Filing # 180744673 E-Filed 08/29/2023 01:08:32 PM

**IN THE SUPREME COURT OF THE STATE OF FLORIDA**

IN RE: AMENDMENT TO
FLORIDA RULE OF CRIMINAL PROCEDURE 3.116

Case No: SC23-0803

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**COMMENT OF JOSEPH C. BODIFORD**

I write in support of adopting the proposed amendment to Florida Rule of Criminal Procedure 3.116, mandating the granting of motions to use communications technology for a non-evidentiary proceeding scheduled for less than 30 minutes in criminal cases.

I have practiced criminal trial law in Florida for over 27 years, as both prosecutor and defense attorney. When I first started as a young prosecutor, we did not even have computers on our desks. Now, we can practice law efficiently and effectively from the palm of our hands. Living and practicing through this evolution has been fascinating, and I believe it to have been very beneficial to the administration of justice in Florida's criminal courts.

As an attorney, I am regularly a part of highly effective online meetings and depositions that resolve cases. As an adjunct law professor, I teach classes via an online learning platform (in fact, my own LL.M. was completed online). When I was the president of the Tallahassee Bar, I led online meetings that positively shaped the direction of the association. I, as

countless others, can connect with far away friends and family by online video conferencing.

*We all know it*: video technology has made our world a little smaller and our lives a whole lot more efficient.

In criminal cases, we have regular (30-45 day) ministerial case management conferences, to ensure compliance with constitutional and procedural speedy trial rules as well as for general docket management. The problems criminal practitioners encounter with this increased court appearance system/structure are many:

1. Criminal defendants must take off time from work to attend their hearings, and miss income, simply to attend what are mostly very quick rescheduling hearings. This can add up to many, many days away from work over the lifespan of some cases.

2. Family members who are interested in knowing the status of the case are in the same spot. This is especially true in college towns, where parents are often in different parts of the state and country. This creates anxiety for those who cannot attend the proceedings in person.

3. Time in court is time away from production. Production, in my practice, is reviewing and demanding additional (where

needed) discovery, researching issues and preparing motions, preparing for and attending depositions, meeting with clients and witnesses, and preparing for trials. Production is what moves the cases along – much more so than attending a 45-second hearing to reset the case.

4. Some courts permit virtual appearances as a regular practice, some require permission in advance, and some prohibit it altogether. Suffice it to say that inconsistency impacts efficiency. It complicates weekly planning – one cannot recoup time from an in-person court appearance and reallocate it to production because some judges require a physical trip to the courthouse for a very short rescheduling or other ministerial hearing.

5. In a system where the use of experts is becoming more and more commonplace, scheduling of live testimony can be cumbersome if not downright impossible. This is especially true in the Second Circuit with mental health professionals. We have only a few experts and all in incredibly high demand. They cannot always get to an in-person hearing without sacrificing valuable time conducting evaluations. Other times we have experts from different parts of Florida and the country; getting them to Tallahassee for a live

hearing is logistically tricky and very costly. While most testify at evidentiary hearings, which are outside what the proposed amendment to rule 3.116 impacts, there are times experts and other professionals are called upon for case updates and other ministerial issues that only take a short time.

All these issues could be easily resolved by the implementation of the proposed amendment to rule 3.116. This is evident by how all of us were able to move cases during the COVID era of 2020 and 2021. We had mandatory virtual court back then, and we all made it work – ministerial hearings were short and sweet, and we all enjoyed more production time than ever. I found that defendant, victim, and observer attendance was higher than ever. By adopting the proposed amendment, we would continue that practice and reap the same benefits.

Access to the courts would be greatly improved, as defendants and loved ones would be able to attend from wherever they are. Defendants and witnesses would not endure work or travel hardships if they are able to Zoom in for a quick hearing – and they would be more informed about the status of the case and feel more of a part of the proceedings.

Consistency is always a desired practice in every circuit. Knowing that one *will* be able to appear virtually because the judge will be required

to permit such appearance, will permit greater consistency in attorneys' weekly planning. Attorneys will be able to move multiple cases to resolution quicker and more efficiently by the ability to calendar multiple tasks in one time block – for example, an attorney could be in a deposition in a one county, then take a short break to reset a case via a Zoom hearing in another county, and then finish the deposition.

I find that a virtual docket moves much quicker than an in-person docket. I would think that judges would have more time to prepare for hearings and render written orders by not having to sit for hours in court.

The result of all of this is that thousands of hours monthly can be recouped across the circuits. The result is more work (production) being done on cases to move them to trial or plea.

With my support for the proposed amendment, I have one implementation recommendation. To facilitate the requests to appear virtually, trial courts should consider blanket orders in cases where such requests are made. What I see being burdensome on everyone would be the preparation and filing of a motion to appear virtually, and issuance of an order, before *every* ministerial hearing in a case. A blanket order in each case and/or a standing court procedural preference/order (or local rule) would alleviate that burden.

I greatly appreciate and commend the work of the Florida Association of Criminal Defense Lawyers, the Florida Bar's Criminal Procedure Rules Committee, and the Justices of the Florida Supreme Court in taking up the proposal and consideration of this proposed amendment. Together, we all make this system work, and together we can make it work even better.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

COMES NOW the undersigned attorney, and hereby certifies that the above comment has been electronically served on all parties on the e-service list on this the 29th day of August, 2023.

JOSEPH C. BODIFORD, B.C.S.