

IN THE SUPREME COURT OF FLORIDA

EMERGENCY AMENDMENT TO THE
FLORIDA RULES OF APPELLATE
PROCEDURE RULES 9.140 AND 9.141
(APPEALS FROM DNA PROCEEDINGS
UNDER PROPOSED RULE 3.853

Case No. SC01-_____

**EMERGENCY PETITION TO AMEND RULES 9.140 AND 9.141
FLORIDA RULES OF APPELLATE PROCEDURE (DNA TESTING)**

The Florida Bar Appellate Court Rules Committee ("Committee") through Winifred J. Sharp, Chair, and John F. Harkness, Jr., Executive Director of The Florida Bar, respectfully petitions the Florida Supreme Court to amend Rule 9.140 and Rule 9.141 on an emergency basis, in connection with and provided the Court accepts and adopts the Florida Bar Criminal Procedure Rule Committee's Emergency Petition to Create Rule 3.853 Florida Rules of Criminal Procedure (DNA Testing).

BACKGROUND

During the first session of the Florida Legislature, it enacted and Governor Bush approved section 925.11 of the Florida Statutes, to allow DNA testing for persons who have previously been tried and found guilty of committing a crime. This statute becomes fully effective October 1, 2001. It creates a new post-conviction remedy for

defendants whose convictions might be overturned or mitigated based on DNA evidence. It also creates an express right of appeal.

Accordingly, the Court and the Committee for Review and Notification of Criminal and Juvenile Legislation requested the Committee to propose on an emergency basis, no later than September 1, 2001, rules of procedure to address appeals under section 925.11(3) and proposed Criminal Rule 3.853.

At the June 22, 2001 meeting of the Committee, the proposed amendments to Rules 9.140 and 9.141 were approved by a vote of 37 to 0. The Committee adopted the recommendations of the Criminal Rules Subcommittee, that rather than draft a new procedure or rule to address appeals from proceedings under section 925.11(3) and Rule 3.853, it would be preferable to make those appellate procedures parallel those for appeals in Rule 3.850 and Rule 3.800(a) proceedings. Accordingly, references to Rule 3.853 were added to Rules 9.140 and 9.141 where appropriate. In addition, Rule 9.140 was changed by adding subsection (c)(1)(I) to provide the state with an express right to appeal from an order granting relief under Rule 3.853, because both the statute and Rule 3.853 provide for state appeals in these instances. If this proposed Rule is adopted, the reference in Rule 9.140(c)(3) should also be changed to Rule 9.140(c)(1)(J), rather than 9.140(c)(1)(I), as a housekeeping measure.

For these reasons, the Committee has responded to the Court's request by amending Rules 9.140 and 9.141, as indicated in the attached proposed Rule.

CONCLUSION AND SPECIFIC RELIEF SOUGHT

The Florida Bar and the Appellate Rules Committee hereby petition The Florida Supreme Court to adopt the foregoing amendments to Rules 9.140 and 9.141, on an expedited basis, but only in conjunction with the court's approval of the Emergency Petition to Create Rule 3.853, filed July 2, 2001, by the Florida Bar and the Florida Criminal Procedure Rules Committee.

Respectfully submitted by:

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CERTIFICATE OF FONT

I hereby certify that the size and style of type used in the Emergency Amendment to the Florida Rules of Appellate Procedure Rules 9.140 and 9.141 Appeals from DNA Proceedings Under Proposed Rule 3.853 is Times New Roman (14 pt.)

Winifred J. Sharp