

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULE OF
CRIMINAL PROCEDURE 3.192**

CASE NO.: 17-

**OUT-OF-CYCLE REPORT OF THE
CRIMINAL PROCEDURE RULES COMMITTEE TO CLARIFY A
FLORIDA RULE OF CRIMINAL PROCEDURE**

The Honorable Jon B. Morgan, Chair of the Criminal Procedure Rules Committee (“Committee”), and John F. Harkness, Jr., Executive Director of the The Florida Bar, file this report of the Criminal Procedure Rules Committee to clarify Florida Rule of Criminal Procedure 3.192 (Motions for Rehearing).

In 2015, Rule 3.192 was amended in two cases: *In re: Amendments to the Florida Rules of Criminal Procedure*, 167 So. 3d 395 (Fla. 2015) (“deemed denied”) and *In re: Amendments to the Florida Rules of Criminal Procedure*, 188 So. 3d 764 (Fla. 2015) (“2015 cycle”).

The “deemed denied” amendments, effective June 11, 2015, removed the fifth sentence of the rule: “[i]f no order is filed within 40 days, the motion is deemed denied.” The opinion also amended the sixth sentence to remove “40 days from the order of which rehearing is sought, or,” to add “signed,;” and to remove, “whichever is earlier” from the rule. (*See In re: Amendments to the Florida Rules of Criminal Procedure*, 167 So. 3d 395, 397 (Fla. 2015).)

The Committee’s 2015 cycle amendments, effective January 1, 2016, removed a hyphen from “postconviction” and added a reference to Rule 3.801(Correction of Jail Credit) in the second to last sentence of the rule. However, when the Committee’s 2015 cycle report opinion was released, it did not reflect the Court’s prior amendment of Rule 3.192. (*See In re: Amendments to the Florida Rules of Criminal Procedure*, 188 So. 3d 764, 771 (Fla. 2015).)

Jay Walter Thomas, staff attorney at the Second District Court of Appeal, brought this concern to our attention via an e-mail to the Clerk of the Court dated March 3, 2017. (*See Appendix C–2.*)

The Committee regrets any oversight and seeks clarification from the Court regarding Rule 3.192. The Committee believes, by incorporating and reconciling the amendments from both opinions, the following is intended:

RECEIVED, 08/16/2017 04:28:29 PM, Clerk, Supreme Court

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. ~~If no order is filed within 40 days, the motion is deemed denied.~~ A timely filed motion for rehearing shall toll rendition of the order subject to appellate review and the order shall be deemed rendered ~~40 days from the order of which rehearing is sought, or~~ upon the filing of a signed, written order denying the motion for rehearing, ~~whichever is earlier.~~ This rule shall not apply to ~~post-conviction~~ 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.

WHEREFORE, the Criminal Procedure Rules Committee requests that the Court clarify the amendments to Florida Rule of Criminal Procedure 3.192 as outlined in this report.

Respectfully submitted on August 16, 2017.

/s/ Hon. Jon. Berkley Morgan
Hon. Jon Berkley Morgan, Chair
Criminal Procedure Rules Committee
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/s/ John F. Harkness, Jr.
John F. Harkness, Jr., Exec. Director
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the Florida Courts E-filing Portal, on August 16, 2017, to:

Jay Walter Thomas
Second District Court of Appeal
P.O. Box 327
Lakeland, FL 33802-0327
863/499-2290
thomasj@flcourts.org
Florida Bar No. 11455

CERTIFICATE OF COMPLIANCE

I certify that these rules were read against Thomson Reuters' *Florida Rules of Court—State* (2017 Edition).

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

/s/ Heather Savage Telfer
Heather Savage Telfer, Staff Liaison
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The amendments in single underline and single strikethrough would conform the rule to the Court's opinion in *In re: Amendments to the Florida Rules of Criminal Procedure*, 167 So. 3d 395, 397 (Fla. 2015).

The amendments in double underline and double strikethrough would conform the rule to the Court's opinion in *In re: Amendments to the Florida Rules of Criminal Procedure*, 177 So. 3d 567 (Fla. 2015).

APPENDIX B

Proposed Rule	Reason for Change
<p>RULE 3.192. MOTIONS FOR REHEARING</p> <p>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. If no order is filed within 40 days, the motion is deemed denied. A timely filed motion for rehearing shall toll rendition of the order subject to appellate review and the order shall be deemed rendered 40 days from the order of which rehearing is sought, or upon the filing of a <u>signed</u>, written order denying the motion for rehearing, whichever is earlier. This rule shall not apply to post-conviction <u>postconviction</u> proceedings pursuant to rule 3.800(a), <u>3.801</u>, 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.</p>	<p>The amendments in single underline and single strikethrough would conform the rule to the Court's opinion in <i>In re: Amendments to the Florida Rules of Criminal Procedure</i>, 167 So. 3d 395, 397 (Fla. 2015).</p> <p>The amendments in double underline and double strikethrough would conform the rule to the Court's opinion in <i>In re: Amendments to the Florida Rules of Criminal Procedure</i>, 177 So. 3d 567 (Fla. 2015).</p>



Supreme Court of Florida

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March 9, 2017

H. Scott Fingerhut, Chair
Criminal Procedure Rules Committee
H. Scott Fingerhut, P.A.
500 South Dixie Highway
Suite 301
Coral Gables, Florida 33146

Re: Request to Amend Criminal Procedure Rule 3.192

Dear Mr. Fingerhut:

Enclosed please find an email from Jay Thomas, which I am forwarding to you pursuant to Florida Rule of Judicial Administration 2.140(a)(2).

Most cordially,

A handwritten signature in dark ink, appearing to be "JT", followed by a long horizontal line.

JAT/sh
Enclosure
cc: Jay Thomas
Heather Telfer, Bar Staff Liaison

From: [Jay Thomas](#)
To: [John A. Tomasino](#)
Cc: ["Mcharbula@coj.net"](#)
Subject: Rule 3.192
Date: Friday, March 3, 2017 6:31:29 PM

There seems to be an error in the Court's documentation on Florida Rule of Criminal Procedure 3.192.

First, the rules opinion at 167 So. 3d 395 deletes the "deemed denied" and related language in the rule.

The next amendment to the rule initially appeared at 177 So. 3d 567 but was withdrawn by the publisher due to motions re scrivener's errors. It's pretty much a blank page both on Westlaw and in the published volume. I can't find the original version of that opinion anywhere; the supreme court docket at October 29, 2015, has a ["corrected opinion"](#) at that entry, which presumably is a subsequent version incorporating the corrections to the scrivener's errors. Three motions to correct scrivener's errors were filed after October 29, 2015, but none of them addresses rule 3.192.

It may also be noted that West seems not to have published the corrected opinion (just as well; see next paragraph).

But in any event, the October 29, 2015, corrected opinion, [docketed again on March 10, 2016](#), **restores sub silentio the "deemed denied" language deleted at 167 So. 3d 395.**

So, which is the real rule? The Florida Bar's pdf version of January 1, 2017, omits the "deemed denied" language, following 167 So. 3d 395. West's Florida Rules of Court (rev. ed. 2016) retains the "deemed denied" language.

Presumably, the real rule is the one at 167 So. 3d 195, with the Court's pdf's at the two docket entries mentioned above reflecting a scrivener's error.

Thank you for looking into this. If the Court issues an order in SC15-177, could you please let me know.

Jay Thomas
Staff Attorney
2d DCA