



**FLORIDA RULES OF CRIMINAL PROCEDURE
SECTION XII
[ALL-IN-ONE DOCUMENT]**

POST-TRIAL MOTIONS

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FLORIDA RULES OF CRIMINAL PROCEDURE

XII POST-TRIAL MOTIONS

RULES: 3.580 through 3.640



RULE 3.580 | COURT MAY GRANT NEW TRIAL

When a verdict has been rendered against the defendant or the defendant has been found guilty by the court, the court on motion of the defendant, or on its own motion, may grant a new trial or arrest judgment.

Committee Notes

1968 Adoption. Same as section 920.01, Florida Statutes, except arrest of judgment is added.

1972 Amendment. Same as prior rule.



**RULE 3.590 | TIME FOR AND METHOD OF MAKING MOTIONS; PROCEDURE;
CUSTODY PENDING HEARING**

(a) Time for Filing in Noncapital Cases. In cases in which the state does not seek the death penalty, a motion for new trial or a motion in arrest of judgment, or both, may be made, either orally in open court or in writing and filed with the clerk's office, within 10 days after the rendition of the verdict or the finding of the court. A timely motion may be amended to state new grounds without leave of court prior to expiration of the 10-day period and in the discretion of the court at any other time before the motion is determined.

(b) Time for Filing in Capital Cases Where the Death Penalty Is an Issue. A motion for new trial or a motion in arrest of judgment, or both, or for a new penalty phase hearing may be made within 10 days after written final judgment of conviction and sentence of life imprisonment or death is filed. The motion may address grounds which arose in the guilt phase and the penalty phase of the trial. Separate motions for the guilt phase and the penalty phase may be filed. The motion or motions may be amended without leave of court prior to the expiration of the 10-day period, and in the discretion of the court, at any other time before the motion is determined.

(c) Oral Motions. When the defendant has been found guilty by a jury or by the court, the motion may be dictated into the record, if a court reporter is present, and may be argued immediately after the return of the verdict or the finding of the court. The court may immediately rule on the motion.

(d) Written Motions. The motion may be in writing, filed with the clerk; it shall state the grounds on which it is based. A copy of a written motion shall be served on the prosecuting attorney. When the court sets a time for the hearing thereon, the clerk may notify counsel for the respective parties or the attorney for the defendant may serve notice of hearing on the prosecuting attorney.

(e) Custody Pending Motion. A defendant who is not already at liberty on bail shall remain in custody and not be allowed liberty on bail unless the court, on good cause shown if the offense for which the defendant is convicted is bailable, permits the defendant to be released on bail until the court disposes of the motion. If the defendant is already at liberty on bail that is deemed by the court to be good and sufficient,



the court may permit the defendant to continue at large on such bail until the motion for new trial is heard and the court disposes of the motion.

Committee Notes

1968 Adoption. (a) The same as the first part of section 920.02(3), Florida Statutes, except that the statutory word “further” is changed to “greater” in the rule and provision for motion in arrest of judgment is added.

(b) Substantially the same as first part of section 920.02(2), Florida Statutes. The rule omits the requirement that the defendant be sentenced immediately on the denial of a motion for new trial (the court might wish to place the defendant on probation or might desire to call for a presentence investigation). The rule also omits the statute’s requirement that an order of denial be dictated to the court reporter, because the clerk is supposed to be taking minutes at this stage.

NOTE: The provisions of the last part of section 920.02(2), Florida Statutes, as to supersedeas and appeal are not incorporated into this rule; such provisions are not germane to motions for new trial or arrest of judgment.

(c) Substantially same as section 920.03, Florida Statutes.

(d) Substantially same as last part of section 920.02(3), Florida Statutes, except that the last sentence of the rule is new.

NOTE: The provisions of section 920.02(4), Florida Statutes, relating to supersedeas on appeal and the steps that are necessary to obtain one, are not incorporated into a rule. The provisions of section 920.02(4) do not belong in a group of rules dealing with motions for new trial.

1972 Amendment. Substantially the same as prior rule.

1980 Amendment. This brings rule 3.590(a) into conformity with Florida Rule of Civil Procedure 1.530(b) as it relates to the time within which a motion for new trial or in arrest of judgment may be filed. It also allows the defendant in a criminal case the opportunity to amend the motion. The opportunity to amend already exists in a civil case. No sound reason exists to justify the disparities in the rules.

2006 Amendment. This amendment provides the time limitations and procedures for moving for new trial, arrest of judgment or a new penalty phase in capital cases in which the death penalty is an issue. The motion may be made within ten days after written final judgment of conviction and sentence of life imprisonment or death is filed.



RULE 3.600 | GROUNDS FOR NEW TRIAL

(a) Grounds for Granting. The court shall grant a new trial only if:

- (1) the jurors decided the verdict by lot;
- (2) the verdict is contrary to law or the weight of the evidence; or
- (3) new and material evidence, which, if introduced at the trial would probably have changed the verdict or finding of the court, and which the defendant could not with reasonable diligence have discovered and produced at the trial, has been discovered.

(b) Grounds for Granting if Prejudice Established. The court shall grant a new trial if substantial rights of the defendant were prejudiced because:

- (1) the defendant was not present at any proceeding at which the defendant's presence is required by these rules;
- (2) the jury received any evidence out of court, other than that resulting from an authorized view of the premises;
- (3) the jurors, after retiring to deliberate upon the verdict, separated without leave of court;
- (4) any juror was guilty of misconduct;
- (5) the prosecuting attorney was guilty of misconduct;
- (6) the court erred in the decision of any matter of law arising during the course of the trial;
- (7) the court erroneously instructed the jury on a matter of law or refused to give a proper instruction requested by the defendant; or
- (8) for any other cause not due to the defendant's own fault, the defendant did not receive a fair and impartial trial.

(c) Evidence. When a motion for new trial calls for a decision on any question of fact, the court may consider evidence on the motion by affidavit or otherwise.



Committee Notes

1968 Adoption. Same as sections 920.04 and 920.05, Florida Statutes, except that the last paragraph of section 920.05 is omitted from the rule. The provision of the omitted paragraph that a new trial shall be granted to a defendant who has not received a fair and impartial trial through no personal fault is inserted in the rule as subdivision (b)(8). The provision of the omitted paragraph of the statute which requires a new trial when the sentence exceeds the penalty provided by law is omitted from the rule because no defendant is entitled to a new trial merely because an excessive sentence has been pronounced. The standing committee on Florida court rules questioned whether this rule is procedural or substantive and directed the subcommittee to call this fact to the attention of the supreme court.

(c) Same as second paragraph of section 920.07, Florida Statutes.

1972 Amendment. Same as prior rule.



RULE 3.610 | MOTION FOR ARREST OF JUDGMENT; GROUNDS

The court shall grant a motion in arrest of judgment only if:

- (a) the indictment or information on which the defendant was tried is so defective that it will not support a judgment of conviction.
- (b) the court is without jurisdiction of the cause.
- (c) the verdict is so uncertain that it does not appear therefrom that the jurors intended to convict the defendant of an offense for which the defendant could be convicted under the indictment or information under which the defendant was tried; or
- (d) the defendant was convicted of an offense for which the defendant could not be convicted under the indictment or information.

Committee Notes

1968 Adoption. Note that (a)(1) of the rule revamps section 920.05(2)(a) through (d), Florida Statutes, in an effort to better take into account the fact that an accusatorial writ that would not withstand a motion to quash (dismiss) might well support a judgment of conviction if no such motion is filed. See *Sinclair v. State*, 46 So.2d 453 (1950).

Note also that, where appropriate, the rule mentions “affidavit” in addition to “indictment” and “information.” The standing committee on Florida court rules questioned whether this rule is procedural or substantive and directed the subcommittee to call this fact to the attention of the supreme court.

1972 Amendment. Same as prior rule. References to trial affidavit deleted.



RULE 3.620 | WHEN EVIDENCE SUSTAINS ONLY CONVICTION OF LESSER OFFENSE

When the offense is divided into degrees or necessarily includes lesser offenses and the court, on a motion for new trial, is of the opinion that the evidence does not sustain the verdict but is sufficient to sustain a finding of guilt of a lesser degree or of a lesser offense necessarily included in the one charged, the court shall not grant a new trial but shall find or adjudge the defendant guilty of the lesser degree or lesser offense necessarily included in the charge, unless a new trial is granted by reason of some other prejudicial error.

Committee Notes

1968 Adoption. Substantially the same as section 920.06, Florida Statutes.

1972 Amendment. Same as prior rule.



RULE 3.630 | SENTENCE BEFORE OR AFTER MOTION FILED

The court in its discretion may sentence the defendant either before or after the filing of a motion for new trial or arrest of judgment.

Committee Notes

1968 Adoption. Same as first paragraph of section 920.07, Florida Statutes. Provision for arrest of judgment is added.

1972 Amendment. Same as prior rule.



RULE 3.640 | EFFECT OF GRANTING NEW TRIAL

When a new trial is granted, the new trial shall proceed in all respects as if no former trial had occurred except that when an offense is divided into degrees or the charge includes a lesser offense, and the defendant has been found guilty of a lesser degree or lesser included offense, the defendant cannot thereafter be prosecuted for a higher degree of the same offense or for a higher offense than that of which the defendant was convicted.

Committee Notes

1968 Adoption. Based on section 920.09, Florida Statutes. The second paragraph of the existing statute allows the testimony of an absent witness, given at a former trial, to be used only if the witness is absent from the state or dead. This has been enlarged to include absent witnesses who are physically incapacitated to attend court or who have become mentally incapacitated to testify since the former trial.

1972 Committee Note. Same as prior rule.



APPENDIX



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