

Supreme Court of Florida

Nos. 68,269 & 68,270

THE FLORIDA BAR RE EMERGENCY
AMENDMENTS TO RULES OF
CRIMINAL PROCEDURE (Rule 3.220)

[November 26, 1986]

PER CURIAM.

The state attorneys of Florida petitioned this Court to appoint a commission to study and make recommendations with respect to discovery procedures in criminal proceedings. At that time, a subcommittee of the Criminal Procedure Rules Committee was conducting such a study. This Court subsequently ordered the Committee to submit its findings and recommendations to the Court.

The Committee has recommended that we amend Rule 3.220(d) by creating a subsection (1) in order to clarify the use of discovery depositions in cases involving multiple defendants. The Committee also recommended that we create Rule 3.220(d)(2) which limits the number of situations in which discovery depositions will be transcribed at public expense. The two proposed rule changes will save money without violating the rights of the accused. The proposed rule changes are unopposed and hereby adopted effective immediately upon the filing of this opinion.

It is so ordered.

McDONALD, C.J., and ADKINS, BOYD, OVERTON, EHRLICH, SHAW and BARKETT, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

RULE 3.220(d)(1) - DISCOVERY DEPOSITIONS. At any time after the filing of the indictment or information the defendant may take the deposition upon oral examination of any person who may have information relevant to the offense charged. The deposition shall be taken in a building where the trial may be held, such other place agreed upon by the parties or where the trial court may designate by special or general order. The party taking the deposition shall give reasonable written notice to each other party. The notice shall state the time and place the deposition is to be taken and the name of each person to be examined. After notice to the parties the court may, for good cause shown, extend or shorten the time and may change the place of taking. Except as provided herein, the procedure for taking such deposition, including the scope of the examination, shall be the same as that provided in the Florida Rules of Civil Procedure. Any deposition taken pursuant hereto may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. The trial court or its clerk shall, upon application, issue subpoenas for the persons whose depositions are to be taken. In any case, including multiple defendant or consolidated cases, no person shall be deposed more than once except by consent of the parties, or by order of the court issued upon good cause shown. A resident of the State may be required to attend an examination only in the county wherein he resides, or is employed, or regularly transacts his business in person. A person who refuses to obey a subpoena served upon him may be adjudged in contempt of the court from which the subpoena issued.

3.220(d)(2) DISCOVERY DEPOSITIONS. No transcript of a deposition for which a county may be obligated to expend funds shall be ordered by a party unless it is: (a) agreed between the State and any defendant that the deposition should be transcribed and a written agreement certifying that the deposed witness is material or specifying other good cause is filed with the court, or (b) ordered by the court upon a showing that the deposed witness is material or upon showing of good cause. This rule

shall not apply to applications for reimbursement of costs pursuant to Florida Statute 939.06 and Article I Section 9 of the Florida Constitution.

Committee Note: 1986 Revision. The showing of good cause under (d)(2) of this rule may be presented ex parte or in camera to the court.

Two Original Proceedings - Florida Rules of Criminal Procedure

Joseph J. Reiter, President of The Florida Bar, West Palm Beach, Florida; Ray Ferrero, Jr., President-elect of The Florida Bar, Ft. Lauderdale, Florida; Michael L. Von Zamft, Chairman, Criminal Procedure Rules Committee, Miami, Florida; Philip W. Maniatty, Vice Chairman, Criminal Procedure Rules Committee, Miami, Florida; John F. Harkness, Jr., Executive Director and John A. Boggs, Director of Lawyer Regulation, The Florida Bar, Tallahassee, Florida; and Arthur I. Jacobs, General Counsel, Prosecuting Attorneys Association, Fernandino Beach, Florida,

for Petitioners