

Law Offices

HOLLAND & KNIGHT

315 South Calhoun Street
Suite 600
P.O. Drawer 810 (ZIP 32302-0810)
Tallahassee, Florida 32301
904-224-7000
FAX 904-224-8832

FILED
S. J. WHITE
JUN 14 1996
CLERK, SUPREME COURT
BY _____
Chief Deputy Clerk

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097

June 13, 1996

STEPHEN F. HANLON
904-425-5626

HAND DELIVERY

Chief Justice Stephen H. Grimes
The Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399

Re: Proposed Florida Rule of Criminal Procedure 3.852

87688

~~**FILED**
S. J. WHITE
JUN 15 1996
CLERK, SUPREME COURT
BY _____
Chief Deputy Clerk~~

Dear Chief Justice Grimes:

The law firm of Holland and Knight files these comments in response to the Court's opinion of April 25, 1996, promulgating proposed Rule of Criminal Procedure 3.852. These comments are timely filed within 30 days of the date of publication in The Florida Bar News issue dated May 15, 1996.

Effect on Volunteer Counsel

If the rule goes into effect as written, the impact on current volunteer counsel will almost certainly dissuade private attorneys in the future from volunteering their time to assist in capital postconviction matters. When we agreed to undertake Richard Cooper's case, it was with the understanding that the circuit court would agree to

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reasonable schedules regarding matters pending in the circuit court due to counsel's heavy workload in private practice. For example, the trial court allowed us six months to familiarize ourselves with the case. (See attached letter.) This rule appears to abrogate those agreements¹ and may compel us to withdraw from the Cooper case. This rule would almost certainly preclude our taking on future cases as volunteer counsel.

Chapter 119 Consistency

Subsections (e)(1) and (2) should be modified to conform to § 119.07(2)(a), Fla. Stat. (1995), which requires agencies to specify the statutory basis for any exemptions they claim. Agencies are presently required to identify an exemption in order to assert it. Without the identification of these exemptions the requestors will not receive the present statutorily required disclosures. Exemption claims will then be matters for the trial court and the State Attorney (or other opposing counsel) to determine, without benefit of any meaningful participation by defense counsel. We believe such a procedure raises grave due process and equal protection concerns.

¹ The pertinent time limits outlined in subdivision (d)(2)(D) are applicable to "cases in which a capital postconviction defendant has a pending rule 3.850/3.851 motion...".

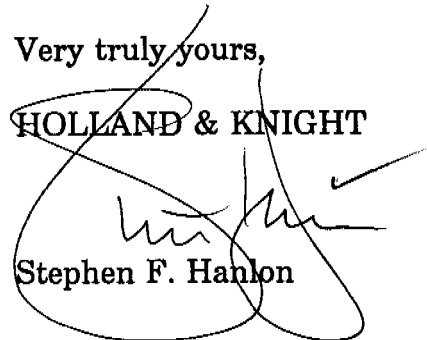
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Sanctions

The rule has no provision for sanctions if agencies should fail to respond on time, except for waiving the right to assert exemptions. We believe the rule should provide for tolling until compliance occurs.

Very truly yours,

~~HOLLAND & KNIGHT~~



Stephen F. Hanlon

SFH/bf

TAL-86639