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SID J. WHITE
OCT 24 1994
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT OF FLORIDA
CLAY, DUVAL AND NASSAU COUNTIES

DONALD R. MORAN, JR.
CHIEF JUDGE

DUVAL COUNTY COURTHOUSE
JACKSONVILLE, FLORIDA 32202

October 21,1994 84,273

RECEIVED
OCT 24 1994
CHIEF JUSTICE

Honorable Stephen H. Grimes
Chief Justice
The Supreme Court Of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, FL. 32399-1925

RE: Amendments to Florida Rule of Criminal Procedure 3.220

Dear Chief Justice Grimes:

Comments on the proposed amendment to Fla.R.Crim.P. 3.220 were solicited in The Florida Bar News of October 1, 1994. As Chief Judge for the Fourth Judicial Circuit, in and For Duval County, my comments are as follows:

Generally, not only myself, but also all six (6) of the Fourth Judicial Circuit Judges assigned to criminal divisions, are opposed to the proposal as written. We oppose this proposal primarily because it will result in unnecessary and prolonged delay between the conclusions of a guilt phase and the beginning of a death penalty phase in a capital case. We believe that this has the potential to seriously impair the efficient function and the fairness of our system. Such delays will severely inconvenience jurors, and will also result in additional opportunity to be exposed to prejudicial publicity. If a jury should have to be sequestered during such a delay, the additional expense will be astronomical.

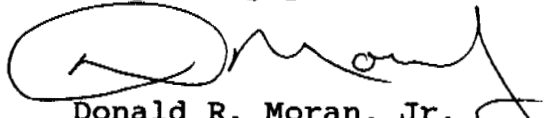
We in the Fourth Judicial Circuit have historically, whenever possible, commenced penalty phases within a day or two of rendition of the verdict. We believe this is consistent with the statutory mandate to begin a penalty phase ".....before the trial jury as soon as practicable." 921.141(1), Fla. Statutes (1993). Conversely, we do not believe that the committee proposal is consistent with the mandate of the Legislature. Indeed, virtually all of the proposed changes build in the potential for delays which may necessitate empaneling two (2) juries in virtually every capital case. Id.

With that in mind, I should like to address one other specific change in the proposed rule. The proposed change to subsection (b)(1)(A) would require the prosecutor to disclose ".....all persons known to have information that may be relevant to the penalty phase." The Judges of this Circuit agree that this requirement is overly burdensome for both prosecutors and the judiciary. Such an overbroad requirement will result in endless litigation over such things as the prosecutor's failure to disclose the names of distant relatives and acquaintances of the defendant. Nor should prosecutors be required to investigate the defendant's mitigation case and then be required to further speculate as to whether information obtained is relevant to an amorphous group of non-statutory mitigating circumstances.

By contrast, we have had the opportunity to review the counter-proposal recently drafted by the FPAA. While we do not contend that the FPAA proposal is perfect, it is our consensus that it is vastly superior to the proposed changes. We do not view the FPAA proposal as unfair to Defendants, and it would appear to offer an opportunity to avoid a great deal of the delay inherent in the Bar Committee's draft.

Therefore, on behalf of the felony Judges of the Fourth Judicial Circuit, I strongly urge this Court to reject the Bar Committee proposal as written, substituting instead the FPAA proposal or some other language that addresses the concerns expressed herein.

Very truly yours,



Donald R. Moran, Jr.
Chief Judge of the
Fourth Judicial Circuit

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