

Submitted to:

THE TRIAL COURT PERFORMANCE AND
ACCOUNTABILITY COMMISSION

THE DISTRICT COURT PERFORMANCE AND
ACCOUNTABILITY COMMISSION

REPORT OF THE
POSTCONVICTION RULES WORKGROUP

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September 1, 2006

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I. A BRIEF DESCRIPTION OF THE POSTCONVICTION RULES WORKGROUP AND ITS MISSION

The Postconviction Rules Workgroup was created jointly by the District Court of Appeal Performance and Accountability Commission and the Trial Court Performance and Accountability Commission following a workshop in June 2005. The Workgroup was created to consider and recommend changes in the procedural rules, administrative practices, and statutes that affect postconviction remedies. This workgroup has met on numerous occasions, prepared many drafts documents presenting competing approaches to perceived problems, and has debated at considerable length the extent of the problems and the feasibility of the solutions.

The membership of the workgroup included two district court judges: Judge Michael E. Allen of the First District Court of Appeal, and Judge Chris W. Altenbernd of the Second District Court of Appeal. It also included three circuit court judges: Judge Kevin M. Emas of the Eleventh Judicial Circuit; Judge Jonathan Sjostrom of the Second Judicial Circuit; and Judge Thomas H. Bateman, III, of the Second Judicial Circuit. Finally, it included an experienced appellate staff attorney, Dorothy L. Trogolo, Esquire, from the Second District, and an experienced trial court staff attorney, E. Ashley Hardee, Esquire, of the Eighteenth Judicial Circuit. This membership was diverse in its experience and perspective.

The Workgroup, however, occasionally noted that its perspective might have been broadened by a larger membership, including representatives of the Department of Corrections, the public defenders, the Attorney General, and the legislature.

The Workgroup initially reviewed postconviction procedures in approximately 25 other states. Although this review was interesting, the Workgroup did not discover any state with a set of procedures that was superior to those in Florida or whose methods warranted substantial emulation. Thus, the recommendations of the members of this Workgroup are based primarily upon their experience under Florida law.

Each member of the Workgroup was encouraged to draft his or her own proposed revisions to the postconviction rules. The drafts included some with minor alterations to the existing rules and others that made extensive and wholesale changes to both procedural and substantive law. After considerable reflection, the Workgroup is presenting a proposal in Appendix A that is based primarily on the existing rules. This proposal often adds language to the rule to expressly state procedural rulings that heretofore have been required or encouraged by case law. Given the extent of the case law and the conflicts within that case

law, it is likely that this proposal involves some procedural or substantive alterations in existing case law.

The proposal in Appendix A is not intended as a proposed rule change for immediate filing in the supreme court. Not every member of the Workgroup would vote for each and every amendment proposed in Appendix A. The proposal in Appendix A would probably warrant additional amendments to the Florida Rules of Appellate Procedure. Although many of these changes may be ready for consideration by the court at this time, the overall document needs to be reviewed and debated by a broader audience before the court considers any changes to the rules.

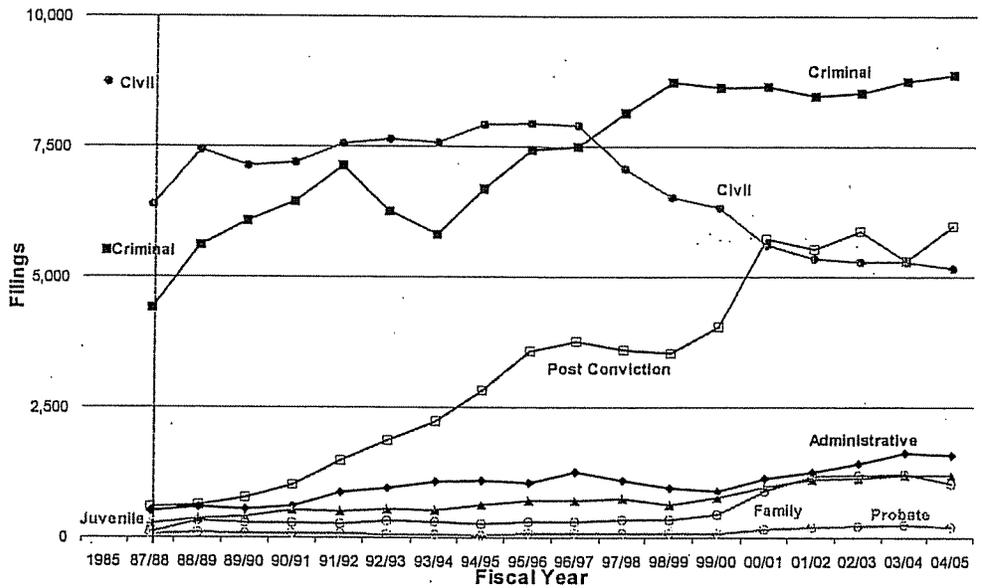
II. PROBLEMS IDENTIFIED BY THE WORKGROUP

a. Overall or Systemic Problems.

There are many problems associated with postconviction proceedings in Florida. This report will attempt to divide the identified problems into those that are more general or systemic as compared to those that relate to one or more of the specific rules of procedure.

1. The Volume of Filings. The first and foremost "problem" is the dramatic increase in postconviction proceedings. The following chart, which was prepared by the staff of OSCA during the workload study for the district courts, reflects the substantial change in filings in the district courts between 1988 and 2005. While most types of appeals in the district courts have experienced only modest changes in the number of filings, there were fewer than 1000 postconviction filings in the district courts in 1988 and more than 6000 in 2005. A similar increase has been occurring in the trial courts. While complete data is unavailable, OSCA reports that circuit court filings of Rule 3.850 motions rose from 2,500 in 1987-88 to over 12,000 in 2003-04. It is noteworthy that the movants usually do not prevail in all respects in postconviction proceedings. Unlike other litigants, these movants

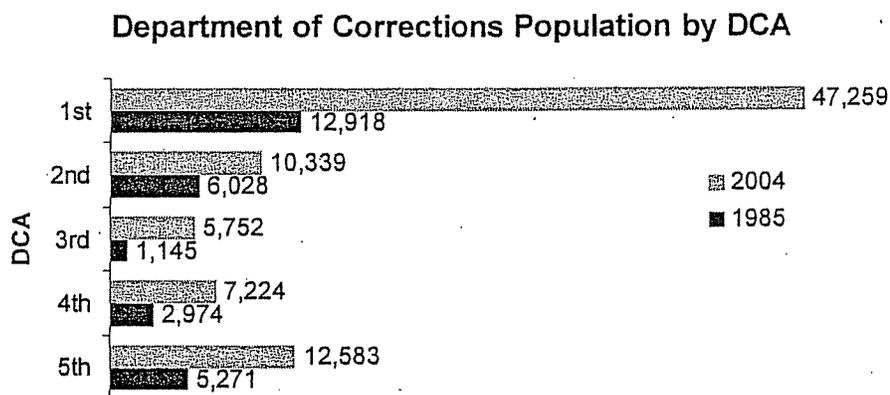
appeal a high percentage of the circuit court rulings. Thus, an increase in filings in the circuit court creates a similar increase in the workload of the district courts.



This 600% increase in less than 20 years has placed considerable stress upon the case management systems used to handle postconviction proceedings. Rules and procedures that were adequate to handle 200 proceedings annually in a district court or 50 such filings in a circuit court in 1988 are now relied upon to handle a volume that is 6 to even 10 times higher. Just as the rules of procedure for family law cases needed a substantial revision to handle the increase in filings in the 1970s and 80s, especially the increase involving pro se litigants, the rules of

procedure for postconviction need a substantial revision to handle a comparable increase in pro se filings over the last 20 years.

The cause of this increase was not extensively studied by the Workgroup. We did attempt to focus on procedural or substantive rules that seem to create or encourage unnecessary and repetitive proceedings. Although there is a general sense that some prisoners are abusing these rules, the Workgroup would emphasize that there has been a substantial increase in the number of people under the supervision of the Department of Corrections during the last 20 years and also a significant increase in the number of prisoners receiving lengthy, mandatory sentences. The chart below, again prepared by the staff of OSCA, shows some of this increase. It does not reflect defendants who are on probation or community control and have the right to seek postconviction review.



Our current rules were designed when the relevant population that could file postconviction proceedings was much smaller and was serving shorter sentences. The rules need to be adjusted to accommodate these changes.

2. The Quality of Filings. A very high percentage of all postconviction motions are filed by prisoners without assistance of counsel. Rule 3.800(a) does not expressly authorize the filing of a motion to correct a sentencing error and contains no information about the content of such a motion. There is no standard form approved for use when filing such a motion.

Rule 3.850 contains more procedural information, but there is only one approved standard form for use in filing a motion under this rule despite the wide variety of grounds that can be presented.

Concerned about security issues, the Department of Corrections has not made word processing or the internet widely available for prisoners. Many prisoners must file handwritten motions or fill-in-the-blank motions on forms that were apparently created by prison paralegals.

As a result of these factors, a significant percentage of all prisoner motions are legally deficient. Even when legally sufficient, they may be difficult or impossible to decipher. This causes judges and staff attorneys to spend

considerable time merely trying to determine the grounds that the prisoner is attempting to present.

When a motion is facially insufficient, rule 3.850(d) currently permits the trial court to deny the motion. The order denying a motion because it is unsworn or fails to contain a few critical words is an appealable order. The order, however, is not generally an adjudication on the merits and does not bar another motion. Accordingly, it is common to see a prisoner unsuccessfully challenge on appeal an order denying a facially insufficient motion when the problem could have been easily corrected by amendment. Not only is this an avoidable use of judicial resources at the appellate level, but also it is not uncommon to see the 2-year time limitation expire in the trial court while the prisoner is pursuing a useless appeal.

Just as a more extensive collection of form motions and orders was required to assist pro se litigants in family law cases, the Workgroup believes that more extensive forms are needed to assist the litigants and the courts in processing postconviction proceedings.

It is often cumbersome and time-consuming to amend rules of procedures. Forms can be more readily adjusted. The law of postconviction is frequently affected by an issue that generates many motions for a short period of time. The

holding in Heggs v. State, 759 So. 2d 620 (Fla. 2000), for example, created a large number of cases in which unrepresented prisoners created their own pleadings and procedures. It would be more cost-effective and efficient if someone could respond to such changes in the law by creating legally sufficient forms to be filed by prisoners who believe in good faith that they are entitled to relief.

3. The Abuse of Process. There is little question that a significant percentage of all motions filed by prisoners have little or no merit. The typical prisoner, however, is untrained in the law, given no adequate form pleadings, and is represented, at best, by other prisoners with limited paralegal training or experience. It is often difficult or impossible to distinguish between a prisoner who is ignorant of the law and one who is filing motions in bad faith. The fact that a prisoner often has limited education and may suffer from mental illness makes this process even more difficult.

This state wisely has a constitutional provision that guarantees "every person" access to the courts. Art. I, § 21, Fla. Const. Nevertheless, the courts must occasionally take steps to sanction or control people who abuse this constitutional right. Within the Workgroup, it was obvious that the members who deal directly with the prisoners in the trial courts feel a strong need to have the power of

sanction. Those who deal indirectly with the prisoners in the appellate court are more skeptical about the efficacy of sanctions in this context. It remains at least debatable whether the additional judicial process required in the trial courts to impose sanctions and the inevitable appeals that would arise from additional sanction orders might create costs that outweigh the benefit of sanctions.

If the rules were changed and more forms were created to simplify the legal tasks expected of prisoners, it would be easier to identify the prisoners who should be sanctioned. The Workgroup has drafted a special sanction proposal for consideration, but would only urge its adoption if the court concluded that it can be effectively implemented.

4. Paper filings and attachments. In the last 20 years, the courts and the clerks of court have made great progress transforming a system designed for paper pleadings into one that accommodates the efficiency of digital technology. Now virtually all pleadings can be electronically filed and retrieved.

Because prisoners have essentially no access to computer technology, their motions cannot currently be filed electronically. The courts must serve orders on prisoners by standard mail. The requirement that the trial court attach court records to refute conclusively the allegations in the motion results in massive

copying. This is an expensive and inefficient way to process postconviction motions. It was workable and necessary in 1988, but it is no longer the best method to manage this case load.

The Workgroup is making no recommendation in Appendix A to solve this problem, in part, because the technology required to solve this problem is beyond our expertise and, in part, because the Department of Corrections would need to be a willing partner in solving this problem. It should be emphasized that appellate proceedings filed by prisoners are now approximately one-third of all filings in the district courts. An electronic filing system in the trial courts and appellate courts cannot achieve maximum efficiency until filings from prisoners are received electronically.

5. Adequate Staffing. The dramatic increase in the filing of handwritten postconviction motions in the trial court has placed considerable pressure on the judges and their staff. In the appellate courts, all of the districts have created special groups of staff attorneys who primarily handle prisoner motions. These groups develop expertise and a good level of efficiency. The Workgroup is not convinced that a staffing problem exists in the district courts concerning postconviction filings.

The situation in the 20 circuit courts is far more complex. Some judges are still handling postconviction motions without any staff assistance. In other courts, several judges share an overloaded staff attorney. In some circuits, a staff attorney will have a broad range of cases to consider and does not have the opportunity to become a specialist in postconviction proceedings.

The Trial Court Performance & Accountability Commission has addressed the issue of level of staff support needed to handle postconviction cases, and the Trial Court Budget Commission has requested additional funding for staff attorneys to assist the trial judges in these matters. Therefore, the Workgroup has not addressed this further, leaving this to the TCP&A and TCBC.

6. An Assortment of Committees. With all due respect to the volunteers who have served on the several committees that have amended the postconviction rules over the last twenty years, and with the confession that the author of this report has participated as a tinkerer on more than one such committee, we have too many committees and too few people with true expertise trying to evaluate and maintain these rules.

These rules are primarily maintained by the Florida Bar Criminal Procedure Rules Committee. That committee has extraordinary expertise in criminal law and

procedure. On the other hand, because this area of law is controlled almost entirely by pro se litigants, the lawyers often have little direct experience with these proceedings except as witnesses when a former client claims they were ineffective. The Committee is understandably, and quite legitimately, more focused on the rules that affect cases prior to judgment and sentence.

Just as the supreme court ultimately concluded that it was necessary to select experts in family law to generate rules and forms for that area of civil law, the Workgroup is inclined to believe that the supreme court should select experts in postconviction relief to maintain the rules of postconviction proceedings. Especially if the rules are to be supplemented by forms that are adequate to handle this ever-evolving area of law, a committee with expertise in this area should have exclusive jurisdiction over these rules. The committee should have representation from the Office of the Attorney General, the Public Defender's Office, the Department of Corrections, the clerks of court, sheriffs, and perhaps other groups that are directly or indirectly affected by these filings.

b. Problems with Specific Rules.

1. Rule 3.170(1). This rule was created by the court in 1996 in response to the Criminal Appeal Reform Act. See In re Amendments to Florida Rules of Criminal Procedure, 685 So. 2d 1253 (Fla. 1996). It permits defendants to file motions to withdraw pleas after sentencing and before appeal. Such a motion stays rendition of judgments for appeal under Florida Rule of Appellate Procedure 9.020(h).

This rule was intended to give a defendant the benefit of counsel when filing a motion to withdraw plea and to give the defendant an opportunity to preserve an issue for direct appeal. At least from anecdotal information, attorneys rarely use this rule. When defendants file these motions pro se while still technically represented by trial counsel, substantial confusions arises. Often the lawyers proceed with an appeal without realizing that the judgment has not yet been legally rendered. The Second and the Fifth District Courts of Appeal have both held that pro se motions under this rule cannot be filed absent a conflict involving trial counsel. See Mourra v. State, 884 So. 2d 316 (Fla. 2d DCA 2004); Whiting v. State, 929 So. 2d 673 (Fla. 5th DCA 2006). This distinction is not easy to enforce. See Bermudez v. State, 901 So. 2d 981 (Fla. 4th DCA 2005). The motion often

requires the appointment of new, conflict-free counsel. See Mosley v. State, 31 Fla. L. Weekly D1856 (Fla. 1st DCA July 11, 2006). The rule does not contain the procedural specificity of rule 3.850 and has generated a number of reversals on appeal for failure to fulfill all procedural requirements.

Although rule 3.850 does not expressly state that a motion under that rule challenging a plea must be presented as a motion to withdraw a plea, that requirement is well-established in the case law. If rule 3.850 cannot be used to challenge issues that could and should have been raised on direct appeal, and if a motion under rule 3.170(1) can be used to raise on direct appeal all issues arising from a plea, then rule 3.170(1) has completely supplanted rule 3.850 for issues related to pleas and movants no longer have two years to raise these issues. The district courts have generally declined to take this logical position, see Gidney v. State, 925 So. 2d 1076 (Fla. 4th DCA 2006); Dooley v. State, 789 So. 2d 1082 (Fla. 1st DCA 2001), but it is difficult to reconcile the language of these two rules. Courts have, however, sometimes held that a motion under 3.850 was successive because of an earlier motion under 3.170(1). See Harris v. State, 801 So. 2d 973 (Fla. 2d DCA 2001). Although a movant cannot allege ineffective assistance of counsel concerning representation on a motion under rule 3.850, see Lambrix v.

State, 698 So. 2d 247 (Fla. 1996), since rule 3.170(1) is a critical stage of proceedings prior to direct appeal, presumably it can support a claim of ineffective assistance of counsel.

The Workgroup believes that the benefit of rule 3.170(1) is outweighed by the confusion it has created. It might be feasible to amend statutes to permit public defenders to have the discretion in rare cases to file postconviction motions when they believe defendants have a clear right to relief, but the current approach of supplying a lawyer for 30 days to provide this assistance in every case involving a plea is elusory. Accordingly, in Appendix A the Workgroup has recommended deleting this rule. If the court decided to retain this rule, it should be substantially rewritten.

2. Rule 3.800(a). From 1961 to 1968, section 921.24, Florida Statutes, stated: "A court may at any time correct an illegal sentence imposed by it in a criminal case." This statutory grant of authority to the trial courts became the original rule 3.800. Because it was a statute and not a rule of procedure, the language does not include the typical provisions of a rule. Even today, the rule explains when a party may not file a motion, but it does not explain when a party can file a motion or what it must contain.

In 1968, there were only a few ways that a sentence could be illegal. After the enactment of many specialized sentencing statutes, there are now numerous ways in which a sentence can be "illegal." The concept of an illegal sentence has taken on a life of its own, and the best efforts of many judges have not created a definition of "illegal sentence" that is consistently helpful.

Because there is no time limitation for the filing of a motion under rule 3.800(a), it has become the basis for a sizable percentage of all postconviction motions. Nevertheless, it has never been placed in section XVII of the Florida Rules of Criminal Procedure, which addresses "postconviction relief." Although rule 3.850 no longer contains any reference to "illegal" sentences, it continues to duplicate much of rule 3.800(a) by allowing an unlimited time to challenge a sentence that "exceeds the limits provided by law."

Rule 3.800(a) permits the filing of a motion to correct "an incorrect calculation" "in a sentencing scoresheet," without requiring the movant to explain or allege that the error had any harmful effect on the sentence imposed. It permits the filing of a motion for proper jail credit if "the court records demonstrate on their face an entitlement to that relief." Experience has shown that virtually no

claim for jail credit can be established exclusively by court records and without the need for an evidentiary hearing.

This rule contains no procedures to explain how a trial court is to process a motion and does not explain what content and attachments should be included within the order. By default, most courts incorporate the procedures from rule 3.850 into 3.800(a).

The problems within this rule are so extensive that the Workgroup questions the wisdom of maintaining a remedy under this rule that is separate and distinct from the remedy provided in rule 3.850. The Workgroup is inclined to believe that "illegal sentence" will continue to be an elusive concept. Instead of struggling to define this concept, the courts should examine the relevant judicial functions. The courts should distinguish between sentencing issues that are questions of law and those that are questions of fact.

If an issue can be decided as a matter of law without an evidentiary hearing, then one set of procedures should apply. In that situation, time limitations may be unnecessary and rules barring successive claims may be more flexible. If an issue can be decided only as a matter of fact, then the issue necessitates an evidentiary hearing. Such an issue should be restricted by time limitations and rules against

successive motions. The amendments proposed in Appendix A are an effort to achieve the equivalent of the current "illegal sentence" case law while relying on the more established dichotomy between questions of fact and questions of law. In Appendix A, we recommend the deletion of subdivision (a) from Rule 3.800.

3. Rule 3.850. This rule was originally created by the court as rule 1 of the Florida Rules of Criminal Procedure because a petition for habeas corpus was not an adequate procedural mechanism to deal with the large volume of prisoner writs generated by Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792 (1963). See Roy v. Wainwright, 151 So. 2d 825 (Fla. 1963). It was modeled on a federal provision that replaced habeas corpus for similar purposes. See 28 U.S.C.A. § 2255. Thus, unlike rule 3.800(a) which was based on a statutory grant of authority to trial judges to resolve sentencing issues after entry of the judgment and sentence within a criminal proceeding, rule 3.850 was created to replace an independent, extraordinary, original, common law proceeding that is technically civil in nature. James H. Kynes, Stuart C. Markman & Katherine Earle Yanes, Habeas Corpus, in Florida Appellate Practice § 23-1 (Continuing Legal Educ. Publ'ns, The Fla. Bar, 5th ed. 2003). Although the motion is now filed in the original criminal

proceeding, it continues to have some of the vestiges of an independent civil action.

Rule 3.850 is a more extensive rule than rule 3.800(a), and its procedures are better delineated. The Workgroup has suggested extensive changes to this rule, but the changes are designed primarily to assist in the processing of these motions and to avoid unnecessary repetition.

a. Title of Rule. The title for this rule is incomplete and misleading. It should be revised to reflect that the rule may be used to challenge judgments postconviction.

b. Separate sections for challenges to judgments and sentences. The current rule allows challenges to both judgments and sentences. The Workgroup believes that this is a sensible approach, but concludes that the rule would be easier to manage if sentencing issues were separated from judgment issues and placed in a different subdivision of the rule.

c. Time Limitations. Subdivision (b) addresses time limitations. It does not currently explain that a motion cannot be filed during a direct appeal. As written, it begins with one exception to the time limits and then adds three more exceptions at the end. The exceptions at the end appear to create unlimited times

for certain belated motions when time limits should be imposed. The proposal in Appendix A restructures this rule and creates time limitations for the exceptions. The unlimited time for legal challenges to sentences is moved to the end of the rule.

The proposal also explains that corrections of sentencing errors postconviction do not lengthen the time to file a motion for postconviction review of a judgment of conviction.

The Workgroup considered ways to measure the time period from the date of entry on the face of the judgment rather than from the point where the judgment becomes final. The requirement of finality essentially adds 30 days to this period and can be confusing to prisoners and trained lawyers alike. Ultimately, the Workgroup decided that the current rule was well-established and that a change was not necessary.

d. Contents of Motions. Subdivision (c) concerns the content of the motion. The Workgroup made no significant changes to this section. By moving rule 3.800(a) into rule 3.850, however, all postconviction motions would be filed under oath.

One of the drafts considered by the Workgroup eliminated much of this subdivision and required the motion to be filed on an approved form. The Workgroup strongly believes that a body of forms should be created to accompany this rule, but ultimately was convinced that the motion should explain the content for cases in which no adequate form exists.

Although the Workgroup created some drafts of additional forms, it concluded that this work should be deferred until the court made a policy decision to use and require such forms. If adequate forms are created, the Workgroup generally believes that movants should be prohibited from using forms other than the approved forms. Currently, a great degree of the inefficiency in this area of the law is created by a wide array of unofficial forms that appear to be authorized, but are often facially deficient.

e. The "could or should have raised on direct appeal" limitation. At the end of subdivision (c), the rule currently contains a very important limitation prohibiting postconviction review of issues that could or should have been raised on direct appeal. The Workgroup believes that this provision should be a separate subdivision. As currently written, however, the provision overstates the holdings.

in the controlling case law. The Workgroup believes that it should be written in a somewhat qualified manner and has attempted to do so in Appendix A.

The Workgroup believes that this provision affects judgments to a greater degree than sentences. For example, "illegal sentences" that could have been raised on direct appeal may still be raised at any time. The Workgroup has attempted to provide an adequate rule for sentences.

Finally, this provision is often read by new staff attorneys and new trial judges as a limitation on the right to raise claims on ineffective assistance of counsel. The Workgroup has suggested language to remind everyone that an unpreserved issue for direct appeal may constitute a valid claim of ineffective assistance of counsel.

f. Amendments. No subdivision currently addresses amendments to these motions, even though amendments are common and often troublesome. Appendix A contains a subdivision (f) to address amendments. The Workgroup believes this subdivision would assist the parties and the trial courts. It is not intended to alter current case law requirements to any significant degree.

g. Procedures. Subdivision (d) currently explains procedures for use in resolving these motions. The Workgroup ultimately concluded that a longer,

more systematic approach to this rule was necessary. In Appendix A, subdivision (g) provides a step-by-step approach to managing and resolving these rules. Subdivision (g)(6) contains a rule on appointment of counsel that is intended to track the current requirements of case law.

Most significantly, these rules are designed and intended to result in only one appealable order at the end of the proceedings. That order is intended to be an adjudication on the merits. These rules would not allow appeal of orders that dismissed motions for insufficiency. Although the Workgroup has not attempted to measure the effect of this change, it should substantially reduce the number of postconvictions appeals.

The rule has been written to explain as clearly as possible that earlier orders in these proceedings are non-appealable. The arguable disadvantage of this approach is that trial courts will need to permit leave to amend in postconviction proceedings. Since the current practice does not result in adjudications on the merits, trial courts are already receiving "amendments" that are filed as new proceedings that cannot usually be denied as successive.

If the court establishes a new rules-committee that is expected to create and maintain adequate forms, the need for amendments should be somewhat

limited in the future. Prisoners should be able to file facially sufficient motions, at least in cases where a motion can be filed in good faith, if they use forms created to satisfy the requirements of the rules.

The Workgroup believes that it would be acceptable to have virtually all motions decided on the merits—if the movants are assisted by adequate forms. If prisoners untrained in the law are expected to create their own pleadings in handwritten documents, there are more substantial due process issues involved in the dismissal of proceedings on the merits when prisoners fail to allege a facially sufficient claim on the second or third attempt.

h. Movant's Presence at Postconviction Hearing. Subdivision (e) currently states that a movant's presence is not required at a hearing on a postconviction motion. This provision existed in the original rule 1, and it is no longer an accurate statement of the case law. Rather than explain when a movant must be present, the Workgroup has simply deleted this section. The Workgroup believes that this issue is sufficiently complex that it must be left to case law.

i. Successive Motions. Subdivision (f) currently addresses successive motions. The Workgroup believes that this provision needs to emphasize the distinction between an amendment and a new filing. We have also added language

to emphasize that successive motions are not routine filings. We have added language clarifying that trial courts must attach earlier postconviction proceeding so that the district court can confirm that the present motion is successive.

j. Right of Appeal. Subdivision (g) currently addresses the right of appeal. The Workgroup has moved this subdivision to (i) and has placed enumerated paragraphs within the rule. We have removed the sentence, "Such appeal shall be as from a final judgment on application for writ of habeas corpus," because it no longer seems necessary in light of the provisions in the appellate rules and section 924.066(2), Florida Statutes (2005).

In an effort to reduce at least a few motions for rehearing in the trial courts, the Workgroup has added language affirmatively stating that no such motion is needed to preserve issues for appeal.

k. Habeas Corpus. Subdivision (h) discusses habeas corpus and reflects the origins of this rule. The Workgroup has suggested slightly updated language that is not intended to alter the current requirements of the case law.

l. Sanctions. There is no current subdivision addressing sanctions. The Workgroup has added subdivision (k) for this purpose.

III. SUMMARY OF RECOMMENDATIONS

The Workgroup recommends that:

(1) 3.170(1) be deleted;

(2) the content of rule 3.800(a) be incorporated into a subdivision of rule 3.850;

(3) the term "illegal sentence" be replaced with rules that distinguish between sentencing errors that are errors of law and those that involve questions of fact that can be ascertained only after an evidentiary hearing;

(4) rule 3.850 be amended along the lines of the recommendations in Appendix A;

(5) a larger collection of form motions and orders be approved for use in postconviction proceedings;

(6) comparable to other legal proceedings, only one final, appealable order be rendered in a typical postconviction proceeding and that order should be a disposition on the merits;

(7) that the supreme court consider more stringent regulation of amendments to postconviction motions and successive motions;

(8) that the supreme court consider the inclusion of special provisions authorizing sanctions for abuse;

(9) that the supreme court consider creating a separate rule committee for postconviction rules and forms with members who work extensively in this area;
and

(10) that the judiciary attempt to collaborate with the Department of Corrections to devise secure and economical methods for prisoners to electronically file and serve computer generated pleadings and receive comparable orders.

IV. WHERE TO GO FROM HERE

The Workgroup was established by the two Commissions and reports to them. The two Commissions report to the supreme court. Neither this Workgroup nor the two Commissions have authority to file amendments to the rules of criminal procedure for approval by the supreme court. The matters addressed in this report, however, are serious and warrant timely action by a committee empowered to amend the rules of procedure. This Workgroup would submit the following suggestions:

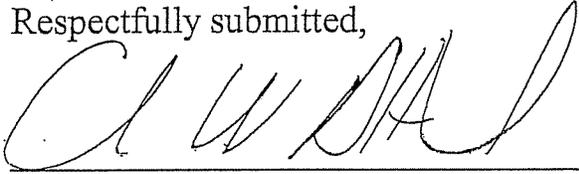
1. The Commissions immediately provide copies of this report to a broad, diverse community of persons having interest in postconviction relief.
2. The supreme court should be encouraged to confer as soon as possible with the Florida Bar Criminal Procedure Rules Committee. If that committee agrees that the rule should be supported by a body of forms that are created and maintained by a specialized committee, the supreme court should, by administrative order, establish a separate supreme court committee to create and maintain both the postconviction rules and the forms supporting those rules. That committee should also be empowered to propose amendments to the Florida Rules of Appellate Procedure as necessary to address postconviction issues. The

recommendations in this report should be referred to that committee and it should make a formal filing, as it sees fit, to amend the rules relating to postconviction relief by July 1, 2007. That committee should also develop additional forms for use with the rules so that the new rules could be implemented by January 1, 2008. This Workgroup takes no position on the appropriate method to keep postconviction rules current in cases in which the death penalty is imposed.

3. If the Florida Bar Criminal Procedure Rules Committee believes that it has the expertise and capacity to propose the necessary amendments and maintain the forms, the supreme court should order it to fulfill those responsibilities within the same time periods.

4. The Office of the State Courts Administrator has already begun to coordinate its efforts with the Department of Corrections to address these issues. It should be requested to continue these efforts and to attempt to coordinate with other members of the executive and legislative branches of government to seek methods by which prisoners could safely, securely, and economically have access to computers for the preparation and filing of postconviction motions.

Respectfully submitted,



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APPENDIX A

[The change in rule 3.170 is merely to delete subdivision 1. Other portions of that rule are reprinted below primarily to provide context.]

Rule 3.170. Pleas

(a) Types of Plea; Court's Discretion. A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. Except as otherwise provided by these rules, all pleas to a charge shall be in open court and shall be entered by the defendant. If the sworn complaint charges the commission of a misdemeanor, the defendant may plead guilty to the charge at the first appearance under rule 3.130, and the judge may thereupon enter judgment and sentence without the necessity of any further formal charges being filed. A plea of not guilty may be entered in writing by counsel. Every plea shall be entered of record, but a failure to enter it shall not affect the validity of any proceeding in the cause.

....

(f) Withdrawal of Plea of Guilty. The court may in its discretion, and shall on good cause, at any time before a sentence, permit a plea of guilty to be withdrawn and, if judgment of conviction has been entered thereon, set

aside the judgment and allow a plea of not guilty, or, with the consent of the prosecuting attorney, allow a plea of guilty of a lesser included offense, or of a lesser degree of the offense charged, to be substituted for the plea of guilty. The fact that a defendant may have entered a plea of guilty and later withdrawn the plea may not be used against the defendant in a trial of that cause.

....

(g) Vacation of Plea and Sentence Due to Defendant's Noncompliance.

(1) Whenever a plea agreement requires the defendant to comply with some specific terms, those terms shall be expressly made a part of the plea entered into in open court.

(2) Unless otherwise stated at the time the plea is entered:

(A) The state may move to vacate a plea and sentence within 60 days of the defendant's noncompliance with the specific terms of a plea agreement.

(B) When a motion is filed pursuant to subdivision (g)(2)(A) of this rule, the court shall hold an evidentiary hearing on the issue unless the defendant admits noncompliance with the specific terms of the plea agreement.

(C) No plea or sentence shall be vacated unless the court finds that there has been substantial noncompliance with the express plea agreement.

(D) When a plea and sentence is vacated pursuant to this rule, the cause shall be set for trial within 90 days of the order vacating the plea and sentence.

....

~~(I) Motion to Withdraw the Plea after Sentencing. A defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue may file a motion to withdraw the plea within thirty days after~~

Rule 3.800. Correction, Reduction, and Modification of Sentences

~~(a) **Correction.** A court may at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it in a sentencing scoresheet, or a sentence that does not grant proper credit for time served when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief, provided that a party may not file a motion to correct an illegal sentence under this subdivision during the time allowed for the filing of a motion under subdivision (b)(1) or during the pendency of a direct appeal.~~

[This deletion should simply leave subdivision (a) empty and not re-alphabetize the remaining subdivisions.]

(b) Motion to Correct Sentencing Error. [unchanged]

(c) Reduction and Modification. [unchanged]

1 **Rule 3.850. MOTION FOR POSTCONVICTION**
2 **RELIEF FROM JUDGMENT OR FOR**
3 **CORRECTION OF SENTENCE IN CASES IN**
4 **WHICH THE DEATH PENALTY HAS NOT BEEN**
5 **IMPOSED**
6

7 **(a) Motion for Relief from Judgment.** Except in
8 cases in which the death penalty has been imposed, a
9 person who has been tried and found guilty or has
10 entered a plea of guilty or nolo contendere before a court
11 established by the laws of Florida may move for relief
12 from judgment pursuant to this rule in the court that
13 entered the judgment on the following grounds:

14 (1) The judgment was entered in violation of the
15 Constitution or laws of the United States or the State of
16 Florida.

17 (2) The court did not have jurisdiction to enter the
18 judgment.

19 (3) The plea was involuntary.

20 (4) The movant was afforded ineffective assistance
21 of counsel.

22 (5) The judgment is otherwise subject to collateral
23 attack.
24

25 **(b) Motion for Correction of Sentence.** Except
26 in cases in which the death penalty has been imposed, a
27 person whose sentence has been rendered may move for
28 correction of an error in that sentence in the court that
29 entered the sentence. The motion may not

30 (1) raise a sentencing error that was preserved and
31 unsuccessfully reviewed in a direct appeal unless
32 authorized under subdivision (c)(1) or (c)(2);

33 (2) raise an error in a scoresheet calculation unless
34 the movant alleges and establishes that there is a
35 reasonable probability that the error affected the terms of
36 the rendered sentence;

37 (3) raise a procedural error that could or should
38 have been raised in the trial court;

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40 The state may file a motion to correct a sentencing
41 error under this rule, but only if the correction of the
42 error will benefit the defendant or correct a scrivener's
43 error.

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45 **(c) Time Limitations.** No motion may be filed
46 pursuant to subdivision (a) of this rule before the
47 judgment has become final either by the expiration of the
48 time to file a direct appeal or by the issuance of mandate
49 in a direct appeal affirming the judgment. No motion
50 may be filed pursuant to subdivision (b) of this rule
51 before the sentence has become final in the same manner.
52 No motion shall be filed pursuant to subdivision (a) of
53 this rule more than 2 years after the judgment becomes
54 final or pursuant to subdivision (b) more than 2 years
55 after the sentence becomes final unless it alleges that

56 (1) the facts on which the claim is predicated were
57 unknown to the movant or the movant's attorney, these
58 facts could not have been ascertained by the exercise of
59 due diligence within the time specified above, and the
60 motion is being filed within two years following the
61 discovery of these facts; or

62 (2) the fundamental constitutional right asserted
63 was not established within the period provided for herein,
64 this right has been held by the United States Supreme
65 Court or the Supreme Court of Florida to apply
66 retroactively, and the motion is being filed within two
67 years following the decision holding the right to apply
68 retroactively; or

69 (3) the defendant retained counsel to file a timely
70 motion under this rule; counsel, through neglect failed to
71 file the motion, and the defendant filed the motion within
72 two years of expiration of the normal time limit, or

73 (4) a sentencing error is conclusively revealed
74 without need for an evidentiary hearing or examination
75 of anything other than the files and records in the case, as
76 defined in subdivision (g)(4) of this rule. Jail credit
77 issues and alleged deviations between the oral
78 pronouncement and the written sentence can only receive
79 the benefit of this exception if the movant alleges and
80 establishes that the claim can be proven without a factual
81 determination of the accuracy of a court reporter, court
82 clerk or jail official or other such scrivener.

83
84 The correction of a sentencing error pursuant to the
85 mandate of a district court on direct appeal or as a result
86 of a motion under this rule does not affect the finality of
87 the judgment of conviction or otherwise extend the time
88 to file a postconviction motion for relief from the
89 judgment.

90
91 **(d) Contents of Motion.** A motion under
92 subdivision (a) or (b) shall be under oath and include:

93 (1) a description of the judgment or sentence under
94 attack and the court which rendered the same;

95 (2) whether there was an appeal from the judgment
96 or sentence and the disposition thereof;

97 (3) whether a previous postconviction motion has
98 been filed, and if so, how many;

99 (4) if a previous motion or motions have been
100 filed, the reason or reasons the claim or claims in the
101 present motion were not raised in the former motion or
102 motions;

103 (5) the nature of the relief sought; and

104 (6) a brief statement of the facts (and other
105 conditions) relied on in support of the motion.

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108 **(e) Grounds That Could Have Been Raised At**
109 **Trial or On Direct Appeal.**

110 (1) Except for specific jurisdictional and
111 constitutional issues recognized by case law, this rule
112 does not authorize relief from judgment based on
113 grounds that could or should have been raised in the trial
114 court and, if properly preserved, on direct appeal of the
115 judgment.

116 (2) This rule does not authorize relief from a
117 sentence based on the impermissible grounds described
118 in subdivision (b).

119 (3) A motion for postconviction relief pursuant to
120 subdivision (a) or (b) may allege that trial counsel
121 afforded ineffective assistance because counsel failed to
122 address adequately an issue in the trial court.

123
124 **(f) Amendments to Motion.** When the court has
125 entered an order under subdivision (g)(2) or (g)(3)
126 granting the movant an opportunity to amend his motion
127 within a specified number of days, any amendment to the
128 motion must be served within that time. A motion may
129 otherwise be amended at any time prior to either the
130 court's entry of an order disposing of the motion or the
131 court's entry of an order pursuant to subdivision (g)(5)
132 directing that an answer to the motion be filed, whichever
133 first occurs. Leave of court is required for the filing of an
134 amendment after the court's entry of an order pursuant to
135 subdivision (g)(5). Notwithstanding the timeliness of an
136 amendment, the court need not consider new factual
137 assertions contained in an amendment unless the
138 amendment is under oath. New claims for relief
139 contained in an amendment need not be considered by
140 the court unless the amendment is filed within the time
141 specified in subdivision (c).
142

143 **(g) Procedure; Summary Denial; Answer By**
144 **State Attorney; Appointment of Counsel; Evidentiary**
145 **Hearing; Disposition.** When a motion is filed under
146 subdivision (a) or (b) of this rule, or under both
147 subdivisions, the motion shall be immediately delivered
148 to the assigned judge along with the court file.
149 Disposition of the motion shall be in accordance with the
150 following procedures:

151 (1) If the motion is insufficient on its face to state
152 any claim for relief and the time specified in subdivision
153 (c) expired within 30 days from the service of the motion,
154 the trial court shall enter a final appealable order
155 summarily denying the motion. This order shall be
156 treated as a disposition of the motion on the merits.

157 (2) If the motion is insufficient on its face to state
158 any claim for relief and the time specified in subdivision
159 (c) did not expire within 30 days from the service of the
160 motion or has not expired when the court determines the
161 insufficiency the motion, the court shall enter a non-
162 appealable order granting the movant an opportunity to
163 amend the motion in an effort to state a claim for relief.
164 Not less than 30 days shall be allowed for the service of
165 such amendment. If the amended motion is still
166 insufficient or if the defendant fails to file a motion
167 within the time allowed for such amendment, the trial
168 court, in its discretion, may permit the movant an
169 additional opportunity to amend the motion or may enter
170 a final, appealable order summarily denying the motion.
171 Such a final order shall be treated as a disposition of the
172 motion on the merits.

173 (3) If the motion sufficiently states one or more
174 claims for relief and it also attempts but fails to state
175 additional claims, and if the time specified in subdivision
176 (c) did not expire within 30 days from the service of the
177 motion or has not expired when the court determines the
178 insufficiency the motion, the court may, in its discretion,

179 enter a non-appealable order granting the movant an
180 opportunity to amend the motion in an effort to
181 sufficiently state additional claims for relief. If such an
182 amendment is allowed, not less than 30 days shall be
183 allowed for the service of the amendment. If the
184 motion's insufficiency as to one or more of the claims
185 has not been cured within the time allowed for such
186 amendment, or if no amendment is allowed or filed, the
187 claims which have not been sufficiently stated shall be
188 summarily denied on the merits by a non-appealable
189 order. The remaining claims shall be resolved in
190 accordance with the following provisions.

191 (4) If the motion sufficiently states one or more
192 claims for relief but the files and records in the case
193 conclusively show that the movant is entitled to no relief
194 as to one or more of these claims, the claims which are
195 conclusively refuted by the files and records in the case
196 shall be summarily denied on the merits without a
197 hearing. A copy of that portion of the files and records in
198 the case that conclusively shows that the movant is
199 entitled to no relief as to one or more of the claims shall
200 be attached to the order summarily denying these claims.
201 The files and records in the case are the documents and
202 exhibits previously filed in the case and those portions of
203 the proceedings in the case which can be transcribed. If
204 the order does not resolve all claims, it shall be a non-
205 appealable order, which may be reviewed when a final,
206 appealable order is entered pursuant to the following
207 provisions.

208 (5) Unless the motion, files, and records in the case
209 conclusively show that the movant is entitled to no relief,
210 the court shall order the state attorney to file, within the
211 time fixed by the court, an answer to the motion which
212 shall include a response to the allegations contained in
213 the movant's sufficiently pled claims, a statement of any
214 matters in avoidance of the sufficiently pled claims, a

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statement as to whether the movant has used any other available state postconviction remedies including any other motion under this rule, and a statement as to whether the movant has previously been afforded an evidentiary hearing. When the motion is filed by the state attorney under subdivision (b) of this rule, no answer to the motion is required unless ordered by the court.

(6) Not later than the time at which the court considers the answer, the court shall determine whether an indigent movant is entitled to appointment of counsel for purposes of representation in further proceedings under this rule. The factors to be considered by the court in making this determination are the adversary nature of the proceeding, the complexity of the proceeding, the complexity of the claims presented, the movant's apparent level of intelligence and education, the need for an evidentiary hearing, and the need for substantial legal research. If the court determines that appointment of counsel is not required and an indigent movant thereafter proceeds to an evidentiary hearing without counsel, the court may reconsider the appointment decision in light of the movant's performance in the course of the evidentiary hearing. Any doubts as to whether counsel should be appointed must be resolved in favor of appointment.

(7) After the answer is filed, the trial court shall determine whether an evidentiary hearing is required. If an evidentiary hearing is not required, the judge shall make appropriate disposition of the motion on the merits. If an evidentiary hearing is required, the court shall grant a prompt hearing thereon and shall cause notice thereof to be served on the state attorney and the movant or the movant's counsel, and shall determine the issues, and make findings of fact and conclusions of law with respect thereto. If the trial court finds that the defendant is

251 entitled to relief, it shall enter a final order vacating or
252 setting aside any order necessary to provide the
253 appropriate relief and shall further order such relief as is
254 appropriate. If the trial court finds that the defendant is
255 entitled to no relief, it shall enter an appropriate final,
256 appealable order.

257
258 **(h) Successive Motions.**

259 (1) A second or successive motion shall not be
260 filed while the original motion remains pending in the
261 trial court. If a movant wishes to allege new or different
262 grounds while the original motion is pending, the movant
263 shall file a motion to amend under subdivision (f).

264 (2) A second or successive motion is an
265 extraordinary pleading. Accordingly, a trial court has
266 discretion to deny a second or successive motion on the
267 merits if the court finds that it fails to allege new or
268 different grounds for relief or, if new and different
269 grounds are alleged, the judge finds that the failure of the
270 movant or the attorney to assert those grounds in a prior
271 motion constituted an abuse of the procedure governed
272 by these rules. When a motion is denied under this
273 subdivision, a copy of that portion of the files and records
274 in the case relied upon for the court's ruling shall be
275 attached to the order by which the motion is denied.

276 **(i) Appeal; Rehearing; Service on Movant.**

277 (1) An appeal may be taken to the appropriate
278 appellate court only from the final order disposing of the
279 motion on the merits. All final orders denying motions
280 for postconviction relief shall include a statement that the
281 movant has the right to appeal within 30 days of
282 rendition of the order. To avoid confusion, all non-
283 appealable orders entered pursuant to subdivision (g)
284 may include a statement that the movant has no right to
285 appeal the order until the entry of the final order.

286 (2) A petitioner may seek a belated appeal upon
287 the allegation that the petitioner timely requested counsel
288 to appeal the order denying petitioner's motion for
289 postconviction relief and counsel, through neglect, failed
290 to do so.

291 (3) The movant may file a motion for rehearing of
292 any order denying a motion under this rule within 15
293 days of the date of service of the order. A motion for
294 rehearing is not required to preserve any issue for review
295 in the district court.

296 (4) The clerk of the court shall promptly serve on
297 the movant a copy of any order denying a motion for
298 postconviction relief or denying a motion for rehearing
299 noting thereon the date of service by an appropriate
300 certificate of service.

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302 **(j) Habeas Corpus.** Before a movant may request
303 a writ of habeas corpus to challenge a judgment or
304 sentence that can be adequately challenged under this
305 rule, the movant must first file for relief under this rule.
306 A petition for writ of habeas corpus may not be used to
307 raise grounds that were or could have been raised in a
308 motion under this rule.

309
310 **(k) Sanctions; Certification of Movant;**
311 **Prohibited Conduct; Determination of Violation of**
312 **Rule.** No motions may be filed pursuant to this rule
313 unless it is filed in good faith and with a reasonable belief
314 that it is timely, has potential merit, and does not
315 duplicate previous motions that have been disposed of by
316 the court.

317 (1) All motions must be signed by the movant
318 under oath. By signing a motion pursuant to this rule, the
319 movant certifies that:
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a. the movant has read the motion or that it has been read to the movant and that the movant understands its content ;

b. the motion is filed in good faith and with an reasonable belief that it is timely, has potential merit, and does not duplicate previous motions that have been disposed of by the court; and

c. the facts contained therein are true and correct.

(2) The movant shall either certify that he or she can understand English or, if the movant cannot understand English, that the movant has had the motion translated completely into a language that the movant does understand. The motion shall contain the name and address of the person who translated the motion, and that person shall certify that he or she provided an accurate and complete translation to the movant. Failure to include this information and certification in a motion shall be grounds for the entry of an order dismissing the motion pursuant to subdivision (g)(1).

(3) The court, upon its own motion or on the motion of a party, may determine whether a motion has been filed in violation of this rule. The court may hold such hearings and take such procedural steps as are necessary to determine whether the movant engaged in conduct that violates this rule.

(4) If the court determines that a claim is:

- a. frivolous;
- b. malicious;
- c. made in bad faith;
- d. made with reckless disregard for the truth;

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- e. a willful violation of any other provision of this rule; or
- f. an abuse of the legal process or the procedures governed by this rule,

the court shall issue an order setting forth the facts indicating that movant has or may have engaged in prohibited conduct under this subsection. Said order shall direct movant to show cause why the court should not find that movant has engaged in prohibited conduct under this rule and impose an appropriate sanction. Movant shall be given an opportunity to file a response to the order within a reasonable time as set by the court. Following the issuance of the order and the filing of any response by movant, and after such further hearing as the court may deem appropriate, the court shall make a final determination whether movant engaged in prohibited conduct under this subsection.

- (5) If the court finds that movant has engaged in prohibited conduct under this rule, the court may impose one or more sanctions, including:
- a. contempt as otherwise provided by these Rules;
 - b. assessing the costs of the proceeding against the movant who, if a prisoner, may be required to pay said costs from the movant's prisoner account in accordance with applicable laws and administrative regulations;
 - c. dismissal with prejudice of the movant's motion;
 - d. prohibiting the filing of further pro se motions under this rule;
 - e. requiring that any further motions under this rule be signed by a member in good standing of the Florida Bar, who shall certify that there is a good faith basis for each claim asserted in the motion;

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f. if the movant is a prisoner, a recommendation that the Florida Department of Corrections take disciplinary action against the movant, including forfeiture of gain time pursuant to Fla. Stat. §944.28.

(6) If the court determines that there is probable cause to believe that a sworn motion contains a false statement of fact constituting perjury in an official proceeding pursuant to section 837.02, Florida Statutes (2005), the court shall refer the matter to the state attorney of that circuit.

APPENDIX B

The current version of Rule 3.850.

Rule 3.850. Motion to Vacate, Set Aside, or Correct Sentence

(a) Grounds for Motion. The following grounds may be claims for relief from judgment or release from custody by a person who has been tried and found guilty or has entered a plea of guilty or nolo contendere before a court established by the laws of Florida:

(1) The judgment was entered or sentence was imposed in violation of the Constitution or laws of the United States or the State of Florida.

(2) The court did not have jurisdiction to enter the judgment.

(3) The court did not have jurisdiction to impose the sentence.

(4) The sentence exceeded the maximum authorized by law.

(5) The plea was involuntary.

(6) The judgment or sentence is otherwise subject to collateral attack.

(b) Time Limitations. A motion to vacate a sentence that exceeds the limits provided by law may be filed at any time. No other motion shall be filed or considered pursuant to this rule if filed more than 2 years after the judgment and sentence become final in a noncapital case

or more than 1 year after the judgment and sentence become final in a capital case in which a death sentence has been imposed unless it alleges that

(1) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or

(2) the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively, or

(3) the defendant retained counsel to timely file a 3.850 motion and counsel, through neglect, failed to file the motion.

(c) Contents of Motion. The motion shall be under oath and include:

(1) the judgment or sentence under attack and the court which rendered the same;

(2) whether there was an appeal from the judgment or sentence and the disposition thereof;

(3) whether a previous postconviction motion has been filed, and if so, how many;

(4) if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions;

(5) the nature of the relief sought; and

(6) a brief statement of the facts (and other conditions) relied on in support of the motion.

This rule does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence.

(d) Procedure; Evidentiary Hearing; Disposition. On filing of a rule 3.850 motion, the clerk shall forward the motion and file to the court. If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion shall be denied without a hearing. In those instances when the denial is not predicated on the legal insufficiency of the motion on its face, a copy of that portion of the files and records that conclusively shows that the movant is entitled to no relief shall be attached to the order. Unless the motion, files, and records of the case conclusively show that the movant is entitled to no relief, the court shall order the state attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate. The answer shall respond to the allegations of the motion. In addition it shall state whether the movant has used any other available state remedies including any other postconviction motion under this rule. The answer shall also state whether an evidentiary hearing was accorded the movant. If the motion has not been denied at a previous stage in the proceedings, the judge, after the answer is filed, shall determine whether an evidentiary hearing is required. If an evidentiary hearing is not required, the judge shall make appropriate disposition of the motion. If an evidentiary hearing is required, the court shall grant a prompt hearing thereon and shall cause notice thereof to be served on the state attorney, determine the issues, and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been

such a denial or infringement of the constitutional rights of the movant as to render the judgment vulnerable to collateral attack, the court shall vacate and set aside the judgment and shall discharge or resentence the movant, grant a new trial, or correct the sentence as may appear appropriate.

(e) Movant's Presence Not Required. A court may entertain and determine the motion without requiring the production of the movant at the hearing.

(f) Successive Motions. A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant or the attorney to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

(g) Appeal; Rehearing; Service on Movant. An appeal may be taken to the appropriate appellate court from the order entered on the motion as from a final judgment on application for writ of habeas corpus. All orders denying motions for postconviction relief shall include a statement that the movant has the right to appeal within 30 days of the rendition of the order. A petitioner may seek a belated appeal upon the allegation that the petitioner timely requested counsel to appeal the order denying petitioner's motion for postconviction relief and counsel, through neglect, failed to do so. The movant may file a motion for rehearing of any order denying a motion under this rule within 15 days of the date of service of the order. The clerk of the court shall promptly serve on the movant a copy of any order denying a motion for postconviction relief or denying a motion for rehearing noting thereon the date of service by an appropriate certificate of service.

(h) Habeas Corpus. An application for writ of habeas corpus on behalf of a prisoner who is authorized to apply for relief by motion pursuant to this rule shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court that sentenced the applicant or that the court has denied the applicant relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of the applicant's detention.