

SUPREME COURT OF FLORIDA

FILED 097
SID J. WHITE
JUN 14 1996
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 THE FLORIDA SHERIFFS
ASSOCIATION UPON RULE 3.852 OF THE
FLORIDA RULES OF CRIMINAL PROCEDURE**

COMES NOW, the FLORIDA SHERIFFS ASSOCIATION, by and through the undersigned counsel, and hereby files the instant comments to proposed Rule 3.852, Florida Rules of Criminal Procedure:

1. On its own motion, this Court promulgated proposed Rule 3.852 to “provide orderly procedures to govern the process of considering public records requests in the context of capital post conviction proceedings.” This Court 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. It can be assumed that the rule has been proposed to expedite the capital postconviction process as it relates to handling public records requests in capital

postconviction cases. The Florida Sheriffs Association represents the interests of the 67 elected sheriffs of the State of Florida . Sheriff's offices are considered public agencies for purposes of requests for production of public records.

3. The Florida Sheriffs Association supports the Court's proposal as it relates to streamlining the process, as sheriff's offices throughout the state are inundated with numerous requests for documents on behalf of capital postconviction defendants. However, we believe that some clarification/amendment is necessary in regard to the area addressed below.

4. Since Rule 3.581(b)(4), Fla. R. Crim. P., provides for the granting of stays of execution, it is perceived by some that unnecessary delays are taking place because disputed public records requests must be resolved by circuit courts where the requests are made. In the effort to streamline the process, the proposed rule would transfer the venue for disputed public records requests from the county where the request is being made to the county where the original trial was held.

5. Proposed Rule 3.852(c)(1), provides that "all requests for production of public records and all objections to production of public records shall be filed in the trial court" (emphasis added). The "trial court" is defined as the judge who 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 motion. In theory then, if the criminal trial were held in south Florida and a public records request is made of a north Florida sheriff's office , that sheriff's office would need to send representatives to south Florida if they wish to claim that the records are exempt. This could pose a significant financial burden on sheriff's

offices as well as the use of significant public resources including staff travel, court preparation and trial.

6. The undersigned counsel respectfully submit that disputes under this new rule be handled as other civil matters under Section 47.011, Florida Statutes, which requires that the actions be brought only in the county where the defendant resides, where the cause of action occurred or where the property in litigation is located. All three of these conditions would put venue in the county of the sheriff that holds the disputed documents.

7. Additionally, a more equitable solution would be to have the venue remain in the county where the sheriff resides who is the custodian of the records and require that the representative of the capital postconviction defendant file a motion in the "trial court" making a good faith showing that the disputed documents are essential to the defendant's appeal. The criminal trial court would conduct a prima facie hearing to determine whether the documents are essential to the appeal. If the trial court rules for the defendant, then the court shall enter an order staying the capital post conviction proceedings until the public records issue is resolved in the county where the records are located pursuant to Chapter 119, Florida Statutes. The times for filing a public records request would be set forth in Rule 3.852. The standards for a "good faith showing" should be that the public records sought reasonably lead to evidence that: (1) is essential to the defense; (2) was unknown to the defense at trial, or; (3) would otherwise demonstrate that the defendant did not receive a fair and impartial trial.

8. Finally, the Florida Sheriffs Association has been provided a copy of the comments filed with this Court by the Attorney General, and would respectfully agree with the suggestions set forth in those comments.

WHEREFORE, the Florida Sheriffs Association, respectfully requests that this Court accept for its consideration these instant comments to proposed Rule 3.852, Fla. R. Crim. P. pertaining to capital postconviction public records requests.

Respectfully Submitted,

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