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

May 7, 1996

Phillip D. Holland
DC# 086070 A-206-L
Okaloosa Correctional Institution
3189 Little Silver Road
Crestview, Florida 32539-6708

Hon. Sid J. White, Clerk
Supreme court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32301

87,688

RE: Comments on Rules governing Public Records Proposal

Dear Clerk White:

This is a comment on the proposed rule change or amendment in in regards the access to Public Records by inmates on Death Row as reported in the 'Northwest Florida Dailey Newspaper' dated April 26, 1996.

What my concern is the fact that the current statute governing access to public records is and was promulgated by the Legislature originally in 1967 see Laws of Florida, c.67-125, § 7 (1967), and was basically rewritten in 1975 via Laws of Florida, c. 75-225 (amended)(1975).

Another major revision was done in 1984, when Governor Graham was the Chief Executive of the State pursuant to Laws of Florida c. 84-298, § 5 (amended)(1984), with notable exemptions as to what public records would be nondisclosable for purposes of law enforcement protected activities. Again, in 1995, further amendments were made by the Legislature to the statute.

The significance to me in this matter is that the Legislature created and made various exceptions within the statute through the course of its history. The fact that the court is now imposing a time limit for a certain "class of persons" appears to be contumacious of Article II, § 3., cl. 2., Florida Constitution, and several decisions of the courts. For example, in Adams v. Miami Beach Hotel Ass'n, 77 So. 2d 465 (Fla. 1955), the court determined that "in the field of social legislation, the legislative power is supreme unless some specific provision of organic law is transgressed, and, absent such transgression, it

is for legislature and not for courts to determine what is unnecessary, unreasonable, arbitrary or capricious". Id. In State v. Herndon, 27 So. 2d 833 (Fla. 1946), the court again noted that "the courts are not clothed with the power to enact laws in the first instance but they do have the power to keep legislative and constitutional enactments ambulatory, likewise it is their duty within the scope of their power to square the law with good morals and to harmonize constitutional and statutory precepts with reason and good conscience.". And finally, this court has recently noted that: "Separation of powers doctrine prohibits any branch of state government from encroaching upon powers of another and prohibits any branch from delegating to another branch its constitutionally assigned power." Id. Chiles v. Children A,B,C,D, & F, 589 So. 2d 260

Of course I can be wrong, and it would not be the first time, but it appears to me, in good conscience, that a time frame rule for seeking access to public records by persons under a sentence of death as promulgated by this court would be a violation of Article II, § 3, cl. 2., Florida Constitution, and hence, unconstitutional.

It could also be argued, that this would violate the death sentence individuals right to due process and equal protection of the law. First as a class of persons, they appear to be singled out for differential treatment as opposed to those persons who are not under a sentence of death and those who are not incarcerated per se. Of course death as a penal sentence is unique in light of its irrevocable sanction once inflicted. The safeguard of not "runing to the gallows" so quickly is apparently abandon by the need to limit the time frame for access to public records under § 119.07., Florida Statutes, (amended)(1995). This is correlative to the enactment of the sentencing guidlines in 1983 by rule of this court which ultimately was determined to have violated the separation of powers since the legilsture was required to enact the sentencing provision by statute and did so in 1984. On that primary and correlative example, it would appear that in the instant matter the same principle would apply. Due process was implicated then and I submit that it would still apply now.

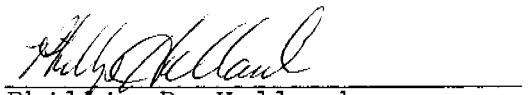
Fundamental fairness of the due process clause and the ends of justice would be better served if the Legislature would implement the court proposed rule change inorder to avoid the needless and costly arguments by various groups in regards to separation of powers as applied to the proposed rule amendment. Stays of execution will be sought, and possibly granted by various courts on the basis that this argument would have to be wrestled with, and such should not be the case. If something is broken, there

is a proper way to fix under the Constitution of the State and of the United States.

There is no question that this court is burden with many appeals and substantial litigation by ppersons under the sentence of death. That the matter requires an automatic appeal only highlights the seriousness of the matter and that life is precious irregardless of the individual's acts or actions. I commend the court for its endeavors, but this matter may be best determined via a legislative enactment than promulgated rule change by the court.

This is my comment on the matter, and would appreciate the courts notation of same for the record.

Respectfully



Phillip D. Holland

PDH/