

The Criminal Procedure Rules Committee has filed with the Florida Supreme Court an “Emergency Petition to Create Rule 3.853 Florida Rules of Criminal Procedure (DNA Testing).” The Court invites all interested persons to comment on the committee’s proposed Rule 3.853, which is reproduced in full below, as well as online at <http://www.flcourts.org/sct/sctdocs/proposed.html>. An original and seven copies of all comments must be filed with the Court on or before April 16, 2001, with a certificate of service verifying that a copy has been served on the committee chair (The Honorable Oscar H. Eaton, Jr., Seminole County Courthouse, 301 N. Park Ave., Sanford, FL 32771-1243), as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case.

IN THE SUPREME COURT OF FLORIDA

AMENDMENT TO FLORIDA RULES OF CRIMINAL PROCEDURE CREATING RULE 3.853 (DNA TESTING), CASE NO. SCO1-363

RULE 3.853 MOTION FOR DNA EVIDENCE EXAMINATION

(a) **Grounds for Motion.** 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 may petition that court to order the examination of physical evidence collected at the time of the investigation of the crime that may contain DNA (deoxyribonucleic acid) and that would exonerate the defendant.

(b) **Contents of Motion.** The motion must be under oath by the defendant and must include the following:

(1) a statement of the facts relied on in support of the motion, including a description of the physical evidence to be tested containing DNA, and, if known, the present location of the evidence and how it originally was obtained;

(2) a statement that the evidence was not tested previously for DNA or a statement that the results of any previous DNA testing were inconclusive and that subsequent scientific developments in the DNA testing technique likely would produce a definitive result;

(3) a statement that the defendant is innocent and that DNA evidence will exonerate the defendant of the crime for which the defendant was convicted;

(4) a statement that identification of the defendant is a genuine disputed issue in the case;

(5) any other material facts relevant to the motion; and

(6) a certificate that a copy of the motion has been served on the prosecuting authority.

(c) **Procedure.**

(1) The clerk of the court shall file the motion when it is received and deliver the court file to the assigned judge.

(2) The assigned judge shall review the motion and deny the motion if it is insufficient. If the motion is sufficient, the court shall order the prosecuting authority to respond to the motion within a specified time.

(3) The court shall review the response of the prosecuting authority and either enter an order on the merits of the motion or set the motion for hearing.

(4) The court shall make the following findings when ruling on the motion:

(A) whether the physical evidence that may contain DNA still exists;

(B) whether the results of DNA testing of that physical evidence would have been admissible at the trial and whether there exists reliable proof to establish that the evidence has not been materially altered and would be admissible at a future hearing; and

(C) whether there is a reasonable probability that the defendant would have been acquitted if the DNA evidence had been admitted at trial.

(5) The court may tax the cost of DNA testing against the defendant

if the defendant is not indigent.

(d) **Time Limitations.**

(1) No motion shall be filed or considered more than 2 years after the date that this rule is adopted by the Supreme Court of Florida, nor more than 2 years after the judgment and sentence in the case become final, whichever is later.

(2) The time limitations provided in Fla. R. Crim. P. 3.850–3.851 do not apply to a motion made under this rule if the motion for postconviction relief is based on the results of DNA testing.

(e) **Appeal; Rehearing.** An appeal may be taken by any adversely affected party from the order entered on the motion. All orders denying relief must include a statement that the defendant has the right to appeal within 30 days after the rendition of the order denying relief. The defendant may file a motion for rehearing of any order denying relief within 15 days after service of the order denying relief. The time for filing an appeal shall be tolled until an order on the motion for rehearing has been entered. The court or the clerk shall serve on all parties a copy of any order rendered with a certificate of service including the date of service.