

**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.

### Committee Notes

**1968 Adoption.** (a) The same as the first part of section 920.02(3), Florida Statutes, except that the statutory word “further” is changed to “greater” in the rule and provision for motion in arrest of judgment is added.

(b) Substantially the same as first part of section 920.02(2), Florida Statutes. The rule omits the requirement that the defendant be sentenced immediately on the denial of a motion for new trial (the court might wish to place the defendant on probation or might desire to call for a presentence investigation). The rule also omits the statute’s requirement that an order of denial be dictated to the court reporter, because the clerk is supposed to be taking minutes at this stage.

NOTE: The provisions of the last part of section 920.02(2), Florida Statutes, as to supersedeas and appeal are not incorporated into this rule; such provisions are not germane to motions for new trial or arrest of judgment.

(c) Substantially same as section 920.03, Florida Statutes.

(d) Substantially same as last part of section 920.02(3), Florida Statutes, except that the last sentence of the rule is new.

NOTE: The provisions of section 920.02(4), Florida Statutes, relating to supersedeas on appeal and the steps that are necessary to obtain one, are not incorporated into a rule. The provisions of section 920.02(4) do not belong in a group of rules dealing with motions for new trial.

**1972 Amendment.** Substantially the same as prior rule.

**1980 Amendment.** This brings rule 3.590(a) into conformity with Florida Rule of Civil Procedure 1.530(b) as it relates to the time within which a motion for new trial or in arrest of judgment may be filed. It also allows the defendant in a criminal case the opportunity to amend the motion. The opportunity to amend already exists in a civil case. No sound reason exists to justify the disparities in the rules.

**2006 Amendment.** This amendment provides the time limitations and procedures for moving for new trial, arrest of judgment or a new penalty phase in capital cases in which the death penalty is an issue. The motion may be made within ten days after written final judgment of conviction and sentence of life imprisonment or death is filed.

