

SUPREME COURT OF FLORIDA

Amendments to Florida Rule of Criminal Procedure 3.851(h)

828 So. 2d 999 (Fla. 2002) · Decided September 19, 2002

SUMMARY

The Florida Supreme Court adopts amendments to Florida Rule of Criminal Procedure 3.851(h), governing post-conviction proceedings after a death warrant is signed. The opinion addresses judicial assignment, expedited scheduling, hearing location, successive motions, case management, transcription, preparation of orders, and transmission of the record. The court adopts the proposed amendments with modifications, including deletion of provisions concerning stays of execution and electronic presence of the defendant.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Anstead, C.J.; Shaw, J.; Wells, J.; Pariente, J.; Lewis, J.; Quince, J.; Harding, Senior Justice
JURISDICTION	Florida
DECIDED	September 19, 2002
DISPOSITION	approved
PROCEDURAL POSTURE	The Supreme Court Committee on Post-conviction Relief in Capital Cases and the Florida Bar Criminal Procedure Rules Committee proposed amendments to Florida Rule of Criminal Procedure 3.851(h), governing capital post-conviction proceedings after issuance of a death warrant. The proposals were published for comment, written comments were received, and representatives of the interested parties presented oral argument. The Supreme Court adopted the amendments with specified modifications.
PRECEDENTIAL VALUE	Published Florida Supreme Court rulemaking opinion adopting amendments to a statewide criminal procedure rule; binding to the extent it construes the court’s jurisdiction and circuit-court authority to stay execution.
PARTIES	Supreme Court Committee on Post-conviction Relief in Capital Cases, Florida Bar Criminal Procedure Rules Committee

TOPICS

state post-conviction relief

post-conviction relief

criminal procedure

appellate procedure

competency to be executed

PRACTICE AREAS

Criminal procedure

Capital post-conviction litigation

Appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of Florida should adopt proposed amendments to Florida Rule of Criminal Procedure 3.851(h) governing post-conviction proceedings after a death warrant is signed.
2. Whether the proposed provision limiting or describing circuit-court authority to stay execution should be included in the rule.
3. Whether the rule should expressly authorize electronic presence of the defendant when the defendant's presence is otherwise required.
4. How proceedings after issuance of a death warrant should be expedited and administered.

HOLDINGS

1. The Supreme Court of Florida adopted the proposed amendments to rule 3.851(h), with the modifications described in the opinion and minor editorial changes, effective immediately.
2. The court declined to include in rule 3.851(h) the proposed language stating that a stay of execution should be granted only under specified logistical or unavoidable circumstances. Circuit courts retain authority under their all-writs power to enter a stay when the stay application is filed with a post-conviction motion or itself shows grounds on which the defendant might be entitled to post-conviction relief.
3. After a death warrant is signed, the proceedings must be expedited: the case must be assigned promptly to a qualified capital-case judge, given precedence over other cases, heard expeditiously without the ordinary rule 3.851 time limitations, conducted at a location selected by the trial judge, and administered under the rule's requirements for successive motions, case management, reporting, orders, and immediate record transmission.

KEY QUOTATIONS

"our case law is clear that circuit courts have jurisdiction, under their all writs power, to enter a stay of execution where the application for stay is filed with a motion for postconviction relief or where the application for stay itself shows grounds under which the defendant might be entitled to postconviction relief." (1001)

"This subdivision is meant to provide the trial judge with the flexibility to travel with the case as necessary and to hold hearings in the most appropriate and convenient location." (1002)

"Accordingly, we adopt the proposed amendments with the modifications discussed above and with other minor editorial changes." (1003)

FACTUAL BACKGROUND

The opinion concerns the administrative and procedural requirements applicable to capital post-conviction proceedings after a death warrant has been signed. The proposed rule addressed the compressed time available before execution and appellate review, including assignment of a qualified judge, expedited proceedings, determination of hearing location, treatment of motions as successive, case management, transcription, preparation of orders, and transmission of the record. The court modified the proposal by deleting provisions concerning circuit-court stays of execution and the defendant's express authorization to appear electronically, among other changes.

PROCEDURAL HISTORY

The court had previously adopted comprehensive amendments to rule 3.851 but requested that the committees develop procedures for proceedings after a death warrant is signed. The committees submitted proposed amendments addressing judicial assignment, scheduling, hearing location, successive motions, case management, reporting, orders, and record transmission. After considering the proposals, comments, and oral argument, the court adopted the amendments with deletions, renumbering, and other modifications, effective immediately.

DISPOSITION

approved

CASES CITED

- Amendments to Florida Rules of Criminal Procedure 3.851, 3.852 & 3.993, 797 So. 2d 1213 (Fla. 2001)
- State ex rel. Russell v. Schaeffer, 467 So. 2d 698 (Fla. 1985)
- Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)
- Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972)
- Scott v. Dugger, 604 So. 2d 465 (Fla. 1992)
- Jones v. State, 591 So. 2d 911 (Fla. 1991)
- Richardson v. State, 546 So. 2d 1037 (Fla. 1989)
- Huff v. State, 622 So. 2d 982 (Fla. 1993)
- Amendments to Florida Rules of Criminal Procedure 3.851, 3.852 and 3.993, 772 So. 2d 488 (Fla. 2000)

OPINION

PER CURIAM.

PER CURIAM. The Supreme Court Committee on Post-conviction Relief in Capital Cases (the Morris Committee), working in conjunction with the Florida Bar Criminal Procedure Rules Committee, has proposed amendments to Florida Rule of Criminal Procedure 3.851(h).

We have jurisdiction. See art. V, § 2(a), Fla. Const. In Amendments to Florida Rules of Criminal Procedure 3.851, 3.852 & 3.993, 797 So.2d 1213 (Fla.2001), this Court adopted amendments to

Florida Rule of Criminal Procedure 3.851 governing the procedures to be followed in capital post-conviction proceedings. These amendments addressed all the major procedural aspects of the postconviction process, but did not contain specific procedures to be followed after a death warrant is signed.

Accordingly, in its opinion adopting the amendments, the Court requested that the Morris Committee and the Criminal Procedure Rules Committee work together to draft a new subdivision of rule 3.851 addressing the procedures to be followed in postconviction proceedings after a death warrant is signed. See *id.* at 1220-21.

The two committees responded with proposed amendments to Florida Rule of Criminal Procedure 3.851(h). As proposed, the amendments address judicial assignment after a death warrant is issued, scheduling and time restraints, venue, content of the postconviction motion, case management conferences, presence of the defendant at hearings, court reporting, preparation of orders, and the transmittal of the record to this Court.

Proposed subdivision (1) requires the chief judge of the circuit to assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital cases as soon as notification of the death warrant is received. Proposed subdivision (2) provides that proceedings after a death warrant has been issued shall take precedence over all other cases and requires the assigned judge to “make every effort to resolve scheduling conflicts with other cases.” Proposed subdivision (3) provides that the time limitations provided elsewhere in rule 3.851 do not apply after a death warrant has been signed, and that “[a]ll motions shall be heard expeditiously considering the time limitations set by the date of execution and the time required for appellate review.” It also provides that a stay of execution should only be granted when necessary due to “logistical difficulties, unavailability of witnesses or other unavoidable circumstances.” Proposed subdivision (4) suspends traditional provisions for venue while a death warrant is pending and provides that the trial judge “shall determine venue considering the availability of witnesses or evidence, security problems, and any other factor.” Under proposed subdivision (5), all postconviction motions filed after a death warrant is signed are considered successive motions and must meet the content requirements of rule 3.851(e)(2).

Proposed subdivision (6) requires the presence of the defendant, either in person, if practical, or electronically, at all evidentiary hearings and any hearing involving change of counsel after a death warrant has been issued. Proposed subdivision (7) requires the assigned judge to schedule a case management conference as soon as reasonably possible after receiving notification of the death warrant and also requires the judge, at the case management conference, to set a time for filing a postconviction motion and to schedule a hearing pursuant to rule 3.851(f)(5)(B).

Proposed subdivision (8) requires the proceedings conducted after a death warrant has been issued to be reported “using the most advanced and accurate technology available in general use at the

location of the hearing.” It also requires the proceedings to be transcribed “expeditiously considering the time limitations set by the execution date.” Under proposed subdivision (9), the trial court is required to obtain a transcript of the evidentiary hearing and render its order complying with the content requirements of rule 3.851(f)(5)(D) as soon as possible.

A copy of the final order must be electronically transmitted to this Court and to attorneys of record. Finally, proposed subdivision (10) requires that the record be immediately delivered by the clerk of the trial court to the clerk of this Court or as ordered by the assigned judge without the requirement of a notice of appeal.

The committees’ proposed amendments were published for comment, and written comments were received from the Honorable O.H. Eaton, Jr., and the Attorney General. Additionally, representatives of the committees, the Attorney General’s office, and the Office of the Capital Collateral Regional Counsel participated in oral argument regarding the proposals.

After careful consideration of the proposals, the comments received, and the arguments of the interested parties, we adopt the proposed amendments to rule 3.851(h) with several modifications discussed below. First, we have deleted the last sentence of subdivision (3) of the proposed rule which read, “A stay of execution should only be granted when orderly disposition of the case requires it due to logistical difficulties, unavailability of witnesses or other unavoidable circumstances.” The Attorney General objected to this language on the grounds that it was overly broad and that authority to grant a stay should be limited to this Court upon a showing of good cause.

In support of its argument, the Attorney General cites to section 922.06, Florida Statutes (2001). This section states: “The execution of a death sentence may be stayed only by the Governor or incident to an appeal.” § 922.06(1), Fla. Stat. (2001). While this section might be read to prohibit circuit courts from entering stays, this Court has never so interpreted it.

In fact, our case law is clear that circuit courts have jurisdiction, under their all writs power, to enter a stay of execution where the application for stay is filed with a motion for postconviction relief or where the application for stay itself shows grounds under which the defendant might be entitled to postconviction relief. See *State ex rel. Russell v. Schaeffer*, 467 So.2d 698 (Fla.1985); see also art. V, § 5(b), Fla. Const.

Nevertheless, while we do not agree with the Attorney General’s suggestion that authority to grant stays of execution should be limited to this Court, we do find that the language regarding stays contained in the proposed rule is unnecessary. It has not been our experience that the circuit courts have in any way abused their power to grant stays, and we believe that the circumstances under which a stay may or may not be granted need not be delineated in a rule of procedure.

Accordingly, we adopt subdivision (3) of the proposed rule without the language regarding stays of execution. *1002Second, at the suggestion of Judge O.H. Eaton, Jr., we have modified the title and content of subdivision (4) of the proposed rule to substitute the term “location of hearings” for the term “venue.” As Judge Eaton has so aptly pointed out, the problem addressed by this subdivision is not purely one of venue, but is largely a logistical one, born of the time pressures and other difficult circumstances inherent in coordinating and conducting the necessary hearings in a death warrant situation.

This subdivision is meant to provide the trial judge with the flexibility to travel with the case as necessary and to hold hearings in the most appropriate and convenient location. Accordingly, we adopt subdivision (4) with the modifications suggested by Judge Eaton.

The third modification we make to the proposed rule is the deletion of subdivision (6) addressing the presence of the defendant. Rule 3.851(c)(3) already provides that “[t]he prisoner’s presence shall not be required at any hearing or conference held under this rule, except at the evidentiary hearing on the merits of any claim and at any hearing involving conflict with or removal of counsel.” Proposed subdivision (6) contained essentially the same provisions except that it expressly provided that, where the defendant’s presence was required, he or she could be present “electronically” if physical presence was not practical.

While we recognize that in a death warrant situation there may be rare circumstances under which it is difficult to secure the defendant’s physical presence, we believe that where such circumstances arise, electronic methods of obtaining the defendant’s presence can be addressed and arranged for by the trial judge on a case-by-case basis.

Accordingly, because we find it unnecessary, we delete subdivision (6) of the proposed rule, and renumber the remaining subdivisions accordingly. The next modification we make is to the titles of renumbered subdivisions (6), (7), and (8) and the language of renumbered subdivisions (6) and (8) referring to an evidentiary hearing.

In its comments and at oral argument, the Attorney General’s office argued that the specific reference to an evidentiary hearing should be removed from the titles and language of these subdivisions because it implied an evidentiary hearing is necessary.

Because all motions under this subdivision are considered successive motions, an evidentiary hearing will not always be required, and the determination of whether an evidentiary hearing will be held is one which must be made by the trial judge under subdivision 3.851(f)(5)(B).

Accordingly, we adopt renumbered subdivisions (6), (7), and (8) with this modification. Next, we modify renumbered subdivision (9), addressing transmittal of the record. Due to the exigencies of the circumstances surrounding death warrants, we agree with Judge Eaton’s suggestion to add a

provision requiring electronic transmittal of the record to this Court if the necessary technology is available.

Accordingly, we adopt this subdivision with the addition of the second to last sentence, reading: “The record shall also be electronically transmitted if the technology is available.” Finally, we decline two suggestions made by the Attorney General in its comments and at oral argument.

First, we find it unnecessary to add a provision to subdivision (1) of the proposed rule, addressing judicial assignment, which would express a preference for assignment to the trial judge who previously heard the original or any prior motion for postconviction relief. Obviously, assignment of these matters to a judge already familiar with the case would likely save time and judicial *1003labor in these time-sensitive cases.

However, we understand that this is already the general practice, and the original judge is usually assigned to postconviction matters arising after a death warrant is signed if that judge is available to serve. However, we also recognize that circumstances, such as a judge’s retirement or relocation to another judicial division, may arise which would require assignment of the case to another judge.

Accordingly, we continue to leave this decision to the discretion of the chief judge of each circuit, and we adopt subdivision (1) of the proposed rule as submitted by the committees. We also decline the Attorney General’s suggestion to add a subdivision requiring all pleadings and orders, including public records requests, filed after the signing of a death warrant to be served by facsimile in addition to normal service by mail.

The Rules of Criminal Procedure already allow service by facsimile in conjunction with another “regular” method of service, see Fla. R.Crim. P. 3.030(b)(5), and while service by facsimile in a death warrant situation is likely a good idea in most cases, we see no reason to require it by rule.

We adopt the proposed amendments with the modifications discussed above and with other minor editorial changes. The adopted language is set forth in the appendix to this opinion, with new language indicated by underscoring and deletions indicated by struck-through type.

The amendments shall become effective immediately. It is so ordered. ANSTEAD, C.J., SHAW, WELLS, PARIENTE, LEWIS, and QUINCE, JJ., and HARDING, Senior Justice, concur. APPENDIX Rule 3.851. Collateral Relief After Death Sentence Has Been Imposed And Affirmed on Direct Appeal (a) Scope. This rule shall apply to all motions and petitions for any type of post-conviction or collateral relief brought by a prisoner in state custody who has been sentenced to death and whose conviction and death sentence have been affirmed on direct appeal.

It shall apply to all post-conviction motions filed on or after October 1, 2001. Motions pending on that date are governed by the version of this rule in effect immediately prior to that date. (b)

Appointment of Postconviction Counsel.

(1) Upon the issuance of mandate affirming a judgment and sentence of death on direct appeal, the Supreme Court of Florida shall at the same time issue an order appointing the appropriate office of the Capital Collateral Regional Counsel.

(2) Within 30 days of the issuance of mandate, the Capital Collateral Regional Counsel shall file a notice of appearance in the trial court or a motion to withdraw based on a conflict of interest or some other legal ground. Motions to withdraw filed more than 30 days after the issuance of mandate shall not be entertained unless based on a specific conflict of interest as set forth in section 27.703, Florida Statutes.

(3) Within 15 days after Capital Collateral Regional Counsel files a motion to withdraw, the chief judge or assigned judge shall rule on the motion and appoint new postconviction counsel if necessary. (c) Preliminary Procedures.

(1) Judicial Assignment. Within 30 days of the issuance of mandate affirming a judgment and sentence of death on direct appeal, the chief judge shall assign *1004the case to a judge qualified under the Rules of Judicial Administration to conduct capital proceedings.

(2) Status Conferences. The assigned judge shall conduct a status hearing not later than 90 days after the judicial assignment, and shall hold status conferences at least every 90 days thereafter until the evidentiary hearing has been completed or the motion has been ruled on without a hearing.

The attorneys, with leave of the trial court, may appear by telephone at such status conferences. Such requests shall be liberally granted. Pending motions, disputes involving public records, or any other matters ordered by the court shall be heard at the status conferences.

(3) Prisoner's Presence Not Required. The prisoner's presence shall not be required at any hearing or conference held under this rule, except at the evidentiary hearing on the merits of any claim and at any hearing involving conflict with or removal of collateral counsel.

(4) Duties of Defense Counsel. Within 45 days of appointment of postconviction counsel, the defendant's trial counsel shall provide to postconviction counsel all information pertaining to the defendant's capital case which was obtained during the representation of the defendant. Postconviction counsel shall maintain the confidentiality of all confidential information received. (d) Time Limitation.

(1) Any motion to vacate judgment of conviction and sentence of death shall be filed by the prisoner within 1 year after the judgment and sentence become final. For the purposes of this rule, a judgment is final: (A) on the expiration of the time permitted to file in the United States Supreme Court a petition for writ of certiorari seeking review of the Supreme Court of Florida decision

affirming a judgment and sentence of death (90 days after the opinion becomes final); or (B) on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.

(2) No motion shall be filed or considered pursuant to this rule if filed beyond the time limitation provided in subdivision (d)(1) unless it alleges that (A) 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 (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or (C) postconviction counsel, through neglect, failed to file the motion.

(3) All petitions for extraordinary relief in which the Supreme Court of Florida has original jurisdiction, including petitions for writ of habeas corpus, shall be filed simultaneously with the initial brief filed on behalf of the death-sentenced prisoner in the appeal of the circuit court's order on the initial motion for postconviction relief filed under this rule.

(4) The time limitation in subdivision (d)(1) is established with the understanding that each death-sentenced prisoner will have counsel assigned and available to begin addressing the prisoner's postconviction issues within the time specified in this rule. Should the governor sign a death warrant before the expiration of the time limitation in subdivision (d)(1), the Supreme Court of Florida, on a defendant's request, will grant a stay of execution to allow any postconviction relief motions to proceed in a timely and orderly manner. *1005 Furthermore, this time limitation shall not preclude the right to amend or to supplement pending pleadings under these rules.

(5) An extension of time may be granted by the Supreme Court of Florida for the filing of postconviction pleadings if the prisoner's counsel makes a showing of good cause for counsel's inability to file the postconviction pleadings within the 1-year period established by this rule. (e) Contents of Motion.

(1) Initial Motion. A motion filed under this rule is an initial postconviction motion if no state court has previously ruled on a postconviction motion challenging the same judgment and sentence. An initial motion and memorandum of law filed under this rule shall not exceed 75 pages exclusive of the attachments. Attachments shall include but are not limited to the judgment and sentence.

The motion shall be under oath and shall include: (A) a statement specifying the judgment and sentence under attack and the name of the court that rendered the same; (B) a statement of each issue raised on appeal and the disposition thereof; (C) the nature of the relief sought; (D) a detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought; and (E) a detailed allegation as to the basis for any purely legal or constitutional claim for which an evidentiary hearing is not required and the reason that this claim could not have been or was not raised on direct appeal.

The memorandum of law shall set forth the applicable case law supporting the granting of relief as to each separately pled claim. As to claims that were raised on appeal or should have or could have been raised on appeal, the memorandum shall contain a brief statement as to why these claims are being raised on postconviction relief.

(2) Successive Motion. A motion filed under this rule is successive if a state court has previously ruled on a postconviction motion challenging the same judgment and sentence. A successive motion shall not exceed 25 pages, exclusive of attachments, and shall include: (A) all of the pleading requirements of an initial motion under subdivision (e)(1); (B) the disposition of all previous claims raised in postconviction proceedings and the reason or reasons the claim or claims raised in the present motion were not raised in the former motion or motions; (C) if based upon newly discovered evidence, *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), or *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), the following: (i) the names, addresses, and telephone numbers of all witnesses supporting the claim; (ii) a statement that the witness will be available, should an evidentiary hearing be scheduled, to testify under oath to the facts alleged in the motion or affidavit; (iii) if evidentiary support is in the form of documents, copies of all documents shall be attached, including any affidavits obtained; and (iv) as to any witness or document listed in the motion or attachment to the motion, a statement of the reason why the witness or document was not previously available. *1006(f) Procedure; Evidentiary Hearing; Disposition.

(1) Filing and Service. All pleadings in the postconviction proceeding shall be filed with the clerk of the trial court and served on the assigned judge, opposing party, and the attorney general. Upon the filing of any original court paper in the postconviction proceeding, the clerk of the trial court shall determine that the assigned judge has received a copy.

All motions other than the postconviction motion itself shall be accompanied by a notice of hearing. (2) Duty of Clerk. Upon the filing of a motion for postconviction relief, the clerk of the trial court shall immediately forward the motion and file to the assigned judge.

(3) Answer. (A) To Initial Motion. Within 60 days of the filing of an initial motion, the state shall file its answer. The answer and accompanying memorandum of law shall not exceed 75 pages, exclusive of attachments and exhibits.

The answer shall address the legal insufficiency of any claim in the motion, respond to the allegations of the motion, and address any procedural bars. As to any claims of legal insufficiency or procedural bar, the state shall include a short statement of any applicable case law. (B) To Successive Motion. Within 20 days of the filing of a successive motion, the state shall file its answer.

The answer shall not exceed 25 pages, exclusive of attachments and exhibits. The answer shall specifically respond to each claim in the motion and state the reason(s) that an evidentiary hearing is or is not required.

(4) Amendments. A motion filed under this rule may be amended up to 30 days prior to the evidentiary hearing upon motion and good cause shown. The trial court may in its discretion grant a motion to amend provided that the motion sets forth the reason the claim was not raised earlier and attaches a copy of the claim sought to be added. Granting a motion under this subdivision shall not be a basis for granting a continuance of the evidentiary hearing unless a manifest injustice would occur if a continuance was not granted.

If amendment is allowed, the state shall file an amended answer within 20 days after the amended motion is filed. (5) Case Management Conference; Evidentiary Hearing. (A) Initial Postconviction Motion. No later than 90 days after the state files its answer to an initial motion, the trial court shall hold a case management conference. At the case management conference, both parties shall disclose all documentary exhibits that they intend to offer at the evidentiary hearing, provide an exhibit list of all such exhibits, and exchange a witness list with the names and addresses of any potential witnesses.

All expert witnesses shall be so designated on the witness list, with and copies of all expert reports shall be attached. At the case management conference, the trial court shall: (i) schedule an evidentiary hearing, to be held within 90 days, on claims listed by the defendant as requiring a factual determination; (ii) hear argument on any purely legal claims not based on disputed facts; and (iii) resolve disputes arising from the exchange of information under this subdivision.

(B) Successive Postconviction Motion. Within 30 days after the state files its answer to a successive motion for post-conviction relief, the trial court shall hold a case management conference. At *1007the case management conference, the trial court also shall determine whether an evidentiary hearing should be held and hear argument on any purely legal claims not based on disputed facts.

If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing. If the trial court determines that an evidentiary hearing should be held, the court shall schedule the hearing to be held within 60 days. If a death warrant has been signed, the trial court shall expedite these time periods in accordance with subdivision (h) of this rule.

(C) Extension of Time to Hold Evidentiary Hearing. The trial court also may for good cause extend the time for holding an evidentiary hearing for up to 90 days. (D) Procedures After Evidentiary Hearing. Immediately following an evidentiary hearing, the trial court shall order a transcript of the hearing which shall be filed within 30 days. Within 30 days of receipt of the

transcript, the court shall render its order, ruling on each claim considered at the evidentiary hearing and all other claims raised in the motion, making detailed findings of fact and conclusions of law with respect to each claim, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review.

The order issued after the evidentiary hearing shall resolve all the claims raised in the motion and shall be considered the final order for purposes of appeal. The clerk of the trial court shall promptly serve upon the parties and the attorney general a copy of the final order, with a certificate of service.

(6) Mental Health Expert. If the defendant intends to offer expert testimony of his or her mental status, the state shall be entitled to have the defendant examined by its own mental health expert. If the defendant fails to cooperate with the state's expert, the trial court may, in its discretion, proceed as provided in rule 3.202(e). Reports provided to either party by an expert witness shall be disclosed to opposing counsel upon receipt.

(7) Rehearing. Motions for rehearing shall be filed within 15 days of the rendition of the trial court's order and a response thereto filed within 10 days thereafter. The trial court's order disposing of the motion for rehearing shall be rendered not later than 15 days thereafter. (g) Incompetence to Proceed in Capital Collateral Proceedings.

(1) A death-sentenced prisoner pursuing collateral relief under this rule who is found by the court to be mentally incompetent shall not be proceeded against if there are factual matters at issue, the development or resolution of which require the prisoner's input.

However, all collateral relief issues that involve only matters of record and claims that do not require the prisoner's input shall proceed in collateral proceedings notwithstanding the prisoner's incompetency. (2) Collateral counsel may file a motion for competency determination and an accompanying certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the death-sentenced prisoner is incompetent to proceed.

The motion and certificate shall replace the signed oath by the prisoner that otherwise must accompany a motion filed under this rule. (3) If, at any stage of a postconviction proceeding, the court determines that there are reasonable grounds to believe that a death-sentenced prisoner is incompetent to proceed and that factual matters *1008are at issue, the development or resolution of which require the prisoner's input, a judicial determination of incompetency is required.

(4) The motion for competency examination shall be in writing and shall allege with specificity the factual matters at issue and the reason that competent consultation with the prisoner is necessary with respect to each factual matter specified.

To the extent that it does not invade the lawyer-client privilege with collateral counsel, the motion shall contain a recital of the specific observations of, and conversations with, the death-sentenced prisoner that have formed the basis of the motion.

(5) If the court finds that there are reasonable grounds to believe that a death-sentenced prisoner is incompetent to proceed in a postconviction proceeding in which factual matters are at issue, the development or resolution of which require the prisoner's input, the court shall order the prisoner examined by no more than 3, nor fewer than 2, experts before setting the matter for a hearing.

The court may seek input from the death-sentenced prisoner's counsel and the state attorney before appointment of the experts. (6) The order appointing experts shall: (A) identify the purpose of the evaluation and specify the area of inquiry that should be addressed; (B) specify the legal criteria to be applied; and (C) specify the date by which the report shall be submitted and to whom it shall be submitted.

(7) Counsel for both the death-sentenced prisoner and the state may be present at the examination, which shall be conducted at a date and time convenient for all parties and the Department of Corrections. (8) On appointment by the court, the experts shall examine the death-sentenced prisoner with respect to the issue of competence to proceed, as specified by the court in its order appointing the experts to evaluate the prisoner, and shall evaluate the prisoner as ordered.

(A) The experts first shall consider factors related to the issue of whether the death-sentenced prisoner meets the criteria for competence to proceed, that is, whether the prisoner has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the prisoner has a rational as well as factual understanding of the pending collateral proceedings.

(B) In considering the issue of competence to proceed, the experts shall consider and include in their report: (i) the prisoner's capacity to understand the adversary nature of the legal process and the collateral proceedings; (ii) the prisoner's ability to disclose to collateral counsel facts pertinent to the postconviction proceeding at issue; and (iii) any other factors considered relevant by the experts and the court as specified in the order appointing the experts.

(C) Any written report submitted by an expert shall: (i) identify the specific matters referred for evaluation; (ii) describe the evaluative procedures, techniques, and tests used in the examination and the purpose or purposes for each; (iii) state the expert's clinical observations, findings, and opinions on each *1009issue referred by the court for evaluation, and indicate specifically those issues, if any, on which the expert could not give an opinion; and (iv) identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.

(9) If the experts find that the death-sentenced prisoner is incompetent to proceed, the experts shall report on any recommended treatment for the prisoner to attain competence to proceed. In considering the issues relating to treatment, the experts shall report on: (A) the mental illness or mental retardation causing the incompetence; (B) the treatment or treatments appropriate for the mental illness or mental retardation of the prisoner and an explanation of each of the possible treatment alternatives in order of choices; and (C) the likelihood of the prisoner attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the prisoner will attain competence to proceed in the foreseeable future.

(10) Within 30 days after the experts have completed their examinations of the death-sentenced prisoner, the court shall schedule a hearing on the issue of the prisoner's competence to proceed.

(11) If, after a hearing, the court finds the prisoner competent to proceed, or, after having found the prisoner incompetent, finds that competency has been restored, the court shall enter its order so finding and shall proceed with a postconviction motion.

The prisoner shall have 60 days to amend his or her rule 3.851 motion only as to those issues that the court found required factual consultation with counsel. (12) If the court does not find the prisoner incompetent, the order shall contain: (A) findings of fact relating to the issues of competency; (B) copies of the reports of the examining experts; and (C) copies of any other psychiatric, psychological, or social work reports submitted to the court relative to the mental state of the death-sentenced prisoner.

(13) If the court finds the prisoner incompetent or finds the prisoner competent subject to the continuation of appropriate treatment, the court shall follow the procedures set forth in rule 3.212(c), except that, to the extent practicable, any treatment shall take place at a custodial facility under the direct supervision of the Department of Corrections. (h) After Death Warrant Signed. this-mle-shall-be-expedited-after-a-death warrant has been signed.

(1) Judicial Assignment. The chief judge of the circuit shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital cases as soon as notification of the death warrant is received.

(2) Calendar Advancement. Proceedings after a death warrant has been issued shall take precedence over all other cases. The assigned judge shall make every effort to resolve scheduling conflicts with other cases including cancellation or rescheduling of hearings or trials and requesting senior judge assistance.

(3) Schedule of Proceedings. The time limitations in this rule shall not apply after a death warrant has been signed. All motions shall be heard expeditiously considering the time limitations set by the *1010date of execution and the time required for appellate review.

(4) Location of Hearings. The location of hearings after a death warrant is signed shall be determined by the trial judge considering the availability of witnesses or evidence, the security problems involved in the case, and any other factor determined by the trial court.

(5) Postconviction Motions. All motions filed after a death warrant is issued shall be considered successive motions and subject to the content requirement of subdivision (e)(2) of this rule. (6) Case Management Conference.

The assigned judge shall schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been signed. During the case management conference the court shall set a time for filing a postconviction motion and shall schedule a hearing to determine whether an evidentiary hearing should be held and hear argument on any purely legal claims not based on disputed facts.

If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing. If the trial court determines that an evidentiary hearing should be held, the court shall schedule the hearing to be held as soon as reasonably possible considering the time limitations set by the date of execution and the time required for appellate review.

(7) Reporting. The assigned judge shall require the proceedings conducted under death warrant to be reported using the most advanced and accurate technology available in general use at the location of the hearing. The proceedings shall be transcribed expeditiously considering the time limitations set by the execution date.

(8) Procedures After Hearing. The court shall obtain a transcript of all proceedings and shall render its order in accordance with subdivision (f)(5)(D) of this rule as soon as possible after the hearing is concluded. A copy of the final order shall be electronically transmitted to the Supreme Court of Florida and to the attorneys of record.

(9) Transmittal of Record. The record shall be immediately delivered to the clerk of the Supreme Court of Florida by the clerk of the trial court or as ordered by the assigned judge. The record shall also be electronically transmitted if the technology is available. A notice of appeal shall not be required to transmit the record. Court Commentary 1993 Adoption.

This rule is consistent with the recommendation of the Supreme Court Committee on Postconviction Relief in Capital Cases, which was created because of the substantial delays in the death penalty postconviction relief process.

The committee was created because of the inability of the capital collateral representative to properly represent all death penalty inmates in postconviction relief cases and because of the resulting substantial delays in those cases. That committee recognized that, to make the process

work properly, each death row prisoner should have counsel available to represent him or her in postconviction relief proceedings.

The committee found that one of the major problems with the process was that the triggering mechanism to start or assure movement of the postconviction relief proceedings was the signing of a death warrant. In a number of instances, the courts were not aware of the problems concerning representation of a defendant until a death warrant was signed.

In other instances, the committee found that, when postconviction relief motions had been *1011filed, they clearly had not moved at an orderly pace and the signing of a death warrant was being used as a means to expedite the process.

The committee recommended that specific named counsel should be designated to represent each prisoner not later than 30 days after the defendant's judgment and sentence of death becomes final. To assure that representation, the committee's report noted that it was essential that there be adequate funding of the capital collateral representative and sought temporary assistance from The Florida Bar in providing pro bono representation for some inmates.

There is a justification for the reduction of the time period for a capital prisoner as distinguished from a noncapital prisoner, who has two years to file a postconviction relief proceeding. A capital prisoner will have counsel immediately available to represent him or her in a postconviction relief proceeding, while counsel is not provided or constitutionally required for noncapital defendants to whom the two-year period applies.

In the event the capital collateral representative is not fully funded and available to provide proper representation for all death penalty defendants, the reduction in the time period would not be justified and would necessarily have to be repealed, and this Court will forthwith entertain a petition for the repeal of the rule.

In this context, it is important to emphasize that the governor agrees that absent the circumstance where a competent death-sentenced individual voluntarily requests that a death warrant be signed, no death warrants will be issued during the initial round of federal and state review, provided that counsel for death penalty defendants is proceeding in a timely and diligent manner.

This Court agrees that the initial round of postconviction proceedings should proceed in a deliberate but timely manner without the pressure of a pending death warrant. Subdivision 3.851(b)(4) above addresses concerns of The Florida Bar and The Florida Bar Foundation.

The provisions of the present rule 3.851 providing for time periods where a 60-day warrant is signed by the governor are abolished because they are unnecessary if the guidelines are followed. The proceedings and grounds for postconviction relief remain as provided under Florida Rule of Criminal Procedure 3.850, which include, as one of the grounds, the opportunity for a defendant to

present newly discovered evidence in accordance with *Scott v. Dugger*, 604 So.2d 465 (Fla.1992), *Jones v. State*, 591 So.2d 911 (Fla.1991), and *Richardson v. State*, 546 So.2d 1037 (Fla.1989).

1996 Amendment. Subdivision (c) is added to make the Court's decision in *Huff v. State*, 622 So.2d 982 (Fla.1993), applicable to all rule 3.850 motions filed by a prisoner who has been sentenced to death. Florida Rule of Judicial Administration 2.071(b) allows for telephonic and teleconferencing communication equipment to be utilized "for a motion hearing, pretrial conference, or a status conference." Teleconferencing sites have been established by the Department of Management Services, Division of Communications at various metropolitan locations in the state.

The "Shevin Study" examined, at this Court's request, the issue of delays in capital postconviction relief proceedings and noted that travel problems of counsel cause part of those delays. The Court strongly encourages the use of the new telephonic and teleconferencing technology for postconviction relief proceedings that do not require evidentiary hearings, such as the hearing required under subdivision (c) of this rule.

Only the attorneys need be involved in a hearing held under subdivision (c) of this *1012rule; attendance of the postconviction defendant is not required. 2001 Amendment. Several new procedures are added to rule 3.851. New subdivision (b), Appointment of Postconviction Counsel, is added to ensure appointment of postconviction counsel upon the Supreme Court of Florida's issuance of mandate on direct appeal.

New subdivision (c), Preliminary Procedures, provides for, among other things, the assignment of a qualified judge within 30 days after mandate issues on direct appeal and status conferences every 90 days after the assignment until the evidentiary hearing has been completed or the motion has been ruled on without a hearing. These status conferences are intended to provide a forum for the timely resolution of public records issues and other preliminary matters.

New subdivision CO, Procedure; Evidentiary Hearing; Disposition, sets forth general procedures. Most significantly, that subdivision requires an evidentiary hearing on claims listed in an initial motion as requiring a factual determination.

The Court has identified the failure to hold evidentiary hearings on initial motions as a major cause of delay in the capital postconviction process and has determined that, in most cases, requiring an evidentiary hearing on initial motions presenting factually based claims will avoid this cause of delay. See Amendments to Florida Rules of Criminal Procedure S.851, 3.852 and 3.993, 772 So.2d 488, 491 (Fla.2000).