

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO  
FLORIDA RULE OF CRIMINAL  
PROCEDURE 3.116.**

**SC23-**

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**REPORT OF THE  
CRIMINAL PROCEDURE RULES COMMITTEE**

The Chair of the Criminal Procedure Rules Committee (“the committee”), Cynthia Cohen, and the Executive Director of The Florida Bar, Joshua E. Doyle, file this report under Florida Rule of General Practice and Judicial Administration 2.140(b).

The committee proposes amendments to the Florida Rule of Criminal Procedure 3.116. The amendments were approved by the committee on January 20, 2023, by a vote of 24-8-1. The Florida Bar Board of Governors recommended the acceptance of these amendments by a vote of 34-10-0 on May 12, 2023.

The amendments are attached in legislative format as Appendix A and in two-column format as Appendix B. The amendments were published for comment on *The Florida Bar News* website on January 31, 2023 and in the March 2023 print edition of *The Florida Bar News*. The publication notices are attached as Appendix C. The Committee received three comments, each of them in support of the proposed amendment as drafted. Additionally, when this proposal was submitted to the Florida Bar Board of Governors for their consideration, the Florida Conference of Circuit Judges and the Florida Association of Criminal Defense Lawyers each submitted comments for the Board’s consideration. All of the comments are attached as Appendix D. For the Court’s convenience, a publication summary is provided as Appendix E. The related request for amendment is attached as Appendix F.

**RULE 3.116. USE OF COMMUNICATION TECHNOLOGY**

The Florida Association of Criminal Defense Lawyers suggested an amendment to Rule 3.116 to align with Rule of

General Practice and Judicial Administration 2.530, which requires judges to grant a request to use communication technology for pretrial conferences and non-evidentiary proceedings scheduled for 30 minutes or less absent good cause to deny the request.

### **Majority Position**

Under RGPJA 2.530(b)(1), all non-criminal courts in Florida are currently required to grant a motion to use communication technology for non-evidentiary hearings scheduled for 30 minutes or less absent good cause to deny the request. It is the position of this Committee that criminal courts should not be treated any differently.

This amendment would increase access to the courts for all Florida citizens. Permitting remote appearance at routine hearings greatly reduces the logistical burden for both state attorneys and defense attorneys, allowing them to be more attentive and responsive to their other cases and clients. Additionally, many victims and witnesses do not have the financial resources to travel and be away from work for the extended periods required for in-person hearings. Allowing these individuals to appear remotely at routine hearings would allow for greater participation, improve access to the court for all, and result in an overall improved administration of justice.

This amendment does not take away all discretion from the trial judge. As proposed, the trial judge may still deny the motion for good cause. This gives the trial judge the discretion to determine when there is truly a need for the parties to appear in person, and to rule accordingly.

Finally, this amendment would not infringe on the constitutional rights of the Defendant. As proposed, this rule only applies to short non-evidentiary hearings which would normally not infringe on any constitutional rights of a Defendant. If the nature of a particular hearing does implicate a Defendant's constitutional rights, then this would certainly present the good cause required for the trial judge to deny the motion.

## **Minority Position**

A minority of the committee voted against this proposal. Some who voted against the proposal agreed that there is a need for remote hearings in criminal court but would prefer language that requires attendance in-person for calendar call and pre-trial hearings. Others believe that remote hearings are not as effective as in person hearings. Some expressed concern that criminal court is different from civil court because a defendant may face incarceration, constitutional rights are at stake, and there may be a need to take someone into custody.

The committee respectfully requests that the Court amend Florida Rules of Criminal Procedure as detailed above.

Respectfully submitted on June 1, 2023.

/s/ Cynthia Cohen  
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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 June 1, 2023, to:

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### **CERTIFICATE OF COMPLIANCE**

I certify that these rules were read against Thomson Reuters' *Florida Rules of Court—State* (2022 Rev. Edition). I certify that this notice was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045 and the requirements in *In re: Guidelines for Rules Submissions*, AOSC22-78 (Fla. 2022).

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