

O/a 4-18-89

IN THE SUPREME COURT OF THE STATE OF FLORIDA.

CASE NO: 73,734

IN RE THE MATTER OF:

SPECIAL COMMISSION ON
CRIMINAL DISCOVERY
FLORIDA RULES OF CRIMINAL
PROCEDURE RULE 3.220.

FILED
SID J. WHITE

APR 17 1989

CLERK, SUPREME COURT

By _____
Deputy Clerk

COMMENTS RELATIVE TO PROPOSED AMENDMENTS

Pursuant to the request of the Florida Supreme Court for comments relative to the proposed rules, the undersigned members in good standing of the Florida Bar submit the following for consideration by the Court:

1. The undersigned have practiced in the area of criminal law before the Courts of this State for a total combined period of twenty one years.
2. Each of the undersigned have appeared before this Court in oral argument relative to criminal matters regarding three (3) separate cases.
3. Each of the undersigned is familiar with the discovery process and procedures pertaining to felony and misdemeanor cases.
4. As practitioners in the area of criminal law counsel can verily state that the discovery depositions provide significant advantages to the State and to the defense. On numerous occasions the discovery depositions have enlightened both the State and the Defense by revealing material facts previously unknown, resulting in plea negotiations and case resolution. Such information acquired pursuant to discovery contributed significantly in resolving numerous cases (especially misdemeanour cases) because the discovery process revealed relative weaknesses and/or strengths of the state's case. Further, the sharing of such information with the State Attorney assigned to the particular case provided the opportunity and impetus for the State and Defense Counsel to engage in meaningful plea negotiations. This information was acquired solely as a result of the discovery process thereby avoiding unnecessary litigation.
5. Counsel has no objection relative to safeguards and guidelines delineated for children under sixteen as long as direct examination of those individuals can be effected in a non-hostile atmosphere perhaps with an attorney/guardian ad litem present for the

child.

6. As to the provisions suggested for depositions other than at the place where trial is to be held counsel again concurs and respectfully suggests that depositions be held at the office of the Court Reporter located within a reasonable radius of the courthouse or any location within a reasonable radius of the courthouse.


7. The undersigned take strong exception as to the suggestion that the defendants should not have the right to depose all witnesses as a matter of course. Such a suggestion would infringe upon the ability of counsel for the defendant to pursue discovery with information he was provided by his client and would certainly limit his ability to proceed in a logical and appropriate fashion. Furthermore, critical facts which might result in plea negotiations may go undiscovered. The Assistant State Attorney has unfettered discretion to depose any party or person he or she chooses (except the defendant) by use of the state attorney investigation process. Further, there are inherent safeguards as any party or deponent can secure a protective order from a court of competent jurisdiction. To restrict the undertaking of depositions would unduly impose upon the discretion of defense counsel to prepare a proper and an appropriate defense for his client so as to insure that his client receives a fair and an impartial trial.

8. Counsel objects to any purported attempts to restrict current discovery procedures except as delineated herein. Especially important to the expeditious, fair and impartial administration of justice is the retention of discovery in misdemeanour actions as well as all felonies. The State of Florida has afforded due process to defendants in the past and it is the joint expressed hope of counsel that this endeavor will continue. The deposition/discovery process constitutes a unique safeguard to insure that the defense has a basis to prepare for trial and/or negotiate an appropriate plea. Both counsel represent that the discovery process is an intricate part of insuring procedural safeguards for all parties involved in the criminal process. The omission or limitation of the current discovery process would serve to erode the rights of the average citizen and further mitigate and minimize the ability of defense counsel to insure that the very basic protections afforded by the Constitution of the United States, the Constitution of the State of Florida and some of

the precedent of this Supreme Court would apply to each proceeding.

It is respectfully submitted that the elimination or restriction of existing discovery procedures will inevitably result in a greater number of criminal trials resulting in a significant increase in the criminal justice system. In sum, additional monies and time expenditures will be incurred which is contrary to the purpose of revisiting the existing discovery rules.

It is the request and the expressed hope of each of the undersigned that this Court insure that the discovery process remain intact and that the procedural safeguards that now exist not be eroded in any manner whatsoever. This request is submitted from two (2) practitioners who have utilized the discovery process and the deposition process extensively and are fully aware and appreciative of the inherent advantages as delineated herein.



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