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IN THE SUPREME COURT OF FLORIDA

IN RE CRIMINAL
DISCOVERY COMMISSION

CASE NO: 73,734

COMMENTS FROM THE FLORIDA
PUBLIC DEFENDER ASSOCIATION

The Florida Public Defender Association, Inc., an association comprised of all elected public defenders of Florida as well as hundreds of members of their professional staffs (hereinafter referred to as "the Association"), hereby responds to the recommendations of this Court's Commission On Criminal Discovery (hereinafter referred to as "the Commission") and to the recommendations of the Florida Criminal Procedure Rules Committee (hereinafter referred to as "the Committee").

The Association adopts, in every respect, the minority report filed by Commissioner Chandler R. Muller. Mr. Muller's insightful analysis of the Commission's work, its findings, and its report fully reflects the Association's view.

The Association believes that Mr. Muller's comments are equally applicable to the recommendations of the Committee. Despite innumerable reviews of Rule 3.220 by the Committee over the last several years, only minor modifications of the Rule have been recommended. Suddenly, however, after issuance of the Commission's report, and consequential perception of a political need for revision in order to preserve discovery depositions, the Committee has now recommended substantial changes in the rule.

Although the Public Defenders understand the motivations of both the Commission and the Committee, and appreciate the desire of both to preserve discovery depositions, albeit in a more limited, more burdensome, and more complex form, we must respectfully disagree with the recommendations of both the Commission and the Committee. This Court's rules should be modified only when objective facts or logic dictate change to facilitate the orderly administration of justice. They should

not be modified merely to accommodate perceived political necessity.

The Association membership has particularly grave concerns regarding one of the proposals put forth for this Court's consideration, the Committee recommendation that depositions be eliminated in misdemeanor cases. The Commission's report includes over twenty-five pages of discussion regarding the likely fiscal impact of elimination or substantial curtailment of discovery depositions. The commission concluded that the overall fiscal impact was unknown, but several observations were made. Those observations included the following:

> "...it is abundantly clear that the judicial segment of the criminal justice system in the State of Florida is cost-efficient. The system disposes of an enormous caseload with minimal judicial and court personnel involvement."
> Commission Report, p. 35.

> "There is no guarantee that abolition of depositions would not result in an increase in judicial proceedings, proceedings which might require an equivalent (or even greater) amount of law enforcement participation (and expense to the agencies) and additional costs to the judicial system."
> Commission Report, p. 42.

> "The Commission does not agree that the state could abolish the deposition process without producing some significant effect, but what that effect would be is impossible to predict with certainty. It is clear that abolition of the availability of depositions would have an effect on the system, that the effect would be significant and probably would be fiscally adverse -- in short, there is no guarantee that the State of Florida would realize monetary savings from abolition of the deposition process. It is probable that the state would sustain significant loss, probably a monetary loss, certainly a loss in efficiency of the system."
> Commission Report, p. 46.

> "It is clear from the testimony before the Commission that depositions play a significant role, under the current process, in arriving at a pre-trial disposition of cases. It is also clear that, if depositions were abolished, mechanisms of some kind would have to be substituted to fulfill that role. What those mechanisms might be is clearly a matter of speculation at this point, although most testimony received by the Commission indicated that they would probably necessitate considerable additional judicial involvement and concomitant expense".
> Commission Report, p. 47.

> "Correspondence from judges to the Commission reiterated the same theme: curtailment of dispositions will result in a significant increase in judicial procedures at enormous cost to the system". Commission Report, p. 55.
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> "Representing the Florida Association of Counties was Ms. Sharon Cruz, Assistant General Counsel with Broward County. Ms. Cruz was emphatic that the counties, already in fiscal straits, could not tolerate expansion of a system to require additional judicial proceedings". Commission Report, p. 56.
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> "Although depositions are expensive for law enforcement, depositions are cost effective to the judicial process, saving public defender investigative costs, minimizing in-court time for assistant public defenders, for judges and court personnel, and, indeed, in saving in-court time for the law enforcement officers themselves. Abolition of depositions would make it impossible for public defenders to maintain current case loads at present funding levels, causing the cost of providing defense for criminal cases to increase by some currently unpredictable factor." Commission Report, pp. 57-58.

Despite such findings by the Commission, one member of the Commission, Commissioner Middlebrooks, recommended in his minority report that depositions be eliminated in misdemeanor cases, except upon order of the presiding trial judge. The Committee agreed with Commissioner Middlebrooks and recommends that this Court so modify Rule 3.220.

The Middlebrooks' proposal flies in the face of the Commission's findings, findings which were reached after many weeks of study and many hours of public hearings. This court's adoption of the proposal would have the precise effects suggested by the Commission. The criminal justice system would become less efficient. More judicial time would be required than is now required under the largely self-executing discovery rule. The cost of administering justice would increase. There would be a decrease in pretrial dispositions and a corresponding increase in trial dispositions. Public defenders would be unable to perform their functions as efficiently and the result would be increased reliance on the state, local government, or both for the cost of indigent defense. For the

reasons so clearly stated in the Commission report the Middlebrooks' proposal should be rejected by this Court.

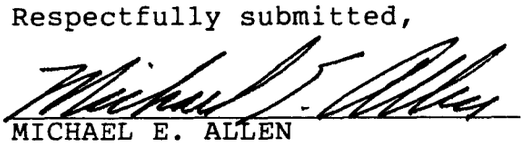
The Association also has doubts regarding the need for several other proposals. For example, hearings relating to whether a prosecutor has properly designated a potential deponent as "unnecessary" and the presence of a judge or special master at depositions of young children would no doubt cause systemic delays and add additional strains to already overburdened judicial resources.

Some of the proposals, if adopted, would also be the basis for extensive litigation at both the trial and appellate court levels. The proposal to allow prosecutors to designate potential deponents as "unnecessary" is a good example. Suppose a prosecutor designates a person as unnecessary because the prosecutor did not, in good faith, plan to call the person as a witness at trial or because the prosecutor believes the witness performed a ministerial function and has no additional knowledge. Suppose further that the prosecutor furnished, along with his designation, a statement as to his knowledge of the person's involvement. Suppose then that the prosecutor finds it necessary to call the witness at trial and it is revealed, at that time, that the witness has different or additional information to provide. It is suggested that this scenario will play out hundreds of times in the overburdened courts of Florida. The result will be a plethora of hearings under Richardson v. State, 246 So.2d 771 (Fla. 1971), and resulting appeals following trial court rulings on the motions. And, unfortunately, these are not issues that would be resolved after a handful of appellate decisions. No doubt, a line of cases would develop around the issue of whether the prosecutor had "fairly characterized" the person's involvement so as to put defense counsel on notice. Such issues would have to be dealt with on a case by case basis, and there would be a steady stream of factual situations being submitted to the courts at all levels.

The current Rule 3.220 is largely self-executing. It requires minimal judicial involvement and has served well as an

integral component of one of the most efficient criminal justice systems in the United States. It should not be crippled or substantially altered. The Association would urge the Court to either retain the current rule or simply modify it to the extent recommended in Commissioner Muller's report.

Respectfully submitted,



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