to the statutory maximum for the primary and any additional offenses as provided in s. 775.082, F.S., unless the lowest permissible sentence under the Code exceeds the statutory maximum. Such sentences may be imposed concurrently or consecutively. If total sentence points are greater than or equal to 363, a life sentence may be imposed.

_____

maximum sentence In years

TOTAL SENTENCE IMPOSED

		Years	Months	Days
¨ State Prison	¨ Life	_____	_____	_____
¨ County Jail	¨ Time Served	_____	_____	_____
¨ Community Control		_____	_____	_____
o Probation ¨ Modified		_____	_____	_____

Please check if sentenced as ¨ habitual offender, ¨habitual violent offender, ¨ violent career criminal, ¨ prison releasee reoffender,

or a ¨ mandatory minimum applies.

¨ Mitigated Departure ¨ Plea Bargain Prison Diversion Program

Other Reason _____

JUDGE'S SIGNATURE

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1998, and subsequent revisions.

RULE 3.992(b) Supplemental Criminal Punishment Code Scoresheet

NAME (LAST, FIRST, MI.I)	DOCKET #	DATE OF SENTENCE

II. **ADDITIONAL OFFENSES(S):**

DOCKET#	FEL/MM DEGREE	F.S#	OFFENSE LEVEL	QUALIFY A S C R	COUNTS		POINTS		TOTAL
_________/	_______/	___________/	__________	.. ..	______	x	______	=	______
DESCRIPTION ____									
_________/	_______/	___________/	__________	.. ..	______	x	______	=	______
DESCRIPTION ____									
_________/	_______/	___________/	__________	.. ..	______	x	______	=	______
DESCRIPTION ____									
_________/	_______/	___________/	__________	.. ..	______	x	______	=	______
DESCRIPTION ____									
_________/	_______/	___________/	__________	.. ..	______	x	______	=	______
DESCRIPTION ____									

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

II. ________

IV. **PRIOR RECORD**

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER		POINTS		TOTAL
__________	____________/	___________	.. ..	______________________________	_______	X	______	=	______
__________	____________/	___________	.. ..	______________________________	_______	X	______	=	______
__________	____________/	___________	.. ..	______________________________	_______	X	______	=	______
__________	____________/	___________	.. ..	______________________________	_______	X	______	=	______

_____ _____/_____ ¨ ¨ ¨ ¨ _____ _____ X _____ = _____

_____ _____/_____ ¨ ¨ ¨ ¨ _____ _____ X _____ = _____

(Level = Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

IV. _____

REASONS FOR DEPARTURE - MITIGATING CIRCUMSTANCES

(reasons may be checked here or written on the scoresheet)

¨ Legitimate, uncoerced plea bargain.

¨ The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction, or for a physical disability, and the defendant is

amenable to treatment.

¨ The need for payment of restitution to the victim outweighs the need for a prison sentence.

¨ The victim was an initiator, willing participant, aggressor, or provoker of the incident.

¨ The defendant acted under extreme duress or under the domination of another person.

¨ Before the identity of the defendant was determined, the victim was substantially compensated.

¨ The defendant cooperated with the State to resolve the current offense or any other offense.

¨ The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

¨ At the time of the offense the defendant was too young to appreciate the consequences of the offense.

- The defendant is to be sentenced as a youthful offender.
- The defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program.
- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

Pursuant to 921.0026(3) the defendant's substance abuse or addiction does not justify a downward departure from the lowest permissible sentence, except for the provisions of s. 921.0026(2)(m).

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committee on or after October 1, 1998 and subsequent revisions.