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**FILED**

SID J. WHITE

SUPREME COURT OF FLORIDA

NOV 18 1985

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

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IN RE: Rule 3.850 of the )  
Florida Rules of Criminal )  
Procedure )  
\_\_\_\_\_ )

No. \_\_\_\_\_

EMERGENCY PETITION FOR SUSPENSION AND  
RECONSIDERATION OF THE TIME-LIMITATION  
PROVISIONS OF RULE 3.850, FLORIDA  
RULES OF CRIMINAL PROCEDURE

The Petition of Larry Helm Spalding, Capital Collateral Representative, shows:

1. This is an original proceeding filed pursuant to Rule 2.130, Florida Rules of Judicial Administration, seeking emergency relief from the recently promulgated time-limitation provisions of Rule 3.850, Florida Rules of Criminal Procedure.

2. Rule 3.850 provides in applicable part:

No other motion shall be filed or considered pursuant to this rule if filed more than two years after the judgment and sentence become final unless it alleges (1) the facts upon which the claim is predicated were unknown to the movant or his attorney and could not have been ascertained by the exercise of due diligence, or, (2) the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively.

Anyone adjudicated guilty prior to January 1, 1985, shall have until January 1, 1986, to file a motion in accordance with this rule.

3. The Office of Capital Collateral Representative (CCR) has the following legislatively-defined responsibilities:

27.702 Duties of the capital collateral representative.--The capital collateral representative shall represent, without additional compensation, any person convicted and sentenced to death in this state who is without counsel and who is unable to secure counsel due to his indigency or determined by a state court of competent jurisdiction to be indigent for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts in this state, federal courts in this

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state, the United States Court of Appeals, Eleventh Circuit, and the United States Supreme Court. A determination of indigency by any trial court of this state for purposes of representation by the public defender shall be prima facie evidence of indigency for purposes of representation by the capital collateral representative. Representation by the capital collateral representative shall commence upon termination of direct appellate proceedings in state or federal courts, notice of which shall be effected as provided by s. 27.51. Upon receipt of files from the public defender, the capital collateral representative shall assign each such case to personnel in his office for investigation, client contact, and such further action as the circumstances may warrant.

4. According to statistics compiled by CCR, approximately 40 separate Rule 3.850 motions in capital cases must be filed by January 1, 1986. Apparently CCR must file these motions<sup>1</sup> in order to fulfill its legislative mandate and to satisfy the time-limitation provisions of Rule 3.850. This creates an emergency situation, calling for this Court's exercise of its power to "change court rules at any time if an emergency exists that does not permit reference to the appropriate committee of The Florida Bar for recommendations." Rule 2.130(a), Florida Rules of Judicial Administration.

5. An emergency exists pursuant to the above cited rule because CCR cannot effectively investigate, research and file these motions prior to January 1, 1986. The filing of 40 Rule 3.850 motions prior to January 1, 1986, is an impossibility because:

a. CCR was created by statute (FLA. STAT. § 27.701) effective only July 1, 1985.

b. Mr. Spalding was appointed by Governor Bob Graham, subject to confirmation by the Florida Senate, as the Capital Collateral Representative on August 1, 1985. The appointment was

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There are approximately 55 additional capital cases in which defendants were "adjudicated guilty prior to January 1, 1985," Rule 3.850, but which are still pending before this Court. Since there has been no "termination of direct appellate proceedings," FLA. STAT. § 27.702, CCR has no authority to represent these individuals. They thus may be required to file by January 1, 1986, but without the assistance of counsel which is guaranteed to other inmates whose convictions and death sentences were affirmed earlier.

not effective until October 7, 1985, because 60 days were required to close a private law practice in Sarasota, Florida, prior to assuming his duties with CCR.

c. Each Rule 3.850 motion will require many hours of investigation, legal research and briefing, and secretarial time. This computation does not include oral argument on the motion, preparation for and conducting of evidentiary hearings, travel time and other activities relating to subsequent proceedings should the Rule 3.850 motions be denied or, if granted, appealed by the State.

d. The Legislature funded 21 positions for CCR, including 11 attorneys, five investigators and five other support staff. Upon the official opening of the office on October 1, 1985, there were no offices, no telephones and no other office equipment. On October 1, 1985, CCR ran its first advertisements in the Florida Bar News and national legal publications seeking applications for the positions of Assistant Capital Collateral Representative.

e. CCR as of the date of the filing of this Petition has employed an office administrator, two investigators, secretarial personnel and only two attorneys. This hiring schedule was not unexpected. CCR is aggressively recruiting, nationwide, highly qualified lawyers with superior analytical and writing skills required for the demanding position of Assistant Capital Collateral Representative. This takes time.

f. CCR will not be fully staffed until February or March, 1986.

g. Within the first eight days of CCR operation (October 1-8), Governor Graham signed four death warrants. CCR was required to utilize its limited staff and resources in cooperation with the Florida Bar Special Committee on the Representation of Death-Sentenced Inmates in Collateral Proceedings to attempt to recruit volunteer lawyers to represent the four inmates and to conduct a substantial portion of the investigative work, legal research and production of pleadings

for the emergency Rule 3.850 motions necessitated by the signing of the death warrants.

h. On November 4, 1985, Governor Graham signed two more death warrants. CCR is presently conducting the necessary investigation and legal research to file the Rule 3.850 motions on behalf of these two inmates. Execution is scheduled for December 3, 1985.

i. Last year, the Florida Bar Special Committee on the Representation of Death-Sentenced Inmates in Collateral Proceedings began recruitment of volunteer Florida civil lawyers to conduct proceedings under Rule 3.850. A Resource Center was established at Florida State University College of Law, funded through the Florida Bar Foundation. The Resource Center had a minimal budget, which has been completely depleted. The Resource Center and the CCR will eventually completely merge, but the merger process has been hampered by the recent pace of death warrants. The Resource Center assisted three volunteer firms on the death warrants signed October 1-8. CCR handled one of the death warrants. James Rinaman, chairman of the Special Committee, was unable to recruit an attorney to handle that case, and has been unable to recruit any new volunteers. The Resource Center has always been underfunded and understaffed, and it has been stretched to the limit by the six warrants signed over the last month.

6. CCR is eager to assume its legislatively-defined responsibilities. Nonetheless, a reasonable time is required to establish a legal agency charged with these overwhelming responsibilities. No matter how skilled and dedicated its employees, CCR simply cannot effectively represent approximately 40 individuals subject to the January 1, 1986, deadline; an immediate suspension of the time-limitation provision of the Rule is imperative.

7. Suspension of the Rule is the minimum emergency relief required. After suspension, the time-limitation provisions of Rule 3.850 should be reconsidered by the Court because:

a. The time-limitation provisions of Rule 3.850 were enacted primarily to address real or perceived problems of delay existing in capital post-conviction litigation. The present Rule was adopted on November 30, 1984, some eight months prior to the effective date of the legislation creating CCR, and at a time when there was no right to counsel in capital post-conviction cases.

b. Circumstances have changed. To whatever extent delay was a concern, the problem was a function of uncounselled inmates. The Florida Legislature has addressed the issue by establishing CCR to provide attorneys specifically for post-conviction litigation. However, with the right to counsel comes the right to effective assistance, which cannot be provided under a procedural rule of time limitation rendered unrealistic by understaffing.

c. The present Rule was adopted over the unanimous objection of the Florida Board of Governors and against the express recommendation of the Florida Bar Criminal Rules Committee.

d. The time-limitation provision adopted was proposed by the Attorney General, and no analysis and research by The Florida Bar was feasible before its adoption.

e. CCR, which is the state agency most directly affected by the time-limitation provisions, requests the opportunity to analyze data and to submit a formal presentation on the impact of the rule on capital post-conviction litigation, and to recommend changes, if any, in the specified time-limitation period to The Florida Bar and this Court. The presentation cannot be accomplished through this Petition, or before January 1, 1986.

WHEREFORE, the Capital Collateral Representative requests that:

1. The time-limitation provisions of Rule 3.850, Florida Rules of Criminal Procedure, be suspended pending further order of Court.

2. Rule 3.850 be referred back to The Florida Bar Criminal Rules Committee for analysis and recommendation to the Board of Governors, with particular analysis of whether absence of counsel was the reason for delay which prompted this Court's rule change, and whether the existence of CCR adequately solves the real or perceived problem of delay.

3. Upon the filing of The Florida Bar recommendation with the Court, the matter be scheduled for oral argument with all appropriate parties, including CCR, given notice and opportunity to be heard.

DATED: November 18, 1985.

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BY: 

Larry Helm Spalding