

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CRIMINAL
PROCEDURE 3.670**

CASE NO.:SC23-1093

**REPORT OF THE
CRIMINAL PROCEDURE RULES COMMITTEE**

Jason B. Blank, Chair of the Criminal Procedure Rules Committee (“Committee”), and Joshua E. Doyle, Executive Director of The Florida Bar, file this report of the Criminal Procedure Rules Committee under Florida Rule of Judicial Administration 2.140(b).

The Committee proposes amendments to Florida Rule of Criminal Procedure 3.670 (Rendition of Judgment). The proposed amendments have been approved by the full Committee and reviewed by The Florida Bar Board of Governors as required by Rule 2.140(b)(2). The amendments are attached in legislative format as Appendix A and in two-column format as Appendix B.

The committee proposes amending Rule 3.670 based on a November 19, 2019, request from Richard E. Hornsby to update the rule to reflect the current Section 948.01(2) Florida Statutes. See Appendix C.

These amendments were approved by the full Committee at the June 2020 meeting by a vote of 24-0-0. The proposal was published to *The Florida Bar News* website on April 7, 2020, and published in the April 30, 2020, print edition of *The Florida Bar News*. See Appendix D.

One comment was received from the Florida Public Defender Association (“FPDA”). See Appendix E. The Committee reviewed the comment and observed that the FPDA’s comment was in reference to an older draft of the amendments that was incorrectly published. The issues raised in FPDA’s comment were resolved in the correct

version of the amendments. The committee therefore decided that no action was necessary in response to the comment.

The proposal was then considered by The Florida Bar Board of Governors at the December 2020 meeting. According to the available meeting minutes, the Board voted 29-17-0 to recommend rejection of the amendments. *See* Appendix F. The audio recording of this meeting is no longer available, so the rationale of the Board of Governors' decision is unknown.

This proposal was inadvertently never filed following the December 2020 Board meeting and this oversight was only recently discovered. For the Court's convenience, a publication summary is provided as Appendix G.

AMENDMENTS

RULE 3.670 RENDITION OF JUDGMENT

The Committee proposes amending Rule 3.670 to reflect the current section 948.01(2) Florida Statutes. In section 6, Chapter 2009-6, Laws of Florida, section 948.01(2), Florida Statutes, was amended in part as follows:

If it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt; ~~and~~, In either case, the court ~~it~~ shall stay and withhold the imposition of sentence upon ~~the such~~ defendant and shall place a felony the defendant upon probation. If the defendant is found guilty of a nonfelony offense as the result of a trial or entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, the court may place the defendant on probation. In addition to court costs and fees and notwithstanding any law to the contrary, the

court may impose a fine authorized by law if the offender is a nonfelony offender who is not placed on probation.

Prior to this amendment, courts have interpreted the statute to require a probationary period whenever adjudication of guilt is withheld. See *e.g. Wiltzer v. State*, 756 So. 2d 1063,1067 (Fla. 4th DCA 2000). The amendment to the statute makes it discretionary for a court to impose probation in a nonfelony matter for which the court withholds adjudication.

This conflict between Rule 3.670 and the Florida Statutes caused confusion in *Larkins v. State*, 279 So. 3d 1287, 1288 (Fla. 5th DCA 2019). In that case, the defendant entered into a plea agreement under which he was sentenced to time served with adjudication withheld on his misdemeanor counts. The defendant subsequently appealed the denial of a motion to suppress in his case. Although the court held there were no reversible errors regarding the motion to suppress, Judge Brian Lambert, writing specially, went on to comment on the defendant's sentence. Citing to pre-2009 case law and the current Rule 3.670, the opinion stated that the court could only withhold adjudication of guilt on the misdemeanor counts if the defendant agrees to a short-term probation.

The Committee believes that is contrary to the statute and recommends the Court update Rule 3.670 to eliminate any confusion.

Specifically, the committee recommends dividing the rule into subdivisions for improved clarity.

In the new subdivision (b), the Committee recommends deleting "and, if the defendant has been acquitted, a judgment of not guilty" in the first sentence as it was cumbersome and relocating this sentence to new subdivision (a).

At the end of subdivision (b), the Committee recommends revising the last sentence to make two separate sentences and adding "In the case of a felony, the judge may withhold an adjudication of guilt, only" to reflect the statutory changes to

section 948.01(2), Florida Statutes, as amended by Chapter 2009-6, Laws of Florida.

WHEREFORE, the committee respectfully requests that the court amend Rule 3.670 (Rendition of Judgment) as detailed above.

Respectfully submitted on August 7, 2023.

/s/ Jason B. Blank
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CERTIFICATE OF SERVICE

I certify that a copy was furnished by e-mail, on August 7, 2023 to:

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CERTIFICATION 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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