

The Florida Supreme Court's Criminal Court Steering Committee (Committee) has submitted to the Florida Supreme Court a report proposing an amendment 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 Court invites all interested persons to comment on the proposed amendment, which is reproduced in full below, as well as online at <http://www.floridasupremecourt.org/decisions/proposed.shtml>. All comments must be filed with the Court on or before July 1, 2019, with a certificate of service verifying that a copy has been served on the Committee Chair, The Honorable James C. Hankinson, Circuit Judge, Second Judicial Circuit, 301F Leon County Courthouse, 301 S. Monroe Street, Tallahassee, Florida 32301, hankinsonj@leoncountyfl.gov, 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 Chair has until July 22, 2019, 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 RULE OF CRIMINAL PROCEDURE 3.851 AND FLORIDA RULE OF APPELLATE PROCEDURE 9.142, CASE NO. SC19-509

RULE 3.851. COLLATERAL RELIEF AFTER DEATH SENTENCE HAS BEEN IMPOSED AND AFFIRMED ON DIRECT APPEAL

(a) [No Changes]

(b) **Appointment of Postconviction Counsel.**

(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~~basis for a defendant to seek to dismiss postconviction 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 ~~both to dismiss pending postconviction proceedings and to discharge collateral counsel.~~

(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 whether the defendant knowingly, freely, and voluntarily wants to dismiss ~~pending postconviction proceedings and discharge collateral counsel.~~

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

(8) If the court grants the motion, the court, the clerk, and collateral counsel shall follow Florida Rule of Appellate Procedure 9.142(d).

~~(A) 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~~

~~(B) 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.~~

(9) [No Changes]

(j) [No Changes]

Court Commentary

[No Changes]

Criminal Court Steering Committee Note

[No Changes]

RULE 9.142. PROCEDURES FOR REVIEW IN DEATH PENALTY CASES

(a)-(c) [No Changes]

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

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

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

(A) Notice to Lower Tribunal. Within 10 days of the rendition of an order granting a prisoner's motion to ~~discharge counsel and dismiss the motion for postconviction relief proceedings~~, discharged collateral 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 on a motion to dismiss ~~and discharge counsel~~ 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 to dismiss and discharge counsel~~ rendition of the order granting the motion to dismiss postconviction proceedings, 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) Proceedings in the Supreme Court of Florida. Within 20 days of the filing of the record in the supreme court, ~~discharged collateral~~ counsel shall serve an initial brief. Both the state and the prisoner may serve responsive briefs. All briefs must be served and filed as prescribed by rule 9.210.

Committee Notes

[No Changes]

Criminal Court Steering Committee Note

[No Changes]