

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.

Committee Notes

1968 Adoption. (a) A combination of section 908.01, Florida Statutes, and Federal Rule of Criminal Procedure 10.

(b) Same as section 908.02, Florida Statutes.

(c) Same as section 909.15, Florida Statutes, except provision is made for trial by affidavit.

(d) Same as section 909.20, Florida Statutes.

(e) Federal rule 44 provides:

“If the defendant appears in court without counsel the court shall advise him of his right to counsel and assign counsel to represent him at every stage of the proceeding unless he elects to proceed without counsel or is able to obtain counsel.”

A presently proposed amendment to such rule provides:

“(a) Right to Assigned Counsel. Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the commissioner or the court through appeal, unless he waives such appointment.

“(b) Assignment Procedure. The procedures for implementing the right set out in subdivision (a) shall be those provided by law or by local rules of district courts of appeal.”

In lieu of such latter, blanket provision, it is suggested that the rule provide, as stated, for inquiry of the defendant and determination by the court as to the defendant’s desire for and inability to obtain counsel, after being advised of entitlement thereto. Many defendants, of course, will waive counsel.

In view of *Harvey v. Mississippi*, 340 F.2d 263 (5th Cir. 1965), and *White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963), holding that entitlement to counsel does not depend upon whether the offense charged is a felony or misdemeanor, it is suggested that the word “crime” be used instead of “felony” only in the first sentence of the proposed rule.

In *Hamilton v. Alabama*, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961), involving breaking and entering with intent to commit rape, the Supreme Court held the defendant was entitled to counsel at the arraignment, if the arraignment be deemed a part of the trial, as apparently

it is under Alabama law. *In Ex parte Jeffcoat*, 109 Fla. 207, 146 So. 827 (1933), the Supreme Court of Florida held the arraignment to be a mere formal preliminary step to an answer or plea. However, in *Sardinia v. State*, 168 So.2d 674 (Fla. 1964), the court recognized the accused's right to counsel upon arraignment. Section 909.21, Florida Statutes, provides for appointment of counsel in capital cases.

1972 Amendment. Substantially the same as prior rule. The committee considered changes recommended by The Florida Bar and incorporated the proposed change relating to written plea of not guilty and waiver of arraignment.

1992 Amendment. The amendment allows the judge to participate in the arraignment process by including the judge as one of the designated individuals who may advise the defendant of the pending charges. Apparently, the 1988 amendment to rule 3.160(a) inadvertently eliminated the judge from the arraignment procedure. *In re Rule 3.160(a), Florida Rules of Criminal Procedure*, 528 So.2d 1179, 1180 (Fla. 1988). The prior amendment did include the judge. *The Florida Bar Re: Amendment to Rules — Criminal Procedure*, 462 So.2d 386 (Fla. 1984). While the language of rule 3.160(a) as presently set out in the Florida Bar pamphlet, Florida Rules of Criminal Procedure, is identical to the language of this proposed amendment (that is, it includes the judge in the arraignment process), the West publications, Florida Criminal Laws and Rules (1991) and Florida Rules of Court (1991), nevertheless follow the language set out in 528 So.2d at 1180.

