



**FLORIDA RULES OF CRIMINAL PROCEDURE
SECTION II
[ALL-IN-ONE DOCUMENT]**

GENERAL PROVISIONS

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FLORIDA RULES OF CRIMINAL PROCEDURE

II GENERAL PROVISIONS

RULES: 3.030 through 3.115



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.

Committee Notes

1968 Adoption. Taken from the Florida Rules of Civil Procedure.

1972 Amendment. Same as prior rule; (a) amended by deleting reference to trial on affidavit.

2000 Amendment. Fraudulent manipulation of electronically transmitted service should be considered contemptuous and dealt with by appropriate sanctions 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).

Committee Notes

1968 Adoption. Taken from the Florida Rules of Civil Procedure.

1972 Amendment. Same as prior rule.

1988 Amendment. The 1983 amendments resulted in the reallocation of the time periods in rule 3.131 to rule 3.133, and also added an important 5 day period in the new rule regarding pretrial detention in rule 3.132.

Court Commentary

1975 Amendment. Underlined portion is the only change. The effect is to remove the 72 hour provision of proposed rule 3.131 from the Saturday, Sunday, and legal holiday exception.

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.

Committee Notes

1968 Adoption. Taken from the Florida Rules of Civil Procedure.

1972 Amendment. Same as prior rule.



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.

Committee Notes

1968 Adoption. Taken from rules of civil procedure.

1972 Amendment. Same as prior rule.



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.

Committee Notes

1968 Adoption. This is the same as rule 1.6(e), Florida Rules of Civil Procedure, except for the omission of subdivision (c) of the civil rules, which appears to be inapplicable to criminal cases.

1972 Amendment. Same as prior rule.



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.

Committee Notes

1968 Adoption. Taken from rules of civil procedure.

1972 Amendment. Same as prior rule.



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).

Committee Notes

1972 Adoption. Part 1 of the ABA Standard relating to providing defense services deals with the general philosophy for providing criminal defense services and while the committee felt that the philosophy should apply to the Florida Rules of Criminal Procedure, the standards were not in such form to be the subject of that particular rule. Since the standards deal with the national situation, contained in them were alternative methods of providing defense services, i.e., assigned counsel vs. defender system; but, Florida, already having a defender system, need not be concerned with the assigned counsel system.

(a) Taken from the first sentence of ABA Standard 5.1. There was considerable discussion within the committee concerning the time within which counsel should be appointed and who should notify defendant's counsel. The commentary in the ABA Standard under 5.1a, b, convinced the committee to adopt the language here contained.



(b) Standard 4.1 provides that counsel should be provided in all criminal cases punishable by loss of liberty, except those types where such punishment is not likely to be imposed. The committee determined that the philosophy of such standard should be recommended to the Florida Supreme Court. The committee determined that possible deprivation of liberty for any period makes a case serious enough that the accused should have the right to counsel.

(c) Based on the recommendation of ABA Standard 5.1b and the commentary thereunder which provides that implementation of a rule for providing the defendant with counsel should not be limited to providing a means for the accused to contact a lawyer.

(d) From standard 7.2 and the commentaries thereunder.

1980 Amendment. Modification of the existing rule (the addition of (b)(5)(A)–(C)) provides a greater degree of uniformity in appointing counsel to indigent defendants. The defendant is put on notice of the lien for public defender services and must give financial information under oath.

A survey of Florida judicial circuits by the Committee on Representation of Indigents of the Criminal Law Section (1978–79) disclosed the fact that several circuits had no procedure for determining indigency and that there were circuits in which no affidavits of insolvency were executed (and no legal basis for establishing or collecting lien monies).

1992 Amendment. In light of *State v. District Court of Appeal of Florida, First District*, 569 So.2d 439 (Fla. 1990), in which the supreme court pronounced that motions seeking belated direct appeal based on ineffective assistance of counsel should be filed in the trial court pursuant to rule 3.850, the committee recommends that rule 3.111(e) be amended to detail with specificity defense counsel’s duties to perfect an appeal prior to withdrawing after judgment and sentence. The present provision merely notes that such withdrawal is governed by Florida Rule of Appellate Procedure 9.140(b)(3).

1998 Amendment. The amendments to (d)(2)–(3) were adopted to reflect *State v. Bowen*, 698 So.2d 248 (Fla. 1997), which implicitly overruled *Cappetta v. State*, 204 So.2d 913 (Fla. 4th DCA 1967), rev’d on other grounds 216 So.2d 749 (Fla. 1968). See *Fitzpatrick v. Wainwright*, 800 F.2d 1057 (11th Cir. 1986), for a list of factors the court may consider. See also *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984), and *Savage v. Estelle*, 924 F.2d 1459 (9th Cir. 1990), cert. denied 501 U.S. 1255, 111 S.Ct. 2900, 115 L.Ed.2d 1064 (1992), which suggest that the defendant’s right to self-representation is limited when the defendant is not able or willing to abide by the rules of procedure and courtroom protocol.

2000 Amendment. This rule applies only to judicial proceedings and is inapplicable to investigative proceedings and matters. See rule 3.010.

2002 Amendment. Indigent defendants are entitled to counsel if they are either currently in custody or might be incarcerated in their case. See *Alabama v. Shelton*, 122 S.Ct. 1764, 1767 (2002) (Sixth Amendment forbids imposition of suspended sentence that may “end up in the actual deprivation of a person’s liberty” unless defendant accorded “the guiding hand of counsel”). See also *Tur v. State*, 797 So. 2d 4 (Fla. 3d DCA 2001) (uncounseled plea to criminal charge cannot



result in jail sentence based on violation of probationary sentence for that charge); *Harris v. State*, 773 So.2d 627 (Fla. 4th DCA 2000).

Discharge of the public defender based on an order certifying no incarceration that is entered after the public defender has already spent considerable time and resources investigating the case and preparing a defense may leave the defendant “in a position worse than if no counsel had been appointed in the first place.” *State v. Ull*, 642 So. 2d 721, 724 (Fla. 1994).

In determining whether a defendant’s due process rights would be violated by the discharge of the public defender, the court should consider all of the relevant circumstances, including, but not limited to:

1. The stage of the proceedings at which the order of no incarceration is entered.
2. The extent of any investigation and pretrial preparation by the public defender.
3. Any prejudice that might result if the public defender is discharged.
4. The nature of the case and the complexity of the issues.
5. The relationship between the defendant and the public defender.

Counsel may be provided to indigent persons in all other proceedings in, or arising from, a criminal case and the court should resolve any doubts in favor of the appointment of counsel for the defendant. See *Graham v. State*, 372 So.2d 1363, 1365 (Fla. 1979).

See form found at Fla.R.Crim.P. 3.994.

2005 Amendment. See Affidavit of Indigent Status as provided by *In re Approval of Form for Use by Clerks of the Circuit Courts Pursuant to Rule 10-2.1(a) of the Rules Regulating the Florida Bar*, 877 So. 2d 720 (Fla. 2004).

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.

(1) 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.

Committee Notes

These standards are based on the general premise that the defense of a capital case requires specialized skill and expertise. The Supreme Court has not only the authority, but the constitutional responsibility to ensure that indigent defendants are provided with competent counsel, especially in capital cases where the State seeks to take the life of the indigent defendant. The Supreme Court also has exclusive jurisdiction under Article V section 15 of the Florida Constitution to "[r]egulate the admission of persons to the practice of law and the discipline of persons admitted." Implied in this grant of authority is the power to set the minimum requirements for the admission to practice law, see *In re Florida Board of Bar Examiners*, 353 So. 2d 98 (Fla. 1977), as well as the minimum requirements for certain kinds of specialized legal work. The Supreme Court has adopted minimum educational and experience requirements for board certification in other specialized fields of the law.

The experience and continuing educational requirements in these standards are based on existing local standards in effect throughout the state as well as comparable standards in effect in other states. Specifically, the committee considered the standards for the appointment of counsel in capital cases in the Second, Sixth, Eleventh, Fifteenth, and Seventeenth Circuits, the statewide standards for appointing counsel in capital cases in California, Indiana, Louisiana, Ohio, and New York, and the American Bar Association standards for appointment of counsel in capital cases.

These standards are not intended to establish any independent legal rights. For example, the failure to appoint cocounsel, standing alone, has not been recognized as a ground for relief from a conviction or sentence. See *Ferrell v. State*, 653 So. 2d 367 (Fla. 1995); *Lowe v. State*, 650 So. 2d 969 (Fla. 1994); *Armstrong v. State*, 642 So. 2d 730 (Fla. 1994). Rather, these cases stand for the proposition that a showing of inadequacy of representation in the particular case is required. See *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). These rulings are not affected by the adoption of these standards. Any claims of ineffective assistance of counsel will be controlled by *Strickland*.

The American Bar Association Standards and many other state standards require the appointment of two lawyers at the trial level in every prosecution that could result in the imposition of the death penalty. The committee has modified this requirement by allowing the trial court some



discretion as to the number of attorneys, and by eliminating certain provisions that may be unnecessary or economically unfeasible. Paragraph (e) minimizes the potential duplication of expenses by limiting the compensable participation of cocounsel. In addition, the standard adopted herein requires an initial showing by lead counsel of the need for cocounsel and, while the standard suggests that cocounsel should ordinarily be appointed, the ultimate decision is left to the discretion of the trial court.

The committee emphasizes that the right to appointed counsel is not enlarged by the application of these standards. The court should appoint conflict counsel only if there is a conflict and the defendant otherwise qualifies for representation by the Public Defender. A defendant who is represented by retained counsel is not entitled to the appointment of a second lawyer at public expense merely because that defendant is unable to bear the cost of retaining two lawyers.

Criminal Court Steering Committee Note

2014 Amendment. The Steering Committee added minimum requirements for lead counsel in capital postconviction proceedings to ensure a requisite level of expertise in capital postconviction cases and to permit the State the opportunity to seek opt-in treatment pursuant to 28 U.S.C. §§2261-2266.



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).

Criminal Court Steering Committee Commentary

2014 Adoption. The Supreme Court has exclusive jurisdiction under Article V, section 15 of the Florida Constitution to “regulate the admission of persons to the practice of law and the discipline of persons admitted.” Implied in this grant of authority is the power to set minimum requirements for the admission to practice law, see *In re Florida Board of Bar Examiners*, 353 So. 2d 98 (Fla. 1977), as well as minimum requirements for certain kinds of specialized legal work. The Supreme Court has adopted minimum educational and experience requirements for attorneys in capital cases, see, e.g., rule 3.112, and for board certification in other specialized fields of law.

The concept of a two-hour continuing legal education (CLE) requirement was proposed in the 2012 Final Report of the Florida Innocence Commission.

The CLE requirement is not intended to establish any independent legal rights. Any claim of ineffective assistance of counsel will be controlled by *Strickland v. Washington*, 466 U.S. 668 (1984).

It is intended that The Florida Prosecuting Attorneys Association and The Florida Public Defender Association will develop a seminar that will be approved for CLE credit by The Florida Bar. It is also intended that attorneys will be able to electronically access that seminar, at no cost, via The Florida Bar’s website, the Florida Prosecuting Attorneys Association’s website, and/or the Florida Public Defender Association’s website.

The rule is not intended to apply to counsel of record in direct or collateral adult felony appeals.



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.



APPENDIX



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