

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC01-363

IN RE: AMENDMENT TO FLORIDA  
RULES OF CRIMINAL PROCEDURE  
CREATING RULE 3.853 (DNA Testing)

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**EMERGENCY PETITION TO CREATE RULE 3.853**  
**FLORIDA RULES OF CRIMINAL PROCEDURE**  
**(DNA TESTING)**

John F. Harkness, Executive Director of The Florida Bar, and the Honorable O. H. Eaton, Jr., Circuit Judge, Chair of the Criminal Procedure Rules Committee, respectfully request the Court to expedite the review of a proposed new rule of criminal procedure authorizing DNA testing for certain individuals who may have been convicted of crimes and who are actually innocent, and as grounds therefor, state:

1. This matter was proposed to the Committee by resolution of the Executive Council of the Criminal Law Section of The Florida Bar. The matter was referred to a subcommittee of the Criminal Procedure Rules Committee on request of the Chair, and has been the subject of considerable study for nearly a year.

2. Subcommittee meetings were held on three occasions, and a proposed rule was circulated to the members of the full Committee before the regularly scheduled midyear meeting in Miami, on January 19, 2001.

3. The proposed rule was debated fully at the meeting, and amendments were offered and approved.

4. The Criminal Procedure Rules Committee voted (35 in favor; 4 opposed) to adopt the proposed rule, and authorized the Chair of the Committee to petition this Court to implement the proposed rule as an emergency measure.

5. The subject of the proposed rule is an emergency because there is presently no mechanism for a person convicted of a crime, whether incarcerated or not, to apply for DNA testing to establish that he or she is actually innocent of the offense. The scientific evidence of DNA can exclude persons from guilt of crime beyond a reasonable doubt and to a scientific certainty.

6. The Committee debated whether persons who pled guilty or no contest to crimes should be included in the DNA testing process, and more than two-thirds of the Committee believed that all persons convicted of crimes should have the opportunity for testing if (1) identity is a serious issue in the case, and (2) evidence that may contain DNA exists and is available for testing. The Committee rejected the notion that certain categories of persons should be excluded from taking advantage of the rule because of factors such as (1) entry of a guilty plea (because that plea often is entered in the defendant's best interest), (2) the existence of a confession (because some defendants confess to crimes that they did not commit), and (3) prior DNA testing

when the science of DNA testing has advanced beyond the prior testing capability.

7. The main disagreement among the Committee members was the establishment of a two-year time bar, and it was necessary to include that provision to secure the more than two-thirds majority of the Committee to pass the rule.

8. The Board of Governors of The Florida Bar voted unanimously on February 9, 2001, to approve the filing of this petition. However, the Board does not urge the Court to adopt the rule proposed by The Florida Bar Criminal Procedure Rules Committee, but urges the Court to fashion a rule after considering the Committee proposal *and* all comments that may be filed by other interested parties, including those presented to The Florida Bar and attached hereto as Appendix B. Attachment C is a list of entities and individuals invited to submit comments to The Florida Bar Board of Governors before its February 9, 2001, meeting.

9. A copy of the proposed rule is attached to this emergency petition as Appendix A.

WHEREFORE, the undersigned respectfully request the Court to review this proposed rule as an emergency amendment to the Florida Rules of Criminal Procedure and to adopt the proposed rule as soon as possible.

Respectfully submitted on \_\_\_\_\_.

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