ARRAIGNMENT EXCEPTION SWALLOWS RULE

In a typical felony case in Lee Circuit Court, defense counsel waives the arraignment by filing a written plea of not guilty. Florida Rule of Criminal Procedure 3.160 provides that the arraignment "shall be deemed waived" if the defendant is represented by counsel and he or she files a written plea of not guilty at or before arraignment. However, barring the filing of a written plea, the rules contemplate that the defendant will be present, either in open court or by audio-visual device, and will be called upon to plead to the charges, the substance of which will be read to him[1]. Rule 3.160(a) provides that:

> The arraignment shall be conducted in open court or by audio-visual device in the discretion of the court and shall consist of the judge or clerk or prosecuting attorney reading the indictment or information on which the defendant will be tried to the defendant or stating orally to the defendant the substance of the charge or charges and calling on the defendant to plead thereto.

While the vast majority of incarcerated defendants are represented by public or private defense counsel who waive arraignment for their clients, thus eliminating the need for the defendant's presence, there are cases and clients for whom counsel may choose not to waive the client's presence. Sometimes there may be doubts or questions about the competence of the client, and defense counsel may want the court and prosecutor to personally see the behavior of the accused at the earliest opportunity. More frequently, defense counsel who was retained by family members at a point too close in time to the arraignment to visit the client at the jail before the hearing may want the defendant to be aware that counsel has been hired to represent her, and that a not guilty plea has been entered. Sometimes family members have traveled from out of town to see their loved one, who has been incarcerated for thirty three (33) days or more[2], and desire to see the client in court.

More fundamentally, unless waived, incarcerated defendants have the right to know whether charges have been filed, what the specific charges are, and when the next court date will be. They have the right to be informed of this in open court. Arraignment is the first hearing after formal charges have been filed, and thus is a critical stage of the proceedings. Any system which does not provide for the appearance of incarcerated non-capital felony defendants at arraignment would no doubt violate their most basic rights under the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, section 16 of the Florida Constitution. Misdemeanor defendants are "present" at their arraignment, and incarcerated juveniles are physically brought to the courtroom. People who are charged with second degree murder, however, which carries a possible sentence of life imprisonment and for whom an indictment for capital murder may be contemplated, should also be brought over for arraignment unless specifically waived. While the budgetary concerns associated with transport or hooking up the existing audio-visual device in the jail to the courtrooms might concern some, the rights of the accused, and the appearance of not violating those rights, must be paramount. As stated by Rule 3.170, governing pleas, "[e]xcept as otherwise provided by these rules, all pleas to a charge shall

[1] Counsel may waive the formal reading of the charges. Rule 3.160(a).
[2] Arraignments are typically set thirty-three (33) days after arrest to avoid a release on recognizance. Rule 3.134(l).

be in open court and shall be entered by the defendant." While this is not mandatory in the state court system[3], the defendant or defense counsel must have a meaningful choice to demand the presence of the defendant in court. Otherwise, the exception has swallowed the rule.

[3] In some federal circuits, presence of the defendant at arraignment cannot be waived, absent good cause.