



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
JULIA BREEDING
STAFF ATTORNEY

May 6, 2021

The Florida Bar News Editor
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

*In Re: Amendments to Florida Rule of Criminal Procedure 3.851
and Florida Rule of Appellate Procedure 9.142, Case No. SC21-
537*

Dear Editor:

I have provided you with a copy of the proposed Rules in the above case. Please publish said Rules in the June 1, 2021, Bar News. Please publish a statement that the Court has placed the proposed Rules on the Internet at location:

<http://onlinedocketssc.flcourts.org/>.

Any comments should be filed with the Supreme Court on or before August 2, 2021. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18,

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2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Comments filed via the Portal must be submitted in Microsoft Word 97 or higher. See *In re Electronic Filing in the Florida Supreme Court*, Fla. Admin. Order No. AOSC17-27 (May 9, 2017). Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

Thank you for your cooperation in this matter.

Most cordially,

A handwritten signature in black ink, appearing to read 'JAT', with a long horizontal line extending to the right.

John A. Tomasino

JAT/so

Enclosure

cc: Hon. Charles T. Canady, Supreme Court Justice Liaison
Diane West, Central Staff Director
Chief Judges of the District Courts of Appeal
Clerks of the District Courts of Appeal
Chief Judges of the Judicial Circuits
Clerks of the Judicial Circuits
Dori Foster-Morales, President, The Florida Bar
Michael G. Tanner, President-elect, The Florida Bar
Joshua E. Doyle, Executive Director, The Florida Bar
Krys Godwin, Bar Liaison, The Florida Bar
Mikalla Andies Davis, Bar Liaison, The Florida Bar
Hon. Debra Johnes Riva, Chair, Criminal Court Steering
Committee
Hon. Stephanie W. Ray, Chair, Appellate Court Rules
Committee

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Hon. Angela Cote Dempsey, Chair, Criminal Procedure Rules
Committee

Bart Neil Schneider, Staff Liaison, Office of State Courts
Administrator

The Florida Supreme Court is considering amendments to Florida Rule of Criminal Procedure 3.851 (Collateral Relief After Death Sentence has Been Imposed and Affirmed on Direct Appeal) and Florida Rule of Appellate Procedure 9.142 (Review Proceedings in Collateral or Postconviction Criminal Cases). The rule amendments under consideration will be reviewed in *In re Amendments to Florida Rule of Criminal Procedure 3.851 and Florida Rule of Appellate Procedure 9.142*, Case No. SC21-537, and pertain to the discharge of postconviction capital counsel or the dismissal of the postconviction capital proceedings themselves, or both, the appeal from those orders, and the appointment of standby counsel upon the discharge of postconviction counsel.

The Court invites all interested persons to comment on the proposed amendments, which are reproduced in full below. The Criminal Court Steering Committee, the Criminal Procedure Rules Committee, and the Appellate Court Rules Committee are specifically requested to file comments. In addition to comments addressing the proposed amendments, the Court specifically seeks comments on whether maintaining the rule provisions providing for automatic appeals when a motion to discharge counsel or to dismiss the capital postconviction proceedings, or both, is granted—Florida Rule of Criminal Procedure 3.851(i)(9)(C) and Florida Rule of Appellate Procedure 9.142(d)(2)(a), as designated in the proposed amendments—continue to be necessary and appropriate. All comments must be filed with the Court on or before August 2, 2021, with a certificate of service verifying that a copy has been served on the Criminal Procedure Rules Committee Chair, The Honorable Angela Cote Dempsey, Second Judicial Circuit, Leon County Courthouse, 301 S. Monroe Street, Room 301E, Tallahassee, Florida 32301-1861, dempsey@leoncountyfl.gov, the Appellate Court Rules Committee Chair, The Honorable Stephanie Williams Ray, First District Court of Appeal, 2000 Drayton Drive, Tallahassee, Florida 32399-0001, rays@1dca.org, and on Bar Liaison to the Rules Committees, Krys Godwin, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, kgodwin@floridabar.org, and the Criminal Court Steering Committee Chair, The Honorable Debra J. Riva, Twelfth Judicial Circuit, P.O. Box 48927, Sarasota, Florida 34230-5927, driva@jud12.flcourts.org, and on the OSCA

Staff Liaison to the Committee, Bart Schneider, 500 S. Duval Street, Tallahassee, Florida 32399, schneidb@flcourts.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chairs have until August 23, 2021, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Comments filed via the Portal must be submitted in Microsoft Word 97 or higher. *See In re Electronic Filing in the Florida Supreme Court*, Fla. Admin. Order No. AOSC17-27 (May 9, 2017). Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA RULES OF CRIMINAL PROCEDURE 3.851 AND FLORIDA RULE OF APPELLATE PROCEDURE 9.142, CASE NO. SC21-537

Rule 3.851. Collateral Relief After Death Sentence has Been Imposed and Affirmed on Direct Appeal

(a) [No changes]

(b) (1)-(5) [No changes]

(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 who has been sentenced to death to seek to dismiss ~~postconviction collateral~~ counsel in state court

shall be pursuant to statute due to actual conflict or subdivision (i) of this rule.

(c)-(h) [No changes]

(i) Dismissal of Postconviction Proceedings.

(1) This subdivision applies only when a defendant seeks either ~~both~~ to dismiss pending postconviction proceedings and/or to discharge collateral counsel, or both.

(2)-(5) [No changes]

(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 either whether the defendant knowingly, freely and voluntarily wants to dismiss pending postconviction proceedings and/or to discharge collateral counsel, or both.

(7) If the court determines that the defendant has made the decision either to dismiss pending postconviction proceedings and/or to discharge collateral counsel, or both, knowingly, freely, and voluntarily, the court shall enter an order dismissing either all pending postconviction proceedings and/or discharging collateral counsel, or both.

(8) ~~But if~~ If the court determines that the defendant has not made either the decision to dismiss pending postconviction proceedings and/or to discharge collateral counsel, or both, knowingly, freely, and voluntarily, the court shall enter an order denying the motion without prejudice.

(89) If the court grants the motion:

(A) it shall appoint standby collateral counsel eligible pursuant to rule 3.112;

~~(AB)~~ 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

~~(BC)~~ 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.

~~(910)~~ If the court denies the motion, the defendant may seek review as prescribed by Florida Rule of Appellate Procedure 9.142(b).

(11) For motions to dismiss postconviction proceedings and to discharge counsel granted prior to [the effective date of this amendment], standby collateral counsel eligible pursuant to rule 3.112 shall be appointed.

Rule 9.142 Procedures for Review in Death Cases

(a)-(c) [No changes]

(d) Review of Either Dismissal of Postconviction Proceedings and/or Discharge of Counsel, or Both, in Florida Rule of Criminal Procedure 3.851(i) Cases.

(1) *Applicability.* This rule applies when the circuit court enters an order either dismissing postconviction proceedings and/or discharging counsel, or both, under Florida Rule of Criminal Procedure 3.851(i).

(2) *Procedure Following Rendition of Order of Dismissal ~~and~~ Discharge, or Both.*

(A) ~~Notice to Lower Tribunal.~~ **Notice to Lower Tribunal.** Within 10 days of the rendition of an order granting either a prisoner's motion to dismiss the motion for postconviction relief ~~motion to discharge counsel and~~ motion to discharge counsel ~~dismiss the motion for postconviction relief, or both,~~ discharged counsel shall file with the clerk of the circuit court a notice of appeal seeking review in the supreme court.

(B) **Transcription.** The circuit judge presiding over any hearing either on a motion to dismiss ~~and~~ or discharge counsel, or both, shall order a transcript of the hearing to be prepared and filed with the clerk of the circuit court no later than 25 days from rendition of the final order.

(C) **Record.** Within 30 days of the granting of a motion either to dismiss ~~and~~ or to discharge counsel, or both, the clerk of the circuit court shall electronically transmit a copy of the motion, order, and transcripts of all hearings held on the motion to the clerk of the supreme court.

(D) [No changes]