

COPY

IN THE SUPREME COURT OF
FLORIDA

FILED

CASE NO.: ~~84,574~~

SID J. WHITE

84,572

DEC 19 1994

IN RE: AMENDMENTS TO FLORIDA RULE
OF JUDICIAL ADMINISTRATION 2.070(a)

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

**RESPONSE TO PROPOSED AMENDMENT TO
FLORIDA RULE OF JUDICIAL ADMINISTRATION RULE 2.070(a)**

COMES NOW, The Florida Prosecuting Attorneys Association, by and through the undersigned counsel and files this Response To the Proposed Amendment to Florida Rule of Judicial Administration Rule 2.070(a), and would show:

1. The Florida Prosecuting Attorneys Association is a not for profit association consisting of the twenty State Attorneys and their assistants, as well as the Statewide Prosecutor and her assistants, and as such represents the prosecutors of Florida who are directly involved as legal advisors to county grand juries as well as statewide grand juries.

2. The Florida Prosecuting Attorneys Association has reviewed the proposed amendment to the Rules of Judicial Administration Rule 2.070(a) and has determined that said proposal or the furtherance of justice is not in the best interest of the citizens of the State of Florida and for reasons therefore would offer the following:

(a) The subject matter of this particular rule was addressed by the Florida Legislature in its 1993 session in a House Bill and Senate Bill that were introduced and considered by committees. However, the bill did not pass the legislature in that session.

(b) The subject matter of this particular matter was again addressed

by The Florida Bar Criminal Rules Committee at their September 9, 1994 meeting. At that meeting the subject matter of this rule was voted down by the committee by a vote of 28 to 7.


(c) For 800 years the grand jury has served as the investigatory arm of the judiciary. The results of the grand jury are merely accusatory and not dispositive of the guilt or innocence of a particular individual and therefore the burden provided to a grand jury is whether or not there is probable cause to indict. The grand jury secrecy is one of the most important reasons for the grand jury and one that would encourage the unrestricted testimony by individuals before the grand jury. The recordation of all testimony, as well as all the deliberations, and advice given by the State Attorney to the grand jury and the questions of grand jurors would have a chilling effect first on witness who would come before the grand jury and secondarily the grand jury itself in the way that it handles its business. Certainly this routine recording would signal to all who appear "secretly" before the grand jury that the cloak is easily removed in our liberal discovery process. Candor would be stifled. This Court, in Keen v. State, 19 Fla. L. Weekly S243 (Fla. May 5, 1994) reaffirms a longstanding principle that there is no pretrial right to inspect grand jury testimony as an aid in preparing a defense. Rather to obtain that grand jury testimony the party must show a particularized need sufficient to justify the revelation of the generally secret grand jury proceedings. The five general reasons sighted by the Supreme Court of Florida as those which mandate secrecy are: (1) to protect the grand jurors; (2) to promote total freedom of disclosure; (3) to prevent the escape of a person indicted before his arrest; (4) to prevent subordination of purgery or tampering with witnesses

who testify before the grand jury and later testify at the trial of the indicted person;
(5) to shield the reputation and identity of a person against whom no indictment is
filed Minton v. State, 113 So.2d 316 (Fla.1959).

Florida has the most liberal discovery provisions in this country. A defendant
in Florida already has an opportunity to depose all witnesses including those who may
have testified before a grand jury. A prosecutor's obligation under Brady to disclose
grand jury testimony of a witness that is contrary to that witness' subsequent
testimony is another safeguard. To require all proceedings, or even the proceedings
of witnesses, to be uniformly recorded is the first step toward the total invasion of the
grand jury. This is contrary to the interest of the public and does not serve the ends
of justice.

Based on the foregoing, the undersigned counsel requests the denial of the
proposed amendment to Florida Rules of Judicial Administration Rule 2.070(a).

Respectfully submitted,



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