**IN THE SUPREME COURT OF FLORIDA**

**Case No.: SC22-1123**

**IN RE: AMENDMENTS TO FLORIDA RULES OF CRIMINAL PROCEDURE 3.134 AND 3.191 AND FLORIDA RULE OF APPELLATE PROCEDURE 9.140**

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**Comments from the Criminal Law Section (CLS) of The Florida Bar**

## I. CRIMINAL LAW SECTION OF THE FLORIDA BAR

The Criminal Law Section ("CLS") of The Florida Bar hereby respectfully submits the following Comments and objections to the Florida Supreme Court's proposed amendments to Florida Rule of Criminal Procedure 3.191 SPEEDY TRIAL and Florida Rule of Appellate Procedure 9.140 proposed via the court's own motion pursuant to Fla. S. Ct. Case No. SC22-1123.

The CLS is comprised of state and federal trial and appellate criminal justice lawyers, judges, and academics. Members of the Section are united by their shared goal of providing a fair, just, and efficient criminal justice system for the citizens of the State of Florida. With over 2,300 members including judges, prosecutors, public and private criminal defense lawyers, law professors, and law students, this diverse membership reflects varied

opinions and viewpoints, but all participants are uniformly committed to, among other things, the improvement of the administration of justice.

## II. PROCEDURAL HISTORY OF PROPOSED CHANGES TO RULE 3.191

The proposed changes to Rule 3.191, respectfully, do not anticipate or take into account collateral and unintended consequences problematic to a rule that functions well in its current form. The old but true adage "if it isn't broken, don't fix it," applies in this situation to the speedy trial rule. To fully understand the current proposal, it is important to review the procedural history of the rule.

In 2018 this court referred to the Steering Committee the idea of amending the speedy trial rule. The Steering Committee proposed significant and substantial changes to the rule at that time that, if approved, would have fundamentally shifted the landscape of the criminal justice system in Florida. The proposals were so critiqued by many of the interested stakeholders in the criminal justice system that the court did not accept the Steering Committee's suggested proposals.

Then, in 2019, the court again considered proposed substantial substantive changes to the rule. Stakeholders including the Florida Criminal Procedure Rules Committee as well as this Section objected to the

proposed changes and critiqued them as not taking into account the unintended consequences that would result if those changes were adopted. As the proverbial “boots on the ground” the practitioners in the criminal justice system are uniquely positioned to assess the function of the speedy trial rule and how it protects the rights of the accused, but also how it operates as an essential mechanism to ensure the efficient, fair and consistent administration of justice. Presumably recognizing these factors, the court again opted to leave 3.191 intact. It was the position of the CLS at the time the last two proposed amendments to the speedy trial rule were considered that such changes were unnecessary—that the current speedy trial rule was working effectively with no significant problems or issues that needed to be addressed by amendments to the rule. The CLS has not changed that position.[1] Additionally, the CLS continues to believe that the speedy trial rule as presently written and applied by the courts promotes professionalism and efficiency in the practice by both the state and the defense.

Subsequent to the second submission of proposed amendments to the speedy trial rule not adopted by the court, then Florida Supreme Court

[1] The only proposed current amendment to the speedy trial rule that the CLS supports is the proposed amendment to extend the recapture period from 15 days to 30 days as discussed infra in these Comments.

Justice Alan Lawson convened an informal work group to review Rule 3.191 and discuss potential changes. This group was comprised of two elected State Attorneys, two private criminal defense lawyers, one elected public defender, one circuit court judge, a retired circuit judge, and a representative of Administration of the Courts as well as The Florida Bar. The committee met several times both in person and via Zoom. The last of these meetings was convened on May 4, 2022 and concluded without a final recommendation by the work group.[2] On September 8, 2022, this court filed and opened for comment the new proposed amendments to Rule 3.191. The Criminal Law Section respectfully submits the following comments and objections to those proposed amendments.

## III. THE CONCERN REGARDING A VIOLATION OF SEPARATION OF POWERS IS NEGATED BY FLORIDA STATUTE § 918.15

One of the arguments behind the proposed changes to the speedy trial rule that most in the field consider to be functioning well in the current form is the belief that it runs afoul of the separation of powers of the Florida Constitution. Former Justice to the Florida Supreme Court, Alan Lawson, in his dissent in Born-Suniaga v. State, 256 So.3d 783 (Fla. 2018), argued the

[2] The informal work group members commended Justice Lawson for the extremely collegial and professional manner in which he facilitated the discussions of the informal work group.

issue that a court's discharge on speedy trial grounds of a case when the state had not taken action on the case by the filing of a charging document (an Information or Indictment) within the applicable speedy trial deadline would be creating a false statute of limitations. Doing so would essentially be the judicial branch of government instructing the executive branch when it may pursue a prosecution, according to the dissent in that case. While at first blush this is a concern and issue worthy of the efforts taken to review this matter, a deeper dive respectfully shows that it fails to acknowledge Florida Statute § 918.15, which states:

> (1) In all criminal prosecutions the state and the defendant shall each have the right to a speedy trial.
> (2) The Supreme Court shall, by rule of said court, provide procedures through which the right to a speedy trial as guaranteed by subsection (1) and by s. 16, Art. I of the State Constitution, shall be realized.

Through Florida Statute § 918.15 the legislature directed the court to create a speedy trial rule. That rule has been in place since 1971. The concern that the current rule is unconstitutional because it violates the separation of powers ignores the mandate of § 918.15. In fact, eliminating certain offenses like manslaughter and homicide from a set speedy trial limitation as this proposal aims to do, would then itself violate the legislative

mandate. Adopting this proposal, especially the ability to discharge "without prejudice" on a case with no statute of limitations would engage in the very same violation of separation of powers this proposal is seeking to avoid. Finally, the constitutional authority of the court to enact the speedy trial rule 51 years ago has not been seriously questioned during that time.

## IV. SUBDIVISION(S): (a)-(d)

(a) **Speedy Trial without Demand.** Except as otherwise provided by this rule, ~~and subject to the limitations imposed under subdivisions (e) and (f),~~ every person charged with a crime ~~shall~~ must be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest if the crime charged is a felony. If a formal charge has not been filed or if trial is not commenced within these time periods, ~~the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p)~~the state is entitled to the recapture period in subdivision (p) once the defendant files a notice of expiration of speedy trial time in accordance with subdivision (h). ~~The time periods established by this subdivision shall commence when the person is taken into custody as defined under subdivision (d). A person charged with a crime is entitled to the benefits of this rule whether the person is in custody in a jail or correctional institution of this state or a political subdivision thereof or is at liberty on bail or recognizance or other pretrial release condition.~~ This subdivision ~~shall cease to~~does not apply ~~whenever a person~~if the defendant files a ~~valid~~ demand for speedy trial under subdivision (b) or is responsible for delaying the trial within the 90-day or 175-day time periods.

This very substantial proposed change to subsection (a) would require a defendant to file a notice of expiration, even if a case had not been filed on by Information or Indictment against him or her by the state within the speedy trial time. This proposed amendment is representative of the overall theme of the proposed changes to the rule which do not account for unintended negative consequences which would be created if those proposed changes were adopted. Perhaps the best way to illustrate the problem with this proposed amendment is to ask this question: “Would a court have a defense lawyer file a notice of expiration compelling the court to start a trial in 15 or 30 days when that lawyer does not even know what charges, if any, his or her client will be charged with?” This situation creates an insoluble ethical dilemma for the defense attorney. Does the defense attorney leave well enough alone to potentially avoid a charge entirely if the state does not file a formal charge within the speedy trial period, or does the defense attorney notice the state and the court thereby forcing the issue and possibly prompting the filing of a formal charge(s). More importantly, how could a defense attorney in good faith announce to the court that the attorney is ready to proceed to trial without knowing what charge(s) the defense attorney would be defending against (and also not having discovery at that time). This proposed amendment also does not

take into account the interplay between the speedy trial rule and Rule 3.220, the discovery rule, that provides that a defendant may elect to participate in the discovery process “after the filing of the charging document.”

It is not uncommon for a person to be arrested on an allegation of one charge and then upon review by the state be charged with something significantly more serious. This proposed change if adopted would provide unnecessary and significant disruption to the orderly operation of the criminal justice system.

Another practical problematic issue involves the language in subdivision (a) of the proposed rule dealing with waiver of speedy trial. The language at the end of subdivision (a) states “or is responsible for delaying the trial within the 90-day or 175 day period.” There are often situations when a defendant by the time of arraignment has not yet retained private counsel – often due to financial reasons. The trial court in this situation can still set the planned trial date when private counsel makes an appearance in the case shortly thereafter. But the rule amendment as drafted suggests that a defendant might be found to be unavailable in this situation – resulting in a waiver of speedy trial. A trial court would be put in the untenable position of having to determine if a request for time to seek

counsel constitutes a delay attributable to the defendant resulting in a waiver of speedy trial. This creates a tension between the defendant's 6th amendment right to counsel of his or her choice and the right to a speedy trial under Rule 3.191. The rule as drafted would also result in different treatment of defendants around the state in this circumstance and also disparate treatment of indigent defendants.

Even more of a significant problem, this proposed change requires a defendant in all cases to file a notice of expiration prior to securing a discharge even when no charging document has been filed. Based upon the comments provided in the proposal, the intent of this drastic shift away from standing precedent (<u>See</u> <u>State v. Williams</u>, 791 So.2d 1088 (Fla. 2001)) is to ensure that no case that the state intends to proceed on is procedurally dismissed without the filing of a notice of expiration of speedy trial time. It is the obligation of the State Attorney and their assigned deputies to manage their case load. Knowing when the speedy trial window closes is a responsibility solely within the purview of the state. This duty or burden should not be shifted to a defendant.

## V. <u>SUBDIVISION</u>: (e)

> (e) **Prisoners outside Jurisdiction.** A person who is in federal custody<u>,</u> ~~or~~ incarcerated in a jail or correctional

institution outside the jurisdiction of this state or a subdivision thereof, or in custody in another county in Florida based on actively pending charges in that other county, ~~and who is charged with a crime by indictment or information issued or filed under the laws of this state~~, is not entitled to the benefit of this rule until:

(1)___ that person returns or is returned to the jurisdiction ~~of the court~~ county within which the Florida charge is pending; and

(2)___~~and until~~ written notice of the person's return is filed with the court and served on the ~~prosecutor~~ prosecuting authority.

For these persons, the time period under subdivision (a) commences on the date the last act required under this subdivision occurs~~. For these persons~~ and the time period under subdivision (b) commences when the demand is filed ~~so long as~~ if the acts required under this subdivision occur before the filing of the demand. If the acts required under this subdivision do not precede the filing of the demand, the demand is invalid and ~~shall~~ must be stricken upon motion of the prosecuting attorney. ~~Nothing in this rule shall affect a prisoner's right to speedy trial under law.~~

This proposed change, while seemingly innocuous, does again raise very real practical concerns. Who is responsible for providing written notice of the prisoner's return to the county where charges are pending? The defendant will not have the due process protection of the speedy trial rule until written notice is provided advising that he or she has been returned to the county where the charge is pending. Is it the Sheriff's Office or the Department of Corrections? Is it the attorney for the defendant who is required to furnish written notice to the court via a pleading? What if the

defendant is indigent and has not yet been assigned counsel? Is the defendant then required to write a letter to the court and the prosecutor advising that he or she has been brought back into the county? What if, when the defendant is returned to the county, he or she is brought before the court for an initial appearance and all parties are on notice that the defendant is now being detained in the jurisdiction where the charge is pending. Is it still required that someone file a written notice with the court? And if so- who does that? Once again, this proposed rule offers a solution that creates more problems. This change is unduly vague and provides no guidance on how to properly proceed under its new requirement. Also, as drafted, implementation of the rule could result in disparate treatment for indigent defendants.

## VI. SUBDIVISION: (j)

(j) **~~Delay and Continuances~~**; ~~Effect on Motion. If trial of the accused does not commence within the periods of time established by this rule, a pending motion for discharge shall be granted by the court unless it is shown that:~~

~~(1) a time extension has been ordered under subdivision~~

~~(i) and that extension has not expired;~~

~~(2) the failure to hold trial is attributable to the accused, a codefendant in the same trial, or their counsel;~~

~~(3) the accused was unavailable for trial under subdivision (k); or~~

~~(4) the demand referred to in subdivision (g) is invalid If the court finds that discharge is not appropriate for reasons under subdivisions (j)(2), (j)(3), or (j)(4), the pending motion for discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial.~~ **Amendments**. No provision of this rule prohibits an amendment to a pending charging document prior to a dismissal granted under this rule. An amendment may include the addition of one or more counts, even if those counts were added after the expiration of the time periods in subdivision (a) or during the time periods in subdivisions (b), (m), or (p)

The addition of the above “Amendments” subdivision opens the door to potential abuses in the filing of charges. This proposed change does not provide any limitation to the filing of additional charges that arise out of the same conduct or criminal episode which was the basis for a defendant’s arrest and further would defeat the purpose of the speedy trial rule. It has sometimes been stated that defendants may engage in strategy with regard to the speedy trial rule hoping to secure a procedural discharge of a case that is otherwise ripe for prosecution. However, it is important to note that the speedy trial rule, in its present form, is not intended to act as a penalty

for the state, but rather as a protection for the defendant. The proposed amendment opens the process up to potential abuses wherein the state faced with a discharge will simply add an additional charge(s) to force the defendant into an impossible ethical dilemma of retaining their readiness for trial or seeking a continuance to properly prepare a defense to the added charge by the necessity of conducting new discovery.

## VII. SUBDIVISION: (l)

(l) **Exceptional Circumstances**. ~~As permitted by subdivision (i)of this rule, t~~ The court may order an extension of any of the time periods provided under this rule when exceptional circumstances ~~are shown to exist~~. Exceptional circumstances may not include general congestion of the court's docket, lack of diligent preparation, failure to obtain available witnesses, or other avoidable or foreseeable delays. Exceptional circumstances are those that, as a matter of substantial justice to the accused or the state or both, require an order by the court. These circumstances include but are not limited to:

(1) [No changes]

(2) a showing by the state that the case is so unusual and or so complex, because of the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this rule;

(3)-(6) [No changes]

(7) a showing by the state that it has a good faith belief additional evidence is forthcoming that would allow the state to file charges

The substantive changes included in subdivision (l), in particular the addition of (l)(7) are untenable and vague as to application and procedural application. This amendment raises far more questions and problems than the amendment presumably was intended to fix. For example, what is the standard of proof for the court to consider in determining "good faith?" What is the definition of "forthcoming?" Is there a time limitation or number of extensions the state can secure on the belief that evidence is forthcoming? Based on this provision, the state could easily advise the court that a witness that has disappeared or is uncooperative "may" remerge or become engaged. That would theoretically be a "good faith" representation but would leave the case in limbo. Subdivision (l)(7) would give rise to contentious litigation on the minutia of a case and has the potential to create vastly different rulings based upon similar factual circumstances in courtrooms and jurisdictions around the state.

## VIII. SUBDIVISION: (n)

**(n) Discharge from Crime; Dismissal With and Without Prejudice; Effect.** ~~Discharge~~ A dismissal with prejudice from a crime under subdivision (p)(4) ~~this rule shall operate to bar~~s prosecution of the crime charged and of all other crimes on which trial has not commenced

> nor conviction obtained nor adjudication withheld and that were or might have been charged as a result of the same conduct or criminal episode as a lesser degree or lesser included offense. ~~Absent a bar such as the statute of limitations or a constitutional speedy trial violation, a dismissal without prejudice under subdivision (p)(4) does not bar later prosecution for any crime that was charged or that might have been charged as a result of the same conduct or criminal episode in the case dismissed.~~

Presumably, this change is designed to alleviate the concerns of a violation of the separation of powers wherein the Judiciary would be creating a bar to prosecution outside of the statute of limitations thereby invading the providence of the Executive Branch. (See Born-Suniaga v. State, 256 So.3d 783 (Fla. 2018)) (Justice Lawson dissent). This concern fails to acknowledge that the speedy trial rule in its present form was a response to the Florida Legislature's directive via Florida Statute § 918.015 to the court to fashion a speedy trial. Florida Statue § 918.015(2) states "The Supreme Court shall, by rule of said court, provide procedures through which the right to a speedy trial as guaranteed by subsection (1) and by s. 16, Art I of the State Constitution, shall be realized." Accordingly, the Legislature, through its law-making authority, has given the court the ability to enact a rule that creates a speedy trial right as reflected in Rule 3.191 thereby making the concern regarding a constitutional violation of the separation of powers moot. As such, amending the rule to incorporate a

convoluted dismissal with or without prejudice is the first step down the slippery slope of violating the Constitutional right to speedy trial. The speedy trial rule in its current form has worked very well over the last 51 years and is not in need of substantial changes that could result in unintended negative consequences to the criminal justice system.

## IX. SUBDIVISION: (o)

**(o) Nolle Prosequi; Effect.** ~~The intent and effect of this rule shall not be avoided by the state entering a nolle prosequi to a crime charged and by prosecuting a new crime grounded on the same conduct or criminal episode or otherwise by prosecuting new and different charges based on the same conduct or criminal episode, whether or not the pending charge is suspended, continued, or is the subject of entry of a nolle prosequi.~~ If the state filed a nolle prosequi before the start of the recapture period in subdivision (p), a defendant who seeks an order of dismissal under this rule must first file a notice of expiration of speedy trial time in accordance with subdivision (h) and seek the remedy provided in subdivision (p)(2). If the state filed a nolle prosequi after the start of the recapture period, a defendant who seeks an order of dismissal under this rule must file a motion to dismiss after expiration of the recapture period, unless the state agreed to an order of dismissal before the recapture period expired. The clerk shall accept and treat such pleadings as filed in an active case. This subdivision does not authorize the defendant to any remedy other than the remedy in subdivision (p)

The function of this amendment is similar to that of the proposed changes in Subdivision (a) which mandate a recapture period in all cases.

Unfortunately, this change again fails to appreciate the problematic negative collateral consequences it creates. Making the filing of a notice of expiration a requirement to secure a discharge on even a “no actioned” or nolle prossed case will create an undue burden on the courts, defense attorneys, and the clerk of courts. Upon a dismissal within the speedy trial period, or the announcement of no charge being filed, an effective and ethical defense attorney will need to then calendar the date of the speedy expiration and then file a “notice of expiration.” Subsequently, upon the expiration of the recapture period the defense attorney would then need to calendar a motion for final discharge to ensure that the case is not resurrected at some time in the future. Certainly, it could be argued that it is unlikely that a case that has been dismissed or no actioned will be refiled; but the rules of procedure, and in this case the rules of professional practice, do not concern themselves with probability, but rather with possibility. So long as there is a provision of the rule that creates the possibility of the state refiling a charge all defense attorneys will now need to file and calendar at least two additional hearings to ensure they are doing their due diligence. Failing to do so would not only leave a client subject to re-prosecution, but would cause issues should that client wish to seal or expunge their arrest.  This amendment would also engender new

issues related to effective assistance of counsel standards in this situation by defense counsel.

Under the provisions of this rule change, so long as the case has not been finally discharged by the court, it can potentially be refiled within the statute of limitations. This means that a petition to seal or expunge by the defendant would properly be denied as ineligible by the Florida Department of Law Enforcement. If this provision is put into effect every single case that is no actioned or nolle prossed within the speedy trial window would need to have two additional hearings. Doing so will place an untenable burden on the court system.

In addition to the practical problems created by this provision, there are significant legal and procedural problems that would be created by the adoption of this amendment. The proposed amendment requires the filing of a notice of expiration and ultimately a motion for final discharge on a case that has not been filed on or has been dismissed. The court will have no jurisdiction to rule on either of those two pleadings. The case no longer exists, the notice of expiration and certainly the motion pleading for final discharge will need to be stricken or denied because the court has no jurisdiction on a dismissed or no actioned case.

DISPARATE TREATMENT OF INDIGENT DEFENDANTS

This provision would also result in disparate and unfair treatment of indigent defendants. Very importantly, upon the dismissal or nolle prosequi of a case, the Public Defender's Office presumably would no longer have involvement in those cases in which it had previously been appointed.. A practical issue would be how would an indigent defendant in this situation be able to secure a dismissal because he/she would be without counsel at that time. For this reason alone- the disparate treatment of indigent defendants to access to the courts in this situation-, the court should reject this amendment

**X. SUBDIVISION: (p)**

**(p) ~~Remedy for Failure to Try Defendant within the Specified Time;~~Recapture ~~Window~~ Period After Notice of Expiration Filed; Motion to Dismiss; Remedy for Failure to Commence Trial Within Recapture ~~Window~~ Period**.

(1) No remedy shall be granted to any defendant under this rule until the court has made the required inquiry under subdivision (j).

(2) At any time after the expiration of the prescribed time period, the defendant may file a separate pleading entitled "Notice of Expiration of Speedy Trial Time," and serve a copy on the prosecuting authority.

(~~3~~1) No later than 5 days from the date of the filing of a notice of expiration of speedy trial time, the court

~~shall~~ must hold a hearing on the notice and set the trial no later than 30 days from the date of the hearing unless the court ~~finds that one of the reasons set forth in subdivision (j) exists, shall order that the defendant be brought to trial within 10 days~~ strikes the notice or the prosecuting authority and the defendant stipulate otherwise and the court agrees to the stipulation. The court must consider the availability of the witnesses and the attorneys when determining the date for commencement of trial.

(2) A defendant not brought to trial within the ~~10~~ 30- day period in subdivision (p)(1) ~~through no fault of the defendant, on motion of the defendant or the court, shall be forever discharged from the crime~~ may file a motion to dismiss. The motion to dismiss must be served on the prosecuting authority the same day the motion is filed. The state must file a response to the defendant's motion within 5 days. Absent a stipulation, the court must hold a hearing on the defendant's motion within 10 days of the state's response.

(3) A motion to dismiss filed pursuant to subdivision (p)(2) must be granted unless:

(A) the period of time for commencement of trial, including any extension of time granted pursuant to subsection (l), did not expire;

(B) the failure to hold trial was attributable to the accused, a codefendant in the same trial, or their counsel;

(C) the accused was unavailable for trial under subdivision (k). If the state presents evidence showing the defendant's nonavailability, the defendant must prove availability by a preponderance of the evidence; or

(D) the notice of expiration of speedy trial time was invalid.

> (4) If the defendant had been arrested for or charged with murder or any manslaughter, an order of dismissal for failure to commence trial within the recapture period for any crime based on the same conduct or criminal episode must be without prejudice. All other orders of dismissal issued pursuant to subdivision (p) must be with prejudice.

The CLS does not have an objection to the extension of the recapture window from 15 days to 30 days as proposed in this portion of the proposed amended rule. It seems that this proposal is rooted in practicality. From discussions held during the informal discussion group meetings, it became clear that impaneling a jury in 15 days in some of the more rural circuits was simply not realistic. This rule provision is designed to be a protection to the defendant and promote practical efficiency in prosecution. It is not designed to allow for the dismissal of an otherwise appropriate and viable charge to be discharged due to reasonable logistical issues.

Conversely, the Criminal Law Section has concerns regarding the carve out in subsection (4) pertaining to murder or manslaughter. The rules of procedure are not designed to differentiate between offenses. Rather, their function is to create uniformity throughout the circuits and individual courtrooms. Allowing for a rule to parse out individual offenses is a slippery slope that will ultimately lead to disputes regarding which offenses are considered more serious or worthy of exception to the speedy trial rule.

Certainly, it is not in dispute that an offense resulting in a death is by definition serious, but arguably so are human trafficking and domestic violence cases. On the other hand, it could be argued that a DUI manslaughter, which is serious, is not as serious as a sex offense against a minor. There is no definitive metric for assessing what offenses are serious enough to evade a speedy trial timeline. This is precisely why procedure is left to rule and charging decisions and plea offers, which are based in fact, are rightly left to the executive branch.

Moreover, offenses involving death have no statute of limitations. As such, eliminating those offenses from the finality of a discharge at the expiration of the speedy trial window would allow those potential cases to exist in perpetuity subject only to the nebulous and undefined constitutional speedy protection. This will potentially put too much strain on the courts. Imagine for instance there is a horrific homicide. The attention surrounding the case leads the police to arrest an individual, but with little to no evidence. After the speedy trial window expires the defendant files the now mandatory notice of expiration, the court grants the motion for discharge, but without prejudice as the rule requires. That individual is now under the specter of prosecution indefinitely. Even if the defendant's attorney files a motion for FINAL discharge based on a 6$^{th}$ Amendment Constitutional

Speedy Trial violation, at what point does that judge discharge the case- one year, two years, five years? What is the calculous for that decision? Allowing for the dismissal of a case without prejudice, with no remedy for the defense is ill-conceived.

## XI. CONCLUSION

The concerns prompting the proposed changes to the current speedy trial rule are obviated by § 918.15. More to the point, the proposed amendments to the rule are unneeded and will create unnecessary problems in the attempt to fix nonexistent problems. The current speedy trial rule is working very well around the state. Moreover, the rules of procedure are designed to create a uniform approach to each case. The speedy trial rule in its current form promotes efficiency and professionalism by the prosecution and defense and protects the rights of the accused. These goals are precisely what the speedy trial rule is designed to accomplish. Additionally, as pointed out above, some of the proposed amendments, if adopted, would result in unfair disparate treatment of indigent defendants. The Criminal Law Section of The Florida Bar respectfully suggests that save the extension of the recapture period from 15 to 30 days, that no other of the proposed amendments should be adopted.

These comments are submitted on behalf of the Criminal Law Section only and do not express the position of The Florida Bar. Further, they have been reviewed pursuant to The Florida Bar's Standing Board Policy 8.20.

DATED this 10th day of November, 2022.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court on November 10, 2022, via the Florida

Courts E-Filing Portal, which will serve a notice of electronic filing to all counsel of record.

/s/Warren W. Lindsey
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## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the appropriate font (Arial 14-point) and word count limit requirements.

/s/Warren W. Lindsey
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