

IN THE SUPREME COURT OF FLORIDA

No. 87,688

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FILED

SID J. WHITE

JUN 14 1996

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

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

COMMENTS OF THE ATTORNEY GENERAL
UPON PROPOSED RULE 3.852 OF THE
FLORIDA RULES OF CRIMINAL PROCEDURE

COMES NOW Robert A. Butterworth, Attorney General of Florida,
by and through the undersigned counsel, and hereby files the
instant comments to proposed Rule 3.852, Florida Rules of Criminal
Procedure:

1. On April 25, 1996, this Court promulgated proposed Rule
3.852, and directed that such be published in The Florida Bar News
in order to allow for comment. See In Re Amendment to Florida
Rules of Criminal Procedure - Capital Postconviction Public Records
Production, 21 Fla. L. Weekly S187 (Fla. April 25, 1996).
Following publication in the May 15, 1996 Bar News, all comments
are due to be filed by June 14, 1996.

2. The proposed rule obviously has the laudatory objective of
seeking to streamline the capital postconviction process, as that

process intersects with public records issues. While the Office of the Attorney General wholeheartedly endorses much of what this Court has promulgated, some clarification and/or amendment is necessary in regard to the three primary areas addressed below, especially as to any application of the proposed rule to defendants who have already initiated public records litigation. This Court has obviously already expended a considerable amount of effort in the preparation and promulgation of this proposed rule. The instant comments are intended to forestall what would seem to be attempts to undermine the purposes of this rule, such efforts clearly foreseeable or already underway. A copy of the rule, amended in accordance with these comments, is attached.

3. In 3.852(d)(2)(D), the proposed rule provides that those defendants with pending rule 3.850 motions shall have either 30 or 120 days from the effective date of the rule to invoke those provisions regarding requests for the production of certain documents. It could be argued that this provision would allow defendants who have already been litigating public records claims to "opt" into the new rule and restart the process. This is not an idle fear. Since the publication of the proposed rule, the Office of the Capital Collateral Representative has moved to dismiss or hold in abeyance a number of public records actions, and, indeed,

has construed 3.852(f)(2) as something of a jurisdictional bar to the continued vitality of a number of pending cases. (See Notice of Voluntary Dismissal, Oats v. Butterworth, Leon County Circuit Court Case No. 94-5968, May 30, 1986; Defendant's Motion to Hold Proceedings in Abeyance Pending Adoption of Fla. R. Crim. P. 3.852, State v. Thompson, Broward County Circuit Court, Case No. 85-899CFA, filed May 15, 1996). This action has even been taken in cases in which the circuit court has entered a final judgment on the public records claim (Motion to Hold in Abeyance and/or Toll Time in which to File Initial Brief, Bryan v. Butterworth, Florida Supreme Court Case No. 87,770, filed May 21, 1996), and circuit courts have likewise indicated a willingness to revisit prior rulings and/or to stay proceedings in light of the proposed rule (Order Staying Proceedings Pending Adoption of Fla. R. Crim. P. 3.852 and Order Quashing Subpoenas and Canceling Hearing, State v. Lucas, Lee County Circuit Court Case No. 76-588 CFIA, May 9, 1996) (See Attached).

Undersigned counsel respectfully submits that those defendants who have already filed 3.850/3.851 motions raising public records claims, or who have already had the opportunity to do so, should be barred from electing to proceed under proposed Rule 3.852. There are presently over 115 postconviction motions pending in the

circuit courts of this state (with another 50 due be filed in the foreseeable future). To allow all of this class of inmates to restart the process under the aegis of the proposed rule would be to compound the delay which this Court is seeking to remedy. Further, because the new rule is procedural in nature, it does not add to the substantive rights of any defendants, and there is no inequity in holding that those defendants who have already litigated their claims have had the benefit of their remedies in this respect. The proposed rule should be amended to provide that those capital defendants who have already begun to litigate their public records claims, as well as those capital defendants who have already had the opportunity to do so, may not elect to proceed under proposed Rule 3.852, barring some exception under 3.852(m). Rule 3.852 should be prospective only and apply to those capital defendants who have yet to file a 3.850/3.851 motion or who have never exercised a public records demand.

4. Undersigned counsel also respectfully suggests that the recipient of a request for production should have the option of requesting a more definite statement or having an indefinite request stricken. Although 3.852(d)(3) contains some specific requirements regarding a request for production, there is no explicit bar against "requests" such as that cited below, in which

CCR recently requested of a State Attorney:

. . . that you provide the office of the CCR with a complete, accurate and legible copy of any and all homicide and sex cases prosecuted and/or investigated by your office between the dates of June 1, 1987 to June 1, 1988. We wish to review all materials (regardless of form and including photographs, sound or video recordings, physical evidence, and electronic mail and/or files) associated with these cases prior to requesting photocopies (See Attachment) (emphasis supplied).

This type of burdensome overbroad request for access serves no useful purpose, and should be expressly disapproved by this Court. (See also attached public records request to court administrator in Jacksonville, seeking, inter alia, all budget memoranda, proposals, notes, reports etc. for two fiscal years). The proposed rule should be amended to require that the request for production of public documents include some allegation of relevance or necessity, as well as the identity of other agencies from which records have been, or are being, sought.

5. Additionally, 3.852(h), which provides that all motions or objections relating to production of documents or procedures shall be decided by the trial court on an expedited basis, should be amended to set a formal time limit, i.e., within thirty (30) days, and this Court should clarify the extent to which, if any, interlocutory review shall be permitted. It is the undersigned

counsel's view that no interlocutory appeal should be allowed under these circumstances, as such would simply delay the process, and that, at most, review be available by extraordinary writ.

6. Further, the undersigned would also respectfully suggest that 3.852(j)(3) be modified, specifically in regard to a trial court's authorization of depositions and/or other discovery. In State v. Lewis, 656 So. 2d 1248, 1250 (Fla. 1994), this Court held that it was within a trial court's inherent authority to allow limited discovery "only upon a showing of good cause." (emphasis supplied). Although the proposed rule does provide that depositions or other discovery may be authorized "when necessary to achieve a fair result and expedite the process," the standard set forth in Lewis is preferable. Under Lewis, limited discovery may be allowed into matters which are relevant and material, and, in deciding whether to allow discovery, a trial judge shall consider the issues presented, the elapsed time between the motion and the postconviction hearing, any burden placed upon the opposing party and witnesses, alternative means of securing evidence, and any other relevant facts.

These considerations are also germane to any public record "discovery," and the proposed rule should be amended to reflect the standard set forth in Lewis, especially in light of the

legislature's recent amendment of Section 119.07(9). This legislation, which, as Chapter 96-290, became effective on May 30, 1996, expressly holds that the provisions of Chapter 119 were not intended to expand the extent of discovery by a defendant in collateral postconviction proceedings. Past experience has demonstrated that some capital litigants regard discovery and/or depositions as a matter of right, available without limitation or any showing of necessity or relevance. Because this is clearly contrary to the intent of the legislature, the proposed rule should be amended not only to conform to Lewis, but also to Section 119.07(9).

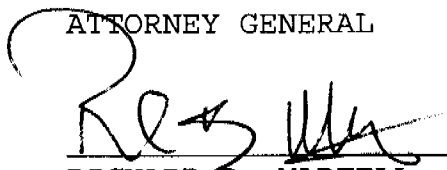
7. Finally, the undersigned has been provided a copy of the comments of Katherine Fernandez Rundle, State Attorney for the Eleventh Circuit, and would respectfully state agreement with the suggestion that Rule 3.852 be amended to require that any party who files a motion to compel or complaint ensure that such motion is set for hearing, so as to avoid undue delay.

CONCLUSION

WHEREFORE, the undersigned respectfully moves this Honorable Court to amend proposed Rule 3.852 in the above-stated respects.

Respectfully submitted

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



RICHARD B. MARTELL
Chief, Capital Appeals
Florida Bar No. 300179

OFFICE OF THE ATTORNEY GENERAL
The Capitol
Tallahassee, FL. 32399-1050
(904) 488-0600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed in the Supreme Court of Florida, Tallahassee, Florida, 32301, this 14th day of June 1996.



RICHARD B. MARTELL

IN THE SUPREME COURT OF FLORIDA

No. 87,688

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

INDEX

1. Proposed Rule (as amended).
2. Notice of Voluntary Dismissal, Oats v. Butterworth, Leon County Circuit Court Case No. 94-5968, May 30, 1986.
3. Defendant's Motion to Hold Proceedings in Abeyance Pending Adoption of Fla. R. Crim. P. 3.852, State v. Thompson, Broward County Circuit Court, Case No. 85-899CFA, filed May 15, 1996.
4. Motion to Hold in Abeyance and/or Toll Time in which to File Initial Brief, Bryan v. Butterworth, Florida Supreme Court Case No. 87,770, filed May 21, 1996.
5. Order Staying Proceedings Pending Adoption of Fla. R. Crim. P. 3.852 and Order Quashing Subpoenas and Canceling Hearing, State v. Lucas, Lee County Circuit Court Case No. 76-5889 CFIA, May 9, 1996.
6. Public Records Request to State Attorney, Eighteenth Judicial Circuit, May 28, 1996.
7. Public Records Request to Court Administrator, Fourth Judicial Circuit, August 10, 1995.



RULE 3.852. CAPITAL POSTCONVICTION PUBLIC RECORDS PRODUCTION

(a) **Applicability.** This rule is applicable to all requests for production of public records to which chapter 119, Florida Statutes (1995), applies and which are on behalf of named capital postconviction defendants relating to proceedings for relief pursuant to Florida Rules of Criminal Procedure 3.850 and 3.851. Except as otherwise provided herein, this rule shall only apply to those capital defendants who have not yet initiated postconviction litigation before the effective date of this rule.

(b) **Definitions.**

(1) "Public records" and "agency" have the meaning set forth in chapter 119, Florida Statutes.

(2) "Capital postconviction defendant" means a person sentenced to death who is seeking disclosure of public records in connection with postconviction proceedings.

(3) "Trial court" means the judge who entered the judgment and imposed the sentence of death or, if a rule 3.850/3.851 motion has been filed, the judge who is assigned to rule on the defendant's rule 3.850/3.851 motion.

(c) **Filing and Service.**

(1) All requests for production of public records and all objections to production of public records shall be filed in the trial court on or before the expiration of the time required by this rule.

(2) Service of a request for production shall be upon the custodian designated pursuant to section 119.021, Florida Statutes, and a copy of that request for production shall be served upon the attorney general and upon all counsel of record in the postconviction proceedings.

(3) Service of a request for production upon the custodian designee shall either be by personal service or by certified mail. An affidavit of personal service or a certified return receipt shall be filed in the trial court and a copy served upon the attorney general and all counsel of record no more than five days after service of the request for production upon the custodian designee.

(4) Service of a request for production shall include a complete copy of the request and shall advise the custodian designee of the time in which objection to the request for production must be filed and served, when notification of the time and place of production must be filed and served, and that the failure to file and serve an objection to the request for production shall act as a waiver of the objection.

(5) Objection to the request for production shall be filed in the trial court using the case number and style of the case set forth in the service of the request for production and shall be served upon the attorney general and upon all counsel of record set forth in the service of the request for production.

(d) Requests for Production; Times for Filing and Service; Contents.

(1) A request for production shall be in writing and, if filed prior to the filing of the rule 3.850/3.851 motion, shall be given a case number in the trial court and will be considered to be a pleading in the rule 3.850/3.851 proceeding when a motion pursuant to the rule is filed.

(2) Requests for production shall be filed and served within the following times:

(A) Within 30 days after counsel is designated pursuant to rule 3.851(3), request for public records pertaining to the capital postconviction defendant in the custody of (i) all law enforcement agencies in the circuit where the conviction occurred, (ii) the state attorney's office that prosecuted the defendant, (iii) the medical examiner in the circuit where the conviction occurred, (iv) the attorney general, and (v) the Department of Corrections.

(B) Within 120 days after counsel is designated pursuant to rule 3.851(3), request for public records pertaining to any other public record in the custody of any other agency not covered within subdivision (d)(2)(A) of this rule.

(C) Within 90 days after the initial production of the records, any supplemental request for production shall be filed and served. Such supplemental request for production shall be limited

to the production of records which only became known from the records produced in the initial production of records.

~~(D) In respect to cases in which a capital postconviction defendant has a pending rule 3.850/3.851 motion and counsel for the defendant has been designated on the effective date of this rule, the time period for any initial request for production covered by subdivision (d) (2) (A) shall be 30 days from the effective date of this rule, and for any initial request for production covered by subdivision (d) (2) (B) shall be 120 days from the effective date of this rule. Any supplemental request for production shall be filed within 90 days after the initial production of the records or within 90 days of the effective date of this rule, whichever is later. Such supplemental request for production shall be limited to the production of records which only became known from the records produced in the initial production of records.~~

(3) The request for production shall state:

(A) The name, identifying number (social security, Department of Corrections, or other), and date of birth of the capital postconviction defendant, and if the defendant is not the person about whom the information is requested, the name and other information sufficient to identify the person about whom the information is requested.

(B) The types of records requested with as much specificity as possible, as well as their relevance to any potential claim for relief.

(C) The dates of any prior requests which have been made by the postconviction defendant upon the agency from whom the information is requested and the name of the person about whom the information is requested, as well as the identity of any other agency from which records have been, or are being, sought.

(D) The trial court in which any objection to the production must be filed, the case number of the postconviction proceeding, the names and addresses of all counsel of record in the postconviction proceeding, and that an objection to production and notification of time and place of production shall be served on the

attorney general and all counsel of record in the postconviction proceeding.

(e) **Production or Objection.**

(1) Within 30 days of receipt of the request for production, the agency shall file and serve upon the attorney general and all counsel of record a notice stating the time and place for the production of the documents requested to which no objection has been filed and served, or claim of exemption asserted. The notice shall include a certification by the agency that a diligent search has been made and that all records requested will be produced or if records are being withheld or redacted, a listing of the records being withheld or redacted. If records are withheld or redacted, the notice shall be served with the objections to the production pursuant to subdivision (d)(4)(B).

(2) Within 30 days of receipt of the request for production, the agency shall file in the trial court and serve upon the attorney general and all counsel of record listed in the service of the request, any objection to the request for production including any objection to specific records requested, as well as any claim of exemption. An objection may be in the form of a motion to strike a request for production which is overbroad, indefinite or unduly burdensome.

(3) Production of the records to which no objection is filed and served or to which no exemption has been asserted shall be no later than 60 days from the receipt of the service of the request. Production of those records to which the trial court overrules any objection to production shall be within 30 days of the trial court's order overruling the objection unless the trial court designates a different time.

(4) Within ten days of review of the records, all requests for copies of any of the records shall be made by any counsel who desires copies. Copies shall be furnished by the agency within ten days of the receipt of the request for copies. Copies shall be provided by the agency for the usual fee charged by the agency for copies or such fee as prescribed by statute, if any. Payment shall be tendered at the time copies are requested.

(f) **Motions to Compel or Complaints.**

(1) The capital postconviction defendant shall file in the trial court and serve on the attorney general and all counsel of record a motion to compel production within 30 days of any noncompliance with this rule. The state shall file and serve on all counsel of record in the trial court a motion as to any complaint it has in respect to any production within 30 days of the occurrence giving rise to the complaint.

~~(2) Motions to compel or complaints about requests for production of chapter 119 records, which requests were served prior to the effective date of this rule, shall be filed in the trial court and served on the attorney general and all counsel of record no more than 30 days after the effective date of this rule. This shall be in light of any independent actions pending for production of chapter 119 records.~~

(g) **Waivers.**

(1) The production of any documents which are not requested within the time periods of subdivision (d)(2) of this rule is waived for purposes of any capital postconviction proceeding on behalf of the capital postconviction defendant including motions pursuant to rules 3.850/3.851 and petitions for habeas corpus.

(2) The failure to file an objection to the request for production or to the production of any document requested within the 30-day time period required by subdivision (d)(4)(A) shall waive any objection to the production.

(3) The failure to file a motion to compel or complaint pursuant to the time period set forth in subdivisions (e)(1) and (2) waives any motion to compel or any complaint.

(h) **Motions and Objections.** All motions or objections relating to production of documents or procedures shall be decided by the trial court on an expedited basis and/or within thirty (30) days. No interlocutory appeal shall be permitted.

(I) **Effect on Proceedings.** No civil actions or any other proceedings except proceedings to enforce procedures authorized by this rule for the production of public records shall stay or have

any affect upon the capital postconviction proceedings before the trial court.

(j) **Authority of Court.** In proceedings under this rule, the trial court may:

(1) compel or deny disclosure of records;

(2) conduct in camera inspections;

(3) ~~when reasonably necessary to achieve a fair result and expedite the process in extraordinary circumstances and upon a showing of good cause,~~ authorize depositions or other limited discovery into matters which are relevant and material; and

(4) otherwise apply and enforce the provisions of chapter 119, Florida Statutes (1994).

(k) **Scope of Rule.** This rule only pertains to the production of records for capital postconviction defendants and does not change or alter any time periods in rules 3.850 and 3.851.

(l) **Extensions of Time.** Extensions of the times set forth in this rule may only be obtained by stipulation of all counsel of record or by leave of the trial court upon a showing of good cause.

(m) **Other Requests Precluded.** No other records request on behalf of a capital postconviction defendant relating to capital postconviction relief shall be considered outside the provisions of this rule unless it is demonstrated to the trial court by the capital postconviction defendant (i) that the existence of the records requested was unknown; and (ii) the need therefor was unknown when the time periods expired and could not have been known through the exercise of due diligence.



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

SONNY BOY OATS, JR.)

Plaintiff,)

vs.)

CASE NO. 94-5968)

ROBERT A. BUTTERWORTH)
ATTORNEY GENERAL, STATE)
OF FLORIDA,)

Defendant.)
_____)

NOTICE OF VOLUNTARY DISMISSAL

PLEASE TAKE NOTICE that the Plaintiff, **Sonny Boy Oats, Jr.**, in the above captioned case, by and through undersigned counsel, voluntarily dismisses this action pursuant to Fla. R. Civ. P. 1.420(a)(1)(A). In support thereof, Plaintiff submits as follows:

1. On April 25, 1996, the Florida Supreme Court published proposed Fla. R. Crim. P. 3.852 "in order to provide orderly procedures to govern the process of considering public records requests in the context of capital postconviction proceedings." In Re Amendment to Florida Rules of Criminal Procedure--Capital Postconviction Public Records Production, No. 87,688 (Fla. April 25 1996). In light of proposed Fla. R. Crim. P. 3.852, Plaintiff believes this Court will lack subject matter jurisdiction before this case can be fully resolved. In the interest of judicial economy, Plaintiff voluntarily dismisses this action without prejudice.
2. This notice is served before trial.
3. No hearing on motion for summary judgment has been held in this case.

I HEREBY CERTIFY that a true copy of the foregoing Notice of Voluntary Dismissal has been furnished by hand delivery to Charlie McCoy, Assistant Attorney General, Office of the Attorney General, The Capitol - PL01, Tallahassee, Florida, 32399-1050, this May 30, 1996.

Peter N. Mills

Peter N. Mills
Assistant CCR
Florida Bar # 0998771
Office of the Capital
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ATTORNEY FOR PLAINTIFF



IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 85-899 CF A

STATE OF FLORIDA,

Plaintiff,

v.

RAYMOND MICHAEL THOMPSON,

Defendant.

**DEFENDANT'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE PENDING
ADOPTION OF FLA. R. CRIM. P. 3.852**

COMES NOW THE DEFENDANT, RAYMOND MICHAEL THOMPSON, by and through undersigned counsel and requests this Honorable Court to stay all proceedings in the above captioned cases. In support thereof, Defendant states:

1. Mr. Thompson is a capital postconviction defendant sentenced to death and is seeking public records in connection with postconviction proceedings. At this time, Mr. Thompson is litigating his inability to obtain public records before this Court.
2. On April 25, 1996, the Florida Supreme Court published proposed Fla. R. Crim. P. 3.852 [hereinafter, Rule 3.852] which, if enacted, would dramatically affect the proceedings currently pending before this Court. See In Re Amendment to Florida rules of Criminal Procedure--Capital Postconviction Public Records Production, No. 87,688 (Fla. April 25, 1996)(See Attachment A).
3. The Florida Supreme Court is moving swiftly to enact Rule 3.852 for the following reason:

In order to provide orderly procedures to govern the process of considering public records requests in the context of capital postconviction proceedings, the Court on its own motion has determined to promulgate a New Rule of Criminal Procedure, to be numbered rule 3.852.

Id.

4. Rule 3.852 applies exclusively to "capital postconviction defendants." Rule 3.852 states:

All requests for production of public records and all objections to production of public records shall be filed in the trial court on or before the expiration of the time required by this rule.

Id. at (c)(1).

"Trial court" means the judge who entered the judgement and imposed the sentence of death or, if a rule 3.850/3.851 motion has been filed, the judge who is assigned to rule on the defendant's rule 3.850/3.851 motion.

Id. at (b)(3)(emphasis added).

Motions to compel or complaints about requests for production of chapter 119 records, which requests were served prior to the effective date of this rule, shall be filed in the trial court and served on the attorney general and all counsel of record no more than 30 days after the effective date of this rule. This shall be in lieu of any independent action pending for production of chapter 119 records.¹

Id. at (f)(2).

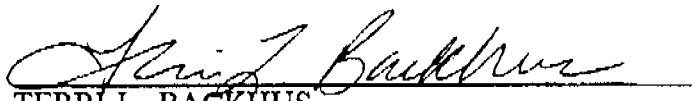
5. Defendant submits any further proceedings in this case may result in duplicative litigation and frustrate the clear intent of the Florida Supreme Court. Defendant

¹ On September 25, 1995, Mr. Thompson filed a Chapter 119 civil suit in Leon County against the Attorney General seeking the disclosure of withheld public records pursuant to Hoffman v. State, 613 So.2d 405 (Fla. 1992). Mr. Thompson voluntarily dismissed this suit without prejudice because it appeared the Leon County Circuit Court would lose jurisdiction to fully resolve that case before the adoption of Fla. R. Crim. P. 3.852.

further submits the interests of judicial economy dictate these proceedings be held in abeyance pending the adoption of Fla. R. Crim. P. 3.852.

WHEREFORE, Defendant respectfully requests this Court grant this motion and hold all proceedings in abeyance pending the effective date of Fla. R. Crim. P. 3.852.

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by United States Mail, first class postage prepaid, to all counsel of record on May 15, 1996.



TERRI L. BACKHUS

Florida Bar No. 0946427

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Attorney for Defendant

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West Palm Beach, FL 33401-2299



IN THE SUPREME COURT OF FLORIDA

CASE NO. 87,770

ANTHONY B. BRYAN,

Appellant,

v.

ROBERT A. BUTTERWORTH,
Attorney General, State of
Florida,

Appellee.

MOTION TO HOLD IN ABEYANCE AND/OR TOLL TIME
IN WHICH TO FILE INITIAL BRIEF

Appellant, ANTHONY B. BRYAN, respectfully requests that this Court hold in abeyance and/or toll the time in which to file his initial brief pending the resolution of proposed Fla. R. Crim. P. 3.852. In support of this motion, Mr. Bryan states the following:

1. Mr. Bryan is a death-sentenced Florida prisoner. His case is before this Court on appeal from the Leon County Circuit Court's final order denying him Chapter 119 public records request. (See Attachment A).

2. Since the Circuit Court's order became final, this Court has proposed Fla. R. Crim. P. 3.852, which enacted, would require all Chapter 119 issues to be litigated in the Rule 3.850 proceedings. See In Re Amendment to Florida Rules of Criminal Procedures--Capital Postconviction Public Records Production, No. 87,688 (Fla. April 25, 1996).

3. As proposed in the new rule:

All requests for production of public records
and all objections to production of public

records shall be filed in the trial court on or before the expiration of the time required by this rule.

(Id. at (c)(1)).

4. Additionally, as the rule outlines:

Motions to compel or complaints about requests for production of chapter 119 records, which requests were served prior to the effective date of this rule, shall be filed in the trial court and served on the attorney general and all counsel of record no more than 30 days after the effective date of this rule. This shall be in lieu of any independent actions pending for production of chapter 119 records.

Id. at (f)(2) (emphasis added).

5. The Circuit Court determined that since it did not preside over Mr. Bryan's trial, it would be "very hard-pressed to determine whether any of the withheld documents would be exculpatory and material as required by Brady." See Final Order, Case No. 94-5009, at 2. The trial court added in a footnote: "Although Defendant has a continuing obligation to disclose Brady material, such claims must be brought in a court of competent jurisdiction." Id. n. 2 at 2. The Circuit Court had not read the trial court records, files or facts of Mr. Bryan's case. It is impossible for the judge to make a determination of whether Brady material existed when he did not know the facts of the case or what had been provided to trial counsel. Because he had not read the record and was unfamiliar with the case, the judge was unable to conduct a proper in camera review under Brady v. Maryland, 373 U.S. 83 (1963), and Pennsylvania v. Ritchie, 107 S.Ct. 989 (1987).

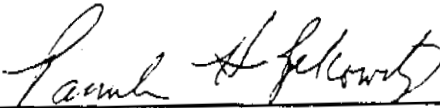
6. Mr. Bryan requests that this Court hold in abeyance and/or toll time in which to file his initial brief until the proposed rule becomes law. After such time, Mr. Bryan will return to the trial court where a valid in camera inspection required by Brady can be held.

7. Pursuant to Fla. R. App. 9.300(b) and (d)(9), Mr. Bryan requests that this Court hold in abeyance and/or toll the time for filing Mr. Bryan's initial brief in this cause until the determination of proposed rule 3.852.

8. The Appellee will suffer no prejudice from the granting of this request and this request is not being made for the purpose of delay.

WHEREFORE, Mr. Bryan respectfully urges that this Court grant this Motion to Hold in Abeyance and/or Toll Time in which to file Appellant's brief until the determination of proposed rule 3.852.

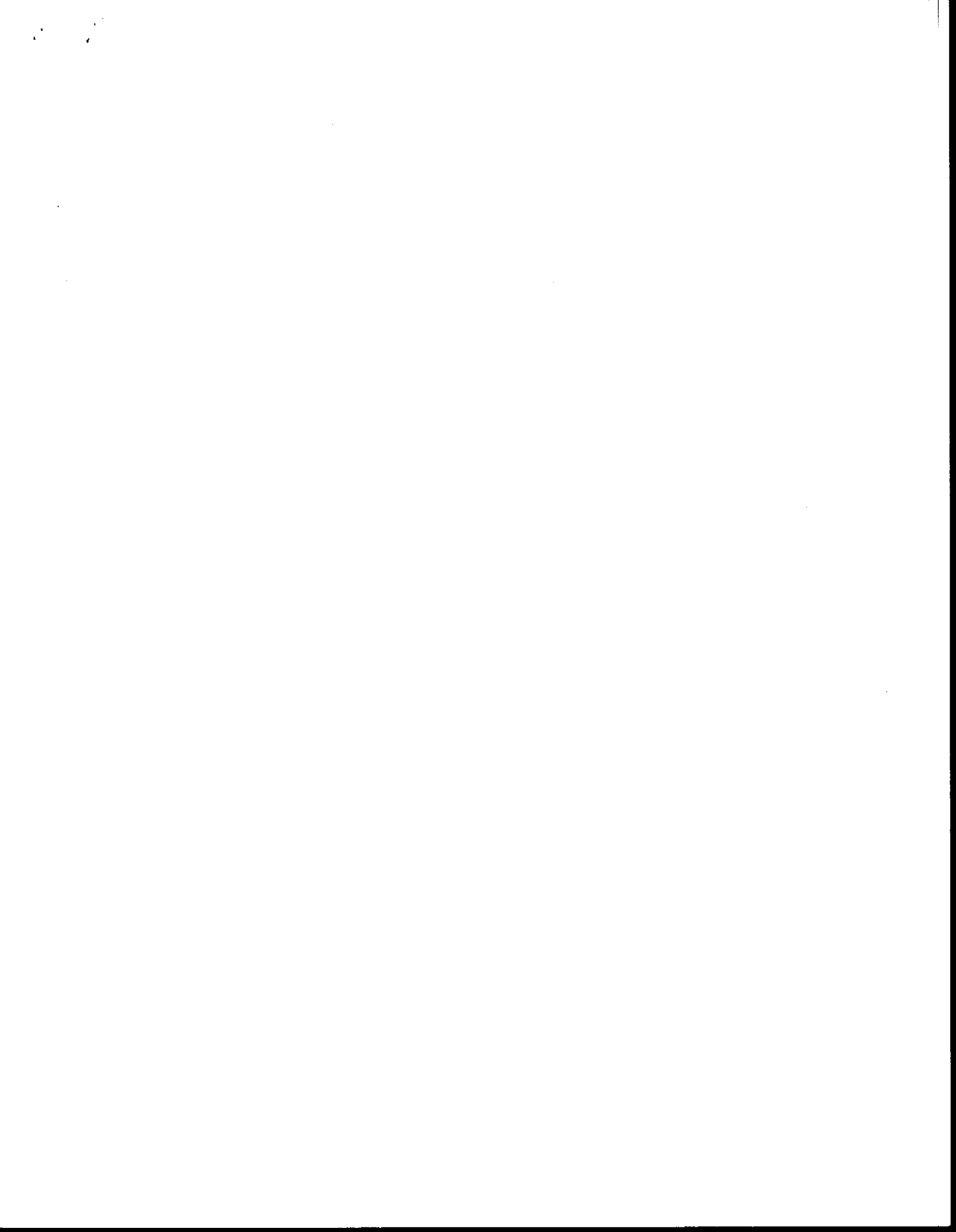
I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by United States Mail, first-class postage prepaid, to all counsel of record on May 21, 1996.



PAMELA H. IZAKOWITZ
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Copies furnished to:

Charlie McCoy
Assistant Attorney General
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Tallahassee, FL 32399-1050



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,)
Plaintiff,)

vs.)

Case No. 76-588 CF IA

HAROLD GENE LUCAS,)
Defendant.)


**ORDER STAYING PROCEEDINGS PENDING ADOPTION OF
FLA. R. CRIM. P. 3.852 AND ORDER QUASHING SUBPOENAS
AND CANCELING HEARING**

THIS CAUSE comes before the Court on its own motion. On May 3, 1996 the Florida Supreme Court promulgated a proposed rule of criminal procedure concerning public records requests for capital postconviction defendants. See, Rules of Criminal Procedure - Amendment - Public Records, 21 Fla. L. Weekly S187 (Fla. May 3, 1996). It is therefore,

ORDERED AND ADJUDGED that the public records proceedings in this action are stayed pending the effective date of Fla. R. Crim. P. 3.852. The hearing scheduled for May 21, 1996, is therefore canceled and all subpoenas issued with regard to this matter are hereby quashed.

Upon the final adoption of Rule 3.852, these proceedings will continue in conformance with the rule in its final form and subpoenas previously issued may be revalidated upon proper application to the Court.

DONE AND ORDERED in Chambers in Fort Myers, Lee County, Florida, this 9th
day of May, 1996.


Isaac Anderson, Jr.
Circuit Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished to George Couture, Assistant CCR, Post Office Drawer 5498, Tallahassee, Florida 32314-5498; Jennifer M. Corey, Esq., Assistant CCR, Post Office Drawer 5498, Tallahassee, Florida 32314-5498; Steven S. Ferst, Esq., Assistant General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399; Raymond Bocknor, Circuit Administrator, Dept. Of Corrections, Probation and Parole Services, 1856 Commercial Drive, Fort Myers, Florida 33901; James H. McNeil, Esq., Fowler, White, Gillen, Boggs, Villareal & Banker, Post Office Box 1567, Fort Myers, Florida 33902; Stephen B. Russell, Esq., Assistant State Attorney, Post Office Box 399, Fort Myers, Florida 33902; Carol Ditmar, Esq., Assistant Attorney General, 2002 N. Lois Ave., Suite 700, Tampa, Florida 33607; Major Jeff Taylor, Leo County Sheriff's Department, 14570 Six Mile Cypress Parkway, Fort Myers, Florida 33912; and Administrative Office of the Courts, 1700 Monroe Street, Fort Myers, Florida 33901, this _____ day of _____, 1996.

CHARLIE GREEN
Clerk of the Court

By: _____
Deputy Clerk



LAW OFFICE OF THE
CAPITAL COLLATERAL REPRESENTATIVE

State of Florida

Post Office Drawer 6498
Tallahassee, FL 32314-5498
(904) 488-7200
(SC) 278-7200
FAX (904) 497-1682
FAX (SC) 277-1682



Michael J. Minerva
Capital Collateral Representative

Martin J. McClain
Chief Assistant CCR

May 28, 1996

The Honorable Norman R. Wolfinger
Office of the State Attorney
100 East 1st Street
Sanford, Fla 32771

Re: Records Request

Dear Mr. Wolfinger:

This is a formal request for access to records pursuant to Chapter 119 of the Florida Statutes and Brady v. Maryland 373 U.S. 83 (1963).

MAY 31 11 08 AM '96

STATE ATTORNEY
SANFORD, FL

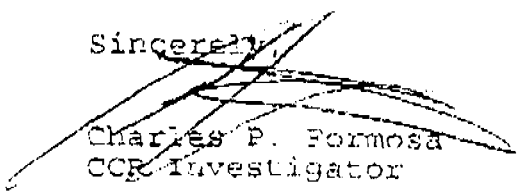
We ask that you provide the Office of The CCR with a complete, accurate and legible copy of any and all homicide and sex cases prosecuted and/or investigated by your office between the dates of June 1, 1987 to June 1, 1988. We wish to review all materials (regardless of form and including photographs, sound or video recordings, physical evidence, and electronic mail and/or files) associated with these cases prior to requesting photocopies.

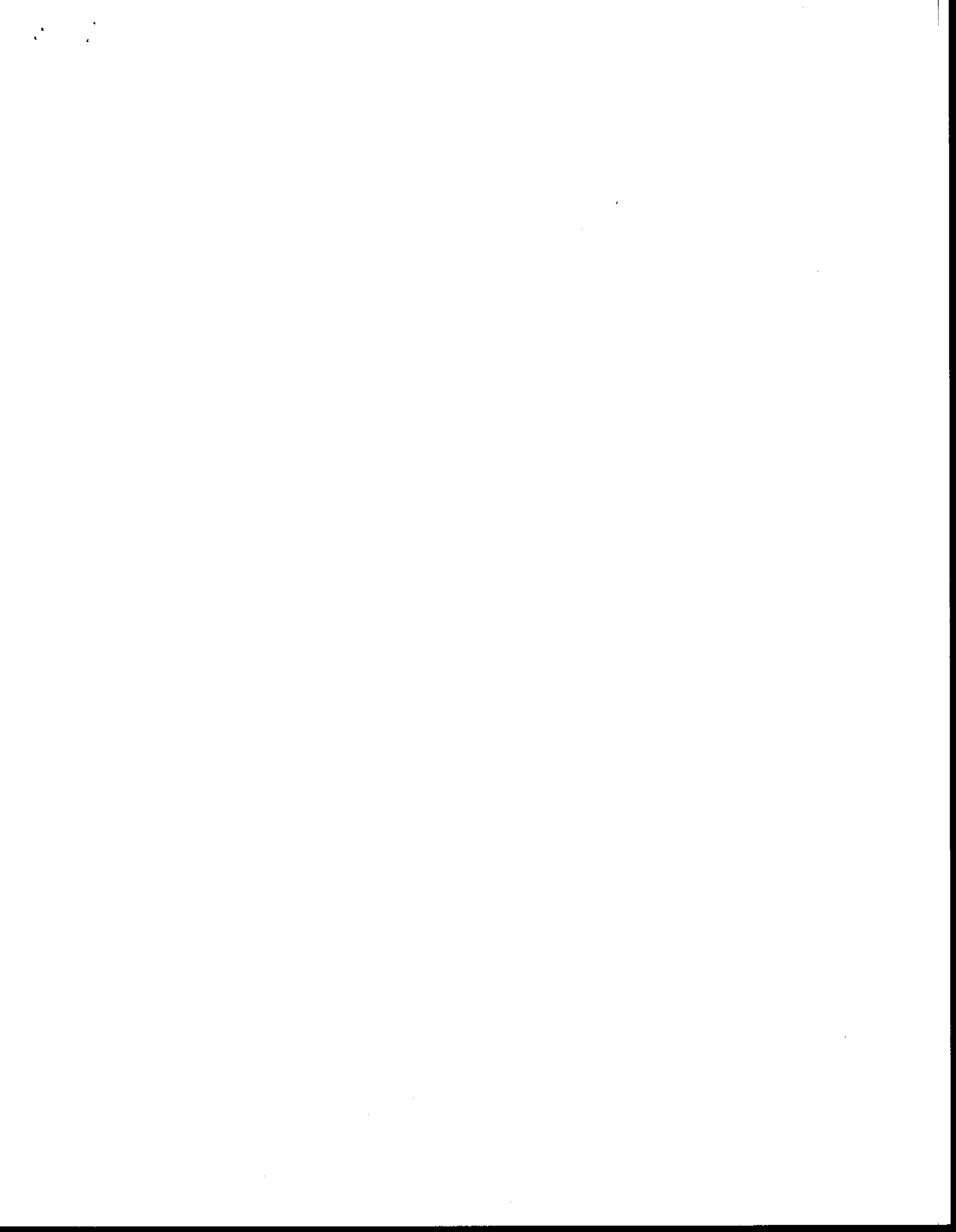
If your office claims any exemptions to this request or withholds any materials, please provide us with an itemized list of withheld materials and a written explanation identifying conclusions you reached when classifying all listed records as exempt.

We also request a cover letter certifying that you are providing CCR with a complete and accurate copy of all requested records. Please contact my office when these files are ready.

Thank you for your kind assistance and cooperation.

Sincerely,


Charles P. Formosa
CCR Investigator



OFFICE OF THE
CAPITAL COLLATERAL REPRESENTATIVE

State of Florida

Post Office Drawer 5498
Tallahassee, FL 32314-5498
(904) 488-7200
(SC) 273-7200
FAX (904) 487-1882
FAX (SC) 277-1882



Michael J. Minerva
Capital Collateral Representative

Martin J. McClain
Chief Assistant CCR

August 10, 1995

Court Administrator
220 Duval County Court House
330 E. Bay St.
Jacksonville, FL 32202

To Whom It Concerns:

The Office of the Capital Collateral Representative currently represents WILLIAM EARL SWEET. This is a formal request for access to records pursuant to Chapter 119 of the Florida Statutes.

We ask that you provide the Office of the CCR with any and all documents concerning the Judicial Budget of the Duval County Judiciary for the Fiscal Years 1989/90 and 1990/91. Our interest is in, but not limited to, the following:

1. All budget memorandum, budget proposals, budget reports, mid-year budget reviews, notes, advisories, requests for polls, reports of City Council actions or meetings and any other communication, whether paper or electronic from the office of the Court Administrator to the Chief Judge or to the Chief Judge and all Circuit Court judges;
2. All Budget memorandum, notes, advisories, requests for polls, reports of City Council actions or meetings and any other communication, whether paper or electronic from the office of the Chief Judge or from the Chief Judge and all Circuit Court judges to the Court Administrator or the Court Administrators office;
3. All budget memorandum, notes advisories, requests for polls, reports of City Council actions or meetings and any other communication, whether paper or electronic from the Duval County Office of Management and Budget to the Office of the Court Administrator and/or the Chief Judge of Duval County and/or the Chief Judge and all Circuit Court judges;
4. All budget memorandum, notes, advisories, requests for polls, reports of County Commission actions or meetings and any

other communication, whether paper or electronic from the Office of the Court Administrator and/or the Chief Judge of Duval County and/or the Chief Judge and all Circuit Court judges to the Duval County Office of Management and Budget;

5. All proposed budgets, actual budgets, mid-year budget reviews, budget memorandum, requests for ARM actions, requests for transfer of funds from various accounts or line items with the judicial budget, notes, advisories, and all other documents concerning the Duval County Judiciary from the Office of Administration and Finance to the Mayor and/or the Jacksonville City Council, whether paper or electronic;

6. All copies of Administrative Budget Action or any other documents dealing with proposed or actual transfers or funds from the various accounts and/or line items in the judicial budget, whether paper or electronic;

7. All documents transferrin any funds from any account, organization, line item, whether paper or electronic, within the Duval County Judicial Budget or from any other City Council Account into the Judicial Budget whether during the regular budget process or at other times during the Fiscal Year;

8. All notes, memorandum, transcripts or summaries of the Jacksonville City Council discussing the Judicial Budget, the transfer of any funds from City Council accounts into the Judicial Budget and/or the approval of any transfer of funds within the Judicial Budget;

9. A complete listing of all of the Judicial accounts by account number, defining the account numbers (for instance #2130 is Court Costs, 1200 is Salary and Wages);

10. All documents, memorandum, notes, whether paper or electronic regardless of whom they are addressed or from whom they were sent dealing with any aspect of Duval County Special Public Defenders, whether contract or non contract, whether appellate or trial, and regardless of whether capital or non capital (Life);

11. Any and all other documents not specifically described dealing with the Duval County Judicial Budget and the requested transfer of funds, within the Judicial Budget and the approval or disapproval thereof and the requested transfer of funds from any form of account from the City Council to the Judicial and whether the request was approved or disapproved.

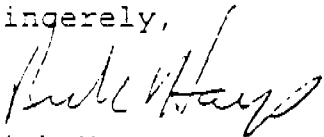
Court Administrator
August 10, 1995
Page 3

This request is made in connection with CCR's representation of Mr. Sweet. If your office claims any exemptions to this request or withholds any material, please provide us with an itemized list of materials withheld and a written explanation identifying conclusions you reached when classifying all listed records as exempt.

We also request a cover letter certifying that you are providing CCR with a complete and accurate copy of all requested records.

Thank you for your time and assistance in this matter.

Sincerely,



Rick Hays
CCR Investigator