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SID J. WHITE

JUN 7 1996

SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

No. 87, 688

IN RE: AMENDMENT TO FLORIDA
RULES OF CRIMINAL PROCEDURE
CAPITAL POSTCONVICTION PUBLIC
RECORDS PRODUCTION

COMMENTS OF KATHERINE FERNANDEZ RUNDLE,
THE STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT AND
MICHAEL J. SATZ, THE STATE ATTORNEY FOR THE SEVENTEENTH
JUDICIAL CIRCUIT, TO PROPOSED RULE 3.852 OF THE FLORIDA RULES OF
CRIMINAL PROCEDURE

Katherine Fernandez Rundle, State Attorney for the Eleventh Judicial Circuit, and Michael J. Satz, State Attorney for the Seventeenth Judicial Circuit, by and through the undersigned counsel, offer the following comments to the proposed Rule 3.852 of the Florida Rules of Criminal Procedure, set forth in this Court's opinion in the above case, rendered on April 25, 1996 and published in The Florida Bar News on May 15, 1996:

1. The proposed Rule 3.852 is very comprehensive in its attempt to assure that public records requests are made and complied with in a timely manner, so that postconviction motions in capital cases do not languish indefinitely in the trial courts. However, there are a few areas that need amendments in order to ensure that the procedures established by this Court in the proposed rule are enforced.

2. Under proposed Rule 3.852(f), for requests made after the effective date of this rule, the capital postconviction defendant is required to file in the trial court and serve upon the attorney general and all counsel of record, a motion to compel production within

30 days of any noncompliance with this rule; or for requests made before the effective date of this rule, 30 days after the effective date of this rule. This rule will help to expedite compliance with public records requests in that it requires the defendant to file a motion to compel after a definitive period of time. However, in order to truly expedite compliance, this Court must also require that the party who files a motion to compel or a complaint serve the trial court with a courtesy copy of the motion and schedule such motion for a hearing before the trial court within a definitive time period, e.,g., 10 days. Rule 3.852(h) requires a trial court to decide the motion to compel on an expedited basis, but does not require the parties to schedule a hearing on the motion to compel on an expedited basis.

3. There are capital postconviction cases pending in the Eleventh Judicial Circuit in which motions to compel have been filed by the capital defendants against state agencies and no attempt had been made to have the motions heard for almost a year. Because courtesy copies of the motions are not served on the trial judge who is assigned to the postconviction motion, the trial judge is unaware that such a motion has been filed with the Clerk of the Court.¹ Unfortunately, due to decisions by the Third District Court of Appeals, see Kollin v. Ader, 591 So.2d 320 (Fla. 3d DCA 1992); Mattson v. Kohlage, 569 So.2d 1358 (Fla. 3d DCA 1990); the Clerk of the Eleventh Judicial Circuit Court, can no longer require that a Notice of Hearing be filed with the motion, in order to have the motion accepted by the Clerk for filing. Thus, without a rule requiring that the moving

¹ Although the State could schedule the hearing when it receives a copy of the motion, such should not become the burden of the non-moving party, especially when it is the moving party, i.e., the defendant, who desires the records and who is in a better position to know whether there has been compliance with the public records requests directed to agencies other than the State Attorney's Office.

party schedule a hearing at the time they file the motion, there would be no incentive for a capital defendant to schedule such a hearing because under the waiver provision of the proposed rule, (g)(3), a waiver occurs only if the party fails to file a motion to compel.

There is little question that the proposed Fla.R.Crim. 3.852, is a necessary tool which will aid the capital defendants in acquiring the public records which they believe they are entitled to, but will also expedite the postconviction process, so that these capital postconviction motions do not languish in the circuits for years while public records compliance is litigated. However, in order to fully achieve that goal, the undersigned believes that the amendments as suggested by this Comment are necessary and should be adopted by this Court.

Respectfully submitted,

KATHERINE FERNANDEZ RUNDLE
State Attorney for the Eleventh Judicial Circuit

BY: 

PENNY H. BRILL
Assistant State Attorney
Florida Bar No. 305073
E.R. Graham Building
1350 N.W. 12th Avenue
Miami, Florida 33136
(305) 547-0100

MICHAEL J. SATZ
State Attorney for the Seventeenth Judicial Circuit

BY: 

CAROLYN V. McCANN
Assistant State Attorney
Florida Bar No. 380393
201 S.E. 6th Street
Room 620
Fort Lauderdale, Florida 33301
(954) 831-6955