IN THE SUPREME COURT OF FLORIDA

NO. 90403

BARRY HOFFMAN,

Petitioner,

V.

THE HONORABLE L.PAGE HADDOCK
Circuit Judge, Fourth Judicial Circuit
In and For Duval County,

Respondent.

EMERGENCY PETITION FOR EXTRAORDINARY RELIEF,
FOR A WRIT OF PROHIBITION,
AND FOR A WRIT OF MANDAMUS
AND REQUEST FOR STAY

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Petitioner, BARRY HOFFMAN through undersigned counsel, petitions this Court for a writ of prohibition prohibiting the Honorable L. Page Haddock, Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, from conducting an evidentiary hearing in the matter of State of Florida v. Barry Hoffman, Case Nos 81-9299 CF and 82-2527 CF without directing Duval County or the City of Jacksonville to pay all costs associated with the evidentiary hearing, or in the alternative, for a writ of mandamus directing Judge Haddock to continue the evidentiary hearing until after the beginning of the fiscal year on July 1, 1997.

Judge Haddock has scheduled an evidentiary hearing regarding several of the claims raised in Mr. Hoffman's Amended Motion to Vacate Judgement for April 29, 1997 through May 2, 1997, Despite full knowledge of the dire financial straits in which the Office of the Capital Collateral Representative finds itself, Judge Haddock has refused to either grant Mr. Hoffman's motions for continuance or to direct Duval County or the City of Jacksonville to pay all costs associated with the hearing. This case presents the question of whether Mr. Hoffman can be compelled to go forward with an evidentiary hearing with counsel who has no funds to prepare or present his case. As grounds for relief, Petitioner alleges:

I. INTRODUCTION

Petitioner requests the Court's attention to this Petition for extraordinary relief at the earliest opportunity as Petitioner has been ordered to conduct an evidentiary hearing in Mr. Hoffman's case which is scheduled to begin on April 29, 1997. Pursuant to Rules 9.030(a)(3) and 9.100 of the Florida Rules of Appellate Procedure,

Petitioner respectfully urges that this Court stay any further postconviction proceedings, including the currently scheduled evidentiary hearing, in Mr. Hoffman's case pending this Court's consideration of the petition for writ of prohibition.

Petitioner, Barry Hoffman, is an indigent individual incarcerated at Union Correctional Institution under sentence of death. Petitioner Hoffman is entitled to a full, fair and adequate opportunity to vindicate his constitutional rights pursuant to the post-conviction process established under Art. V, sec. 3(b)(9), Fla. Const., Fla. R. App. P. 9.030(a), and Fla. R. Crim. P. 3.850. See, e.g., Holland v. State, 503 So. 2d 1250 (Fla. 1987). Florida's constitution and laws, Holland; Fla. R. Crim. P. 3.850; art. V, sec. 3(b)(9), Fla. Const.; Fla. R. App. P. 9.030(a)(3), as well as the federal constitution, guarantee Petitioner Hoffman that opportunity. See Michael v. Louisiana, 350 U.S. 91, 93 (1955) (Due Process Clause guarantees defendant "a reasonable opportunity to have the issue as to the claimed right heard and determined by the state court."), quoting Parker v. Illinois, 333 U.S. 571, 574 (1948); Case v. Nebraska, 381 U.S. 336, 337 (1965) (Clark, J., concurring) (federal constitution guarantees defendant "adequate corrective [state-court] process for the hearing and determination of [his] claims of violation of federal constitutional guarantees); see also id. at 340-47 and nn. 5-6 (Brennan, J., concurring) (same).

The process will fail in Petitioner Hoffman's case unless this Court exercises its lawful authority to stay the proceedings on Mr. Hoffman's Rule 3.850 motion. Due process, equal protection, the Sixth Amendment, and the Eighth Amendment's "need

for reliability in the determination that death is the appropriate punishment," Woodson v. North Carolina, 428 U.S. 280, 304 (1976), countenance no less.

Petitioner respectfully urges that this Court stay any further post-conviction proceedings in Mr. Hoffman's case, including the evidentiary hearing currently set for April 29, 1997 through May 2, 1997.

II. JURISDICTION

This is an original action under Rule 9.1 OO(a) of the Florida Rules of Appellate Procedure. This Court has original jurisdiction pursuant to 9.030(a)(3) thereof and art V, sec. 3(b)(8), Fla. Const. Bundv v. Rudd, 366 So. 2d 440 (Fla. 1978) (writ granted where circuit court erroneously denied motion to recuse judge.)

III. STATUS OF PETITIONER

Mr. Hoffman was sentenced to death in the Circuit Court of Duval County on February 13, 1983. Mr. Hoffman has filed a Motion to Vacate Judgments of Convictions and Sentences with Special Request for Leave to Amend pursuant to Fla. R. Crim. P. 3.850.

At a hearing which took place on February 21, 1997, Judge Haddock informed counsel for Mr. Hoffman that he was under pressure from the Chief Judge of the Circuit to file a report regarding the status of the Hoffman case, who in turn was under pressure to report this status to this Court. Judge Haddock declared that he was determined on that day to calendar the dates for Mr. Hoffman's subsequent Huff

and evidentiary hearings, and that he was resolute in his decision to proceed on the chosen dates in order to alleviate any further chastisement by his superiors.

Judge Haddock proceeded to schedule Mr. Hoffman's Huff hearing on April 11, 1997 and to schedule the evidentiary hearing in Mr. Hoffman's case on April 29, 1997 through May 2, 1997. As counsel would not know which claims the Court would grant a hearing on until after the Huff hearing on April 11, 1997, counsel was given approximately two weeks to subpoena and prepare to present witnesses in Mr. Hoffman's case. In response to counsel's concerns regarding the feasibility of obtaining out-of-state subpoenas for the numerous mitigation witnesses whom Mr. Hoffman intended to call at the April 29, 1997 hearing, Judge Haddock asserted that undersigned counsel would simply have to obtain these out-of-state subpoenas prior to the April 11, 1997, and then cancel them should an evidentiary hearing not be granted.

On March 11, 1997, Governor Chiles signed a warrant for the execution of Leo Alexander Jones, with an execution date of April 15, 1997. Ms. Anderson Mills and Michael Chavis, the second chair and investigator on Mr. Hoffman's case, had previously been assigned to represent Mr. Jones. As such, they were compelled to turn their complete attention to the litigation of Mr. Jones' case and were not available to work on the preparation of Mr. Hoffman's case. On April 10, 1997, this Court stayed Mr. Jones' execution and remanded his case to the circuit court for an evidentiary hearing regarding his electric chair claim as expediently as possible. This

hearing would require substantial preparation, compelling the full attention of all those assigned to his team.

Because of these circumstances, undersigned counsel filed a Motion to Reset Evidentiary Hearing. See Attachment A. Argument was heard on this motion at the April 11, 1997 Huff hearing in Mr. Hoffman's case. The state opposed this motion. Judge Haddock thereafter denied Mr. Hoffman's Motion to Reset, stating that it was his belief that the hearing on the electric chair would not go forward in the near future. See Attachment B.

At the same time Judge Haddock was making these assertions, however, Judge Soud, the Judge presiding over Mr. Jones' case in Duval County, was scheduling the evidentiary hearing in Mr. Jones' case for 9:00 a.m. on April 15, 1997. Thus, the complete attention of the Jones' team was necessarily turned to the preparation of this hearing. The hearing lasted from 9:00 a.m. on April 15, 1997, to the afternoon of April 18, 1997.

In an effort to correct Judge Haddock's mistaken belief that the Jones team would not be litigating the chair claim prior to the Hoffman evidentiary hearing, undersigned counsel filed an Amended Motion to Reset the Evidentiary Hearing on April 15, 1997. See Attachment C. This Motion was denied by Judge Haddock without a hearing, and undersigned counsel was ordered to file a list of witnesses he intended to call at the hearing by 5:00 p.m. on April 21 , 1997. See Attachment D.

On April 23, 1997, Michael Minerva, the Capital Collateral Representative, issued a memorandum informing undersigned counsel and all CCR staff that CCR had

expended or encumbered the entire amount appropriated to it for FY 96-97 and that CCR had sought, but not yet received, authorization to deplete its trust fund in order to pay bills. Additionally, the memorandum explained that with the exception of money from the trust fund (which funds have yet to be released) CCR would not have more money coming until July 1, 1997. The memorandum asserted that consequently, no expenditures of any kind would be approved, and that no money was available to litigate Mr. Hoffman's hearing or any other hearing. Consequently, there are absolutely no funds available to undersigned counsel for the litigation of Mr. Hoffman's hearing.

After being appraised of this alarming situation, undersigned counsel, out of desperation, immediately drafted and filed a Motion For Order Directing Payment of Defendant's Hearing Costs Or, In The Alternative, Motion To Continue, And Emergency Motion For Hearing. See Attachment E. This motion contained full information regarding CCR's financial crisis and complete lack of funding and also contained an estimate of the costs undersigned counsel anticipated would be incurred at the hearing. However, armed with this knowledge, Judge Haddock denied the motion without a hearing on April 24, 1997. See Attachment F.

Mr. Hoffman and undersigned counsel have been placed in the untenable position of litigating claims at an evidentiary hearing without any funds to pay for the testimony, transportation and lodging of experts and other witnesses (including out-of-state witnesses) he desires to call in support of his claims at the evidentiary hearing. Undersigned counsel does not even have the funds available to him to provide

transportation to or lodging during the hearing for his own litigation team. A writ of prohibition is the proper remedy to preserve Mr. Hoffman's Constitutional rights.

IV. REASONS FOR GRANTING PETITION

The Office of the Capital Collateral Representative (CCR) is required by law to provide effective legal representation to all death row inmates in post-conviction proceedings. § 27.702, Fla. Stat. (1996); Spalding v. Dugger, 526 So. 2d 71 (Fla. 1988); Ssaziano v. State, 660 So.2d 1363, 1370 (Fla. 1995). This involves filing innumerable pleadings and briefs in Florida's circuit courts, the Florida Supreme Court, the United States District Courts, the Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. CCR is also responsible for presenting oral arguments and conducting evidentiary hearings. Attorneys and investigators on a case must: review the entire record on appeal of the case; obtain and review all public records related to the case; investigate witnesses and issues relevant to the case; obtain the opinions of experts on relevant issues such as mental health, crime scene, DNA, etc.; and assess the performance of trial counsel under the relevant constitutional standards as well as research the existence of other possible constitutional violations. This and other research and investigation is crucial to the preparation of a Rule 3.850 motion, and it all requires money, As of April 23, 1997, CCR had expended all its available funds for the 1996-97 fiscal year.

The dire financial straits in which CCR now finds itself is the result the culmination of its ten-year history of being continually underfunded, and the actions

of this Court, the legislature and other agencies. Recently, Rule 3.851 of the Florida Rules of Criminal Procedure reduced the filing time for 3.850 motions from two (2) years to one (1) year.' That change became effective January 1, 1994. CCR, which was underfunded even before the one (1) year limit of Rule 3.851 was enacted, has never received the increase of funding necessary to operate under the one (1) year time limit.

During 1994, the number of direct appeal affirmances by this Court was the highest in its history. The Legislature during the 1995-96 fiscal year did not appropriate the extra funds to compensate for that additional and unpredicted caseload. As a result, CCR was unable to achieve new Rule 3.851 filings at the same rate as the influx of new cases. In the spring of 1995, this Court compressed the filing dates for Rule 3.851 motions to a rate of one (1) per week. That schedule exceeded CCR's capacity. The 1995 session of the Legislature did not increase CCR's funding beyond its previous level for the 1995-96 fiscal year.

With more cases than it could prepare and file habeas corpus petitions in within the time required by Rule 3.851, and without funds to increase its staff any further, CCR asked the Florida Supreme Court to: (1) find that CCR is not fully funded, (2) repeal the one (1) year time limit as required by the express terms of Rule 3.851, and (3) stay its orders for designation of counsel and filing of habeas corpus petitions in specified cases. In part as a result of this request, this Court extended the due date

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'Despite being considered a one (1) year rule, once counsel is assigned to a case under Rule 3.851, there remains only eleven (11) months in which to prepare the Rule 3.851 motion.

for the assignment of counsel and subsequent filing of Rule 3.851 motions. Under this Court's orders to assign counsel, CCR has assigned counsel to over forty-four (44) new cases since April, 1996.

The Legislature's response to the situation was to appropriate additional funds for the hiring of additional staff and the opening of branch offices during the 1996-97 fiscal year. The branch offices of CCR were opened by January, 1997, but are yet to be fully functional as the Legislature did not provide adequate funding. Consequently, neither of these offices is fully staffed and does not even have the funding available to buy necessary office equipment.

CCR's already existing financial crisis was greatly exacerbated by a combination of factors which have served to greatly increase its workload and staff, and which have resulted in the complete depletion of its funds. On October 30, 1996, this Court enacted Rule 3.852, setting forth the procedure for obtaining public records by postconviction litigants. Compliance with Rule 3.852 has placed a significant drain on the resources of CCR in the following areas: postage, paper, freight, salary and overtime, and the purchase of copies of requested records. CCR presently represents 188 clients, some of which have multiple cases. CCR has had to dedicate the time of 5 full time employees to the task of making and tracking Rule 3.852 requests within the strict schedules imposed by the Rule on these cases.

Compliance with Rule 3.852 has also required extensive litigation[2] thus far, all

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'Some of the objections and motions for protective order filed by state agencies have made startling assertions, yet CCR lawyers will have to spend time and money to protect their client's interests against those assertions, such as the assertion that

of which costs CCR money. In March alone, in order to comply with the Rule, CCR attorneys researched, prepared and filed over sixty (60) motions to compel. Thereafter in the weeks following the effective date of the rule, many additional pleadings have been researched, prepared and filed in order to meet the strict schedules imposed by the Rule on CCR cases. Researching, preparing and filing motions and pleadings costs money.

Effective April 1 1, 1996, the Rules of Judicial Administration were amended to require the chief judge of each judicial circuit to "monitor the status of all pending postconviction or collateral relief proceedings brought by defendants who have been sentenced to death" and "take the necessary actions to assure that such cases proceed without undue delay." Fla. R. Jud. Admin. 2.050(b)(7). Further the Rule requires that beginning with July 1, 1996, on the first day of every January, April, July, and October thereafter, the chief judge of each judicial circuit is to inform the chief justice of this Court as to the status of all such pending action. Id.

Additionally, it has become apparent that Justice Wells has corresponded with several circuit courts requesting when the pending 3.850 litigation would be completed. The reaction to these communications has been a great increase in the pace of proceedings and number of hearings set in pending cases around the state. It is apparent and has been communicated to CCR attorneys by judges that these status reports and especially these requests by Justice Wells have had the effect of drastically increasing the number of proceedings which CCR attorneys must prepare

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the obligations of Brady v. Maryland do not apply to a Sheriff's Office.

for and attend. Attendance and presentation of hearing costs money. The increased costs associated with the increased pace of proceedings on pending 3.850 motions has drained CCR's financial resources.

The increase is astounding. An estimate based on hastily reviewed records reveal that from July 1, 1996 until March 31, 1997, CCR attorneys attended approximately three times more court hearings and oral arguments than during the entire 1995-96 fiscal year. Moreover, in the first twelve (12) months since the rule was announced, from April 1996 until the end of March 1997, CCR lawyers attended a total of approximately three hundred and sixty four (364) hearings and oral arguments.[3] In nine months prior to April, 1996, CCR lawyers attended

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[3]Many of these hearing were full-blown evidentiary hearing on Rule 3.850 motions. For example, since July 1, 1996, in State v. Trepal a 5 day hearing was conducted, in State v. Bruno, a 4 day hearing was conducted and the hearing re-set for 4 more days in June, in State v. Young, a one day hearing was conducted, in State v. Porter, a one day hearing was conducted, in State v. Medina, a 4 day hearing was conducted, in State v. Smith, a 2 day hearing was conducted, in State v. Swafford, a 2 day hearing was conducted, in State v. Castro, a one day hearing was conducted, in State v. C. Jones, a 2 day hearing was conducted, in State v. Cherry, a 3 day hearing was conducted, in State v. Happ, a one day hearing was conducted, in State v. Johnson, a 3 day hearing was conducted, in State v. Duckett, a 3 day hearing was conducted, in State v. Glock, a 2 hearing was conducted, in State v. Jones, a 2 day hearing was conducted, in State v. Wright, a 5 days hearing was conducted, in State v. Teffeteller a one day hearing was conducted, in State v. Quince a one day hearing was conducted, in State v. L. Jones, a 4 day hearing was conducted, in State v. P. Brown, a 2 day hearing was conducted, in State v. Gilliam a 1 day hearing was conducted.

Each of these hearings was a full blown evidentiary hearing but this list does not include the many chapter 1 19 evidentiary hearings.

The pace of evidentiary hearings has never been so high. Evidentiary hearings are a huge drain on resources in the areas of travel, overtime, OPS, and per diem. Furthermore, some of these hearings have been conducted in cases which were previously litigated by volunteer counsel with the assistance of the now-defunct VLRC. In these cases, CCR has been required to pay all or a substantial part of the bills to conduct the hearings.

approximately ninety-one (91) hearings total! Averaging that onto a one year basis would result in a number of one hundred twenty-two (122). Thus, it would amount to a tripling of the number of hearings held in the year since this Court adopted its rule in April of 1996.

Another change in circumstances that has resulted in increased litigation, and concomitantly, increased costs, is the enactment of continuous warrant. In 1996, the Legislature made death warrants effective continuously. § 922.052(2), Fla. Stat. (1996) provides that:

> If, for any reason, the sentence is not executed during the week designated, the warrant shall remain in full force and effect and the sentence shall be carried out as provided in s. 922.06.

The new statute means a warrant never expires. In the past, once a client was granted an indefinite stay from a court, the litigation would cease until the court granting the stay issued an opinion or order. Now, the litigation continues at the frantic pace that previously characterized just the 4-6 weeks during which a warrant was pending until the client was executed. The first case to actually operate under continuous warrant, Pedro Medina, is indicative of the increased litigation caused by the change in law. The Governor signed Mr. Medina's death warrant on October 30, 1996, and set his execution week for December 2 through December 9, 1996. Mr. Medina's litigation team, who were all assigned to the case on November 12, 1996, due to a conflict of interest with prior counsel, had no familiarity with the case. Mr.

Medina's investigators began initiating public records requests. On behalf of Mr. Medina, undersigned counsel notified the Governor on December 2, 1996, that Mr. Medina was insane to be executed as set forth in § 922.07, Fla. Stat. The Governor stayed Mr. Medina's execution, then set psychiatric evaluations for December 5, 1996. Mr. Medina's counsel attended the examination of Mr. Medina by the Governor's commission of psychiatrists on December 5, 1996. On December 6, 1996, counsel filed a Rule 3.850 motion, a motion for appointment of conflict-free counsel, a motion for determination of competency to proceed, and a motion for appointment of clemency counsel with the circuit court. Also in the circuit court, Mr. Medina's counsel filed and litigated five separate motions to compel production of public records.

On January 6, 1997, the Governor re-set Mr. Medina's execution for January 29, 1997. In the ensuing weeks, Mr. Medina's counsel filed a motion for determination of competency to be executed, attended an all-day hearing on Mr. Medina's motion for determination of competency to proceed, attended a Huff hearing, and presented oral argument to the Florida Supreme Court. This Court issued an indefinite stay on January 27, 1997, a stay that lasted only two weeks.

On February 10, 1997, the Court issued an opinion remanding for an evidentiary hearing on Mr. Medina's competency to be executed. However, this Court gave the circuit court only 21 days to conduct the hearing and issue an order. Mr. Medina's counsel conducted a four-day evidentiary hearing, before which they attended a second evaluation of Mr. Medina at Florida State Prison by the court's appointed

mental health experts. The circuit court issued its order on the Monday following the evidentiary hearing. Mr. Medina's counsel appealed. The Florida Supreme Court gave Mr. Medina's counsel 36 hours to write the appellate brief, which was over 100 pages long. The Florida Supreme Court heard oral argument on March 10, and issued its opinion on March 19, 1997. Also in February, Mr. Medina's counsel filed two additional Rule 3.850 motions and conducted Huff hearings on each.

Mr. Medina's counsel proceeded to file in federal court and attempted to comply with the dictates of the new federal habeas statute. Mr. Medina's counsel filed a federal habeas, an application for certificate of appealability with the district court and the Eleventh Circuit, an application for leave to file a second petition with the Eleventh Circuit, two cert petitions to the United States Supreme Court on the denial of the Rule 3.850 motion and denial of the competency to be executed motion, an original habeas in the United States Supreme Court, and a petition for extraordinary relief off the denial of the federal habeas by the Eleventh Circuit. All relief was denied around midnight on March 24, 1997, and Mr. Medina was executed on March 25, 1997 at 7:10 a.m., under circumstances that caused the members of Mr. Medina's litigation team who were present in Starke for the execution to proceed to Gainesville and initiate proceedings in federal court to stay Mr. Medina's autopsy and perpetuate evidence.

The Medina litigation, as evidenced above, was active continuously from November 12, 1996 to even after Mr. Medina was executed. For four months, three attorneys and two investigators of CCR devoted 99% of their time to the Medina

litigation, while the rest of the office assumed the Medina team's duties on other cases. The impact of the Medina litigation, under continuous warrant, was felt office-wide in terms of resources and time expended.

Moreover, the Anti-Terrorism and Effective Death Penalty Act of 1996, which imposes a one-year time limit on state prisoners by which time they must file a federal habeas petition became effective on April 24, 1996. In order to toll the one-year time limit on behalf of death sentenced inmates in Florida represented by CCR, CCR lawyers prepared and filed over forty (40) Rule 3.850 motions during March and April of 1997. Such action had to be undertaken on behalf of any inmate CCR provides counsel for who did not already have a Rule 3.850 motion or federal habeas corpus petition pending. Researching, preparing and filing Rule 3.850 motion costs money.

CCR is presently out of money. To keep up with what has been demanded of CCR has cost CCR significantly more to operate during this fiscal year thus far (based on 9 months of expenditures) than it did for CCR to operate during the entire fiscal year of 1995-96. For example, travel costs, which supposedly were to decrease once the branch offices opened, have increased dramatically because of the huge increase in the number of court proceedings, particularly evidentiary hearings.[4] From July 1, 1996 until March 31, 1997, travel expenditures were approximately one-hundred (100%) of what they were during the entire 1995-96 fiscal year.

[4]CCR must pay not only for the travel and accommodations of its attorneys and investigators, but also any witnesses required.

Expenditures for postage from July 1, 1996 until March 31, 1997, have been approximately one-hundred thirty seven (137%) of what they were during the entire 1995-96 fiscal year. This increase is largely attributable to CCR's compliance with Rule 3.852 which requires service of requests be made either personally or by certified mail. Fla. R. Crim. P. 3.852(c). Furthermore, Rule 3.852 requires that copies of the requests be served on the trial judge, trial court, attorney general and all counsel of record. CCR has been achieving that requirement by filing and serving requests by notice of filing to all parties required by the Rule. In that way, numerous requests can be filed and served simultaneously upon courts and parties in the most efficient means possible. Rule 3.852 also requires either an affidavit of personal service or a certified return receipt be filed in the trial court and a copy served upon the attorney general and all counsel of record. Fla. R. Crim. P. 3.852(c)(3). This requirement has also been achieved by the filing and service of a notice of filing. In that way, numerous receipts can be filed and served simultaneously upon courts and parties as efficiently as possible.[5]

Expenditures for freight from July 1, 1996 until March 31, 1997, have been approximately one-hundred seventy-one (171%) of what they were during the entire 1996-97 fiscal year. This increase is attributable to the fact that CCR has been required to open branch offices in Miami and Tampa this fiscal year. Voluminous records and files had to be shipped from Tallahassee and many remain in Tallahassee

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'However, those return receipts must be filed within 5 days of their receipt to be compliant with Rule 3.852.

which need to be shipped but cannot be due to the budget shortfall. Again Rule 3.852 has required increased expenditures in this area because requested records must be shipped to CCR at CCR's expense. Moreover, expenditures for obtaining copies of requested records from July 1, 1996 until March 31, 1997, have been approximately one-hundred forty three (143%) of what they were during the entire 1995-96 fiscal year.

Finally, expenditures for overtime have skyrocketed. For the nine months from July 1, 1996 until March 30, 1997, overtime has costs one hundred and thirty percent (130%) of what it cost for the entire 1995-96 fiscal year. Under federal law, CCR investigators and support staff must be paid time and a half for time spent working over 40 hours per week. In order to meet 3.852 deadlines, overtime has been necessary and will continue to be necessary. However, there are no funds to pay it.

The demands placed on investigators and support staff dictate that they work an exorbitant number of overtime hours. Since they are intimately involved with hearings and death-warrants, their workload has been greatly affected by the alarming pace of these type of proceedings. The preparation time required to adequately prepare for hearings requires that investigators and support staff personnel work such an exhausting number of overtime hours that it is impossible to focus on more than a few cases at any one time. The institution of the continuous death-warrant precludes a significant portion of the investigative and support staff resources from being applied to the sizeable number of cases not under warrant.

The institution of Fla. R. Crim. P. 3.852 and the current unprecedented caseload further illustrates the somber reality of the overtime issue. Investigators must attempt to review, analyze and digest the voluminous amount of paper on all one-hundred and ninety (190) cases to determine the history and present status of the records collection process and apply the requirements of Rule 3.852. There is not time to competently complete such a task while simultaneously attempting to fully investigate every aspect of each case with a 3.851 due date and/or prepare the cases presently set for evidentiary hearing.

These unreasonable working conditions have driven the investigators and support staff to undertake the role of crisis management experts. They are not afforded the resources to competently complete all the responsibilities under these circumstances. To the contrary, they are forced to move from crisis to crisis while neglecting the pressing needs of clients that do not fall under the "emergency" category. Despite working unprecedented amounts of overtime, investigators and support staff personnel are only able to complete a small portion of the work required of CCR. The consequence of these unforeseeable and oppressive financial drains on CCR is the complete depletion of CCR's allotted funds for the 1995-96 fiscal year. In its current predicament, CCR has no funds available to it for any expenditure whatsoever. If compelled to go forward with an evidentiary hearing on April 23, 1997, or on any other date prior to July 1, 1997, Mr. Hoffman will be financially constrained from doing anything which requires money. This includes attending the

hearing, as CCR has no money for transportation and the hearing will take place in Jacksonville.

Under these circumstances, it will impossible for undersigned counsel to provide Mr. Hoffman with the meaningful assistance of counsel which this Court has affirmatively stated he is entitled to. Spaldina v. Dugger, 526 So. 2d 71 (Fla. 1988); Spaziano v. State, 660 So.2d 1363, 1370 (Fla. 1995).

This Court has acknowledged that it is impossible for an attorney to provide representation when in such a predicament. In State of Florida ex re. Escambia County v. Jack Behr, 354 S. 2d 974 (1st DCA 1978); aff'd 384 So. 2d 147 (Fla. 1980), the public defender for the First Judicial Circuit had filed motions to withdraw, based on its inability to provide effective assistance of counsel due to excessive caseload. The Court found that the public defender could not be compelled to accept these cases, stating that "Section 27.51 cannot be construed mechanically, in all circumstances, to mandate the appointment of the public defender if so doing would compromise the effectiveness of his representation. Both ethical considerations and professional standards dictate otherwise." Id, at 976. This Court affirmed the decision of the District Court.

Additionally, in Kiernan v. State, 485 So. 2d 460 (Fla. 1st DCA 1986), the Court found under such circumstances that "when [the desire to avoid additional expenditure necessitated by the withdrawal of public defenders and the need to appoint special public defenders] is weighed against the indigent defendant's

constitutional right to effective assistance of appellate counsel, the constitutional right must prevail." Id., at 462.

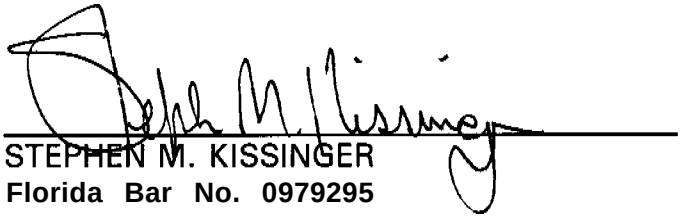
In similar situations, this Court has directed public defenders to decline to accept any new capital appeals until the office was in a position to file timely briefs. See In re: Directive to the Public Defender for the Seventh Judicial Circuit, (Fla. 1981). In re: Order of Prosecution of Cr. App, 561 So.2d 1130 (Fla. 1990), this Court recognized that it is empowered and has the responsibility to impose appropriate remedies to protect the rights of indigent defendants , Surely, these considerations must be applied to Mr. Hoffman's case. The appropriate remedy is for this Court to prohibit the circuit court from compelling Mr. Hoffman to go forward with an evidentiary hearing on April 29, 1997 until appropriate funds are provided. This remedy has been consistently applied by Florida Courts. In Re: Order on Motions to Withdraw, 612 So. 2d 597 (Fla. 2nd DCA 1992); Bennett v. State, 605 So. 2d 552, 553 (Fla. 3d DCA 1992); Younq v. State, 580 So. 2d 301 (Fla. 1st DCA 1991); Hatten v. State, 561 So. 2d 562 (Fla. 1990); In Re: Order on Prosecution of Criminal Appeals, 561 So. 2d 1130 (Fla. 1990).

Furthermore, forcing Mr. Hoffman to go forward when his counsel has been denied any funds to operate constitutes denial of access to the courts of this state under article I, section 21 of the Florida Constitution and deprives him of due process.

WHEREFORE, Mr. Hoffman requests that this Court issue a writ of prohibition prohibiting the Honorable L. Page Haddock, Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, from conducting an evidentiary

hearing in the matter of State of Florida v. Barrv Hoffman, Case Nos 81-9299 CF and 82-2527 CF without directing Duval County or the City of Jacksonville to pay all costs associated with the evidentiary hearing, or in the alternative, for a writ of mandamus directing Judge Haddock to continue the evidentiary hearing until after the beginning of the fiscal year on July 1, 1997.

I HEREBY CERTIFY that a true copy of the foregoing petition has been furnished by United States Mail, first class postage prepaid, to all counsel of record on April 25, 1997.



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Attachment A

IN THE CIRCUIT COURT FOR THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

Case Nos: 81-9299-CF
82-2527-CF
Division Q

STATE OF FLORIDA,

Plaintiff,

v.

BARRY HOFFMAN,

Defendant.

MOTION TO RESET EVIDENTIARY HEARING

The Defendant, BARRY HOFFMAN, through undersigned counsel, hereby requests that this Court re-set the evidentiary hearing in this cause, currently set for April 29, 1997, through May 2, 1997. As grounds and reasons Mr. Hoffman states:

1. Since this Court set the date for the evidentiary hearing in this cause, circumstances for undersigned counsel have changed, making it impossible for counsel to conduct the evidentiary hearing on the forgoing dates. Both undersigned counsel's second chair on Mr. Hoffman's case, Ms. Mary Anderson Mills, and Mr. Hoffman's investigator, are assigned to the case of Mr. Leo Jones. Mr. Jones is scheduled to be executed on April 15, 1997. Mr. Jones' current warrant week extends from April 1 O-l 7, 1997. However, Mr. Jones' warrant is a continuous warrant, which means that it remains in effect even in if the execution does not occur during the scheduled warrant

week. For the next three weeks, undersigned counsel's second chair and investigator will be focusing exclusively on Mr. Jones' case.

2. Undersigned counsel has an evidentiary hearing scheduled in James Aren Duckett's case in Lake County for April 9-11, 1997. This hearing has been set since January, 1997. Similarly, undersigned counsel has a hearing in Miami set for April 18, 1997.

3. For the foregoing reasons, Mr. Hoffman' counsel is simply unable to prepare for an evidentiary hearing in Mr. Hoffman' case on April 29, 1997, through May 2, 1997. Undersigned counsel's second chair and investigator will be in warrant litigation at least until April 17, 1979. Undersigned counsel will be in hearing, and/or in preparation for hearing, the entire week of April 6, 1997. Ms. Anderson and Mr. Hoffman' investigator will have scarcely more than one week from the end of the Jones warrant litigation to prepare for a four-day evidentiary hearing in this case. Several of the witnesses 'which counsel intends to call on Mr. Hoffman's behalf are out-of-state.

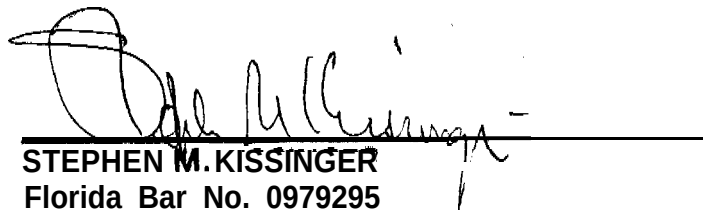
4. Forcing Mr. Hoffman to proceed to an evidentiary hearing in this matter under these circumstances would constitute a denial of due process and a denial of the effective assistance of counsel in postconviction proceedings.

5. The State of Florida has consistently taken the position that warrant-litigation must take precedence over counsel's other duties, and has repeatedly asked for continuances on those grounds. Mr. Hoffman's counsel has also requests continuances due to the warrant litigation, which routinely have been granted.

WHEREFORE, Mr. Hoffman, through undersigned counsel, requests that this Court re-set the evidentiary hearing in this cause after the conclusion of the Jones warrant

litigation and with sufficient time for under-signed counsel to adequately prepare for the hearing.

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by hand delivery to ail counsel of record on April 11, 1997.



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Attorney for Defendant

Copies furnished to:

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Assistant State Attorney
Duval County Courthouse
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Attachment B

IN THE CIRCUIT COURT FOR THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DWAL COUNTY, FLORIDA

Case Nos: 81-9299-CF
82-2527-CF
Division Q

STATE OF FLORIDA,

Plaintiff,

v.

BARRY HOFFMAN,

Defendant.

AMENDED MOTION TO RESET EVIDENTIARY HEARING

The Defendant, BARRY HOFFMAN, through undersigned counsel, hereby requests that this Court re-set the evidentiary hearing in this cause, currently set for April 29, 1997, through May 2, 1997. As grounds and reasons Mr. Hoffman states:

1. On April 11, 1997, undersigned counsel filed a motion to reset the evidentiary hearing, currently set for April 29, 1997, through May 2, 1997, on the grounds that both undersigned counsel's second chair on Mr. Hoffman's case, Ms. Mary Anderson Mills, and Mr. Hoffman's investigator, Mr. Michael Chavis, are assigned to the case of Mr. Leo Jones. A warrant for Mr. Jones' execution was signed on March 11, 1997, a full forty-eight (48) days prior to the date set for Mr. Hoffman's evidentiary hearing.'

'Mr. Jones' warrant was signed eleven days after this Court set Mr. Hoffman's evidentiary hearing.

2. A hearing was held on Mr. Hoffman's motion to reset the evidentiary hearing on April 11, 1997. At the hearing, undersigned counsel informed this Court that the Florida Supreme Court had issued an opinion on April 10, 1997, remanding Mr. Jones' case to the circuit court for an evidentiary hearing regarding Mr. Jones' electric chair claim. Undersigned counsel further informed this Court that the Florida Supreme Court had stayed Mr. Jones' execution to April 18, 1997, with directions to the circuit court to hold the hearing as "expeditiously" as possible.

3. This Court thereafter denied Mr. Hoffman's motion to reset the evidentiary hearing, indicating that the *Jones* matter was in a dynamic state and that, if Judge Soud chose not to set Mr. Jones' case for hearing before the hearing set in this matter, Mr. Hoffman's counsel and investigator would have time to prepare for Mr. Hoffman's evidentiary hearing.

4. At the same time the hearing regarding Mr. Hoffman's motion to reset the evidentiary hearing was being held, a status conference was held regarding the setting of the evidentiary hearing in Mr. Jones' case. Judge Soud has, in fact, set that hearing for 9:30 a.m. on April 15, 1997. Mr. Jones' counsel anticipates the testimony of more than eighty (80) witnesses at that hearing.

5. Ms. Anderson Mills must assist in the preparation for that hearing set in Mr. Jones' case. She must also continue to review available facts and law to determine whether Mr. Jones' case contains legally cognizable claims which would render his

execution, convictions, and/or sentence a violation of the Constitutions of the United States and the State of Florida. Because Ms. Anderson Mills' work on Mr. Jones' case must be completed prior to his execution, it must take priority over Mr. Hoffman's cases. In short, until and unless an indefinite stay is entered in Mr. Jones's case, Ms. Anderson cannot actively engage in Mr. Hoffman's representation.

6. Mr. Hoffman's investigator, Michael Chavis, is the lead investigator in Mr. Jones' case. As such, he must also assist in the preparation and presentation of that hearing set in the Jones matter for April 15, 1997. He must also continue investigation to determine whether Mr. Jones' case contains legally cognizable claims which would render his execution; convictions, and/or sentence a violation of the Constitutions of the United States and the State of Florida. Because that investigation must take place prior to Mr. Jones' execution, it must take priority over every other one of Mr. Chavis's cases. In short, until such time as an indefinite stay is entered in Mr. Jones's case, Mr. Chavis cannot perform **any** services on Mr. Hoffman's behalf.

7. Mr. Hoffman's cannot be effectively represented at the hearing set in this matter without Ms. Anderson Mills' and Mr. Chavis's assistance. Mr. Hoffman's counsel, CCR, cannot afford the luxury of devoting its scarce resources to preparing for hearings which are more than a month and a half in the future. Consequently, no hearing preparation in Mr. Hoffman's case occurred prior to March 11, 1997, the date of the Jones' warrant.

Since that time, virtually every available moment of Ms. Anderson Mills' and Mr. Chavis's time has been spent on Mr. Jones' case.

8. Even if undersigned counsel had absolutely no other responsibilities, he would be unable to do the work of three people. Moreover, undersigned counsel has overwhelming responsibilities. He is lead attorney on over twenty-seven capital cases. He has conducted numerous hearings during the months of March and April, 1997. He has drafted a multitude of pleadings. He has reviewed innumerable documents. He is the Chief Assistant Capital Collateral Representative in the Tallahassee CCR office and, as such, is the direct supervisor and administrator of 17 attorneys and assists in the supervision and administration of the investigators assigned to the Tallahassee Office.

9. While counsel concedes, similar to what the Court obsewed during that hearing on Mr. Hoffman's prior motion to reset, that the Office of the Capital Collateral Representative is grossly underfunded and without adequate resources to even begin to effectively represent its clients under any circumstances, the absolutely critical situation in Mr. Hoffman's case is both unique and transient. Had it not been for the Governor's decision to sign a warrant in Mr. Jones' particular case, Mr. Hoffman would not have been stripped of two-thirds of his legal team.

10. Solely because of the Jones' warrant, Mr. Hoffman has been deprived of even the slightest opportunity to prepare for that hearing set in this matter. Witnesses have not been

contacted in months or even years, Some may even have to be relocated due to the passage of time. Documentary evidence must be located within the voluminous materials compiled in Mr. Hoffman's case. This is true even assuming that undersigned counsel would conducting most of the hearing. The location and preparation of witnesses and documentary evidence would normally have been done by Mr. Hoffman's second chair and/or investigator. Due solely to the Jones warrant, neither have been done in Mr. Hoffman's case.

11. Further, Mr. Hoffman's second chair and/or investigator would normally be responsible for arranging subpoenas and travel for Mr. Hoffman's witnesses. While Mr. Hoffman has not been able to even begin to determine who he will call at hearing, it is believed that many of these witnesses will be members of law enforcement. Due solely to the Jones warrant, these subpoenas cannot be served sufficiently prior to Mr. Hoffman's evidentiary hearing to compel such witnesses' attendance.[2]

12. Judge Soud's decision to conduct an evidentiary hearing in Mr. Jones' case this week, coupled with the temporary stay issued by the Florida Supreme Court, has eviscerated whatever slim chance[3] Mr. Hoffman's legal team had of using these two

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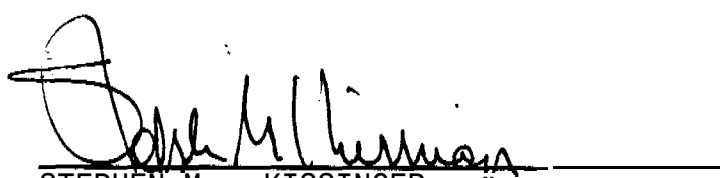
[2] Undersigned counsel would point out that recently the Assistant Attorney General in this case, Ms. Barbara Yates, successfully sought to quash subpoenas served on state employees less that five working days prior to a recent evidentiary hearing in another capital case, State v Gore. She also argued that undersigned counsel violated ethical standards by even serving such subpoenas in the first place.

[3] The Court should note that Mr. Hoffman has been deprived of Ms. Anderson Mills' and Mr. Chavis's services since March 11, 1997.

weeks to prepare for Mr. Hoffman's evidentiary hearing. It will, therefore, be completely impossible for Mr. Hoffman's counsel to prepare for and conduct an evidentiary hearing on April 29, 1997.

WHEREFORE, Mr. Hoffman, through undersigned counsel, again requests that this Court re-set the evidentiary hearing in this cause after the conclusion of the Jones warrant litigation and with sufficient time for under-signed counsel to adequately prepare for the hearing.

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by facsimile transmission, to all counsel of record on April 15, 1997.



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Department of Legal Affairs
The Capitol
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Attachment C

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.

CASE NO: 81-9299 CF
82-2527 CF

STATE OF FLORIDA

v.

BARRY HOFFMAN

ORDER DENYING AMENDED MOTION TO RESET EVIDENTIARY HEARING

THIS CAUSE came on to be heard on the befcndant's Amended Motion to Reset Evidentiary Hearing , and the Court being fully advised in the premises, it is;

ORDERED AND ADJUDGED: That the Defendant's Amended Motion to Reset Evidentiary Hearing is hereby DENIED.

DONE AND ORDERED in Chambers at Jacksonville, buval County, Florida this 17th day of April, 1997.

/s/ L. P. Haddock
CIRCUIT JUDGE

Copies furnished to:

Stephen M. Kissinger, Esq.
Laura Starrett, Esq.
Barbara Yates, Esq.

Post-it® Fax Note 7671	Date 4/17	# of pages ▶ 1
To Stephen Kissinger	From Judge HADDOCK	
Co./Dept. CCR	Co. 4th Circuit	
Phone #	Phone # 630-2537	
Fax # 904/487-1687	Fax #	

Attachment D

IN THE CIRCUIT COURT FOR THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

Case Nos: 81-9299-CF
82-2527-CF
Division Q

STATE OF FLORIDA,

Plaintiff,

v.

BARRY HOFFMAN,

Defendant.

MOTION FOR ORDER DIRECTING PAYMENT OF DEFENDANT'S HEARING COSTS OR, IN THE ALTERNATIVE, MOTION TO CONTINUE, AND EMERGENCY MOTION FOR HEARING

The Defendant, BARRY HOFFMAN, through undersigned counsel, hereby requests that this Court enter an order directing Duval County and/or the City of Jacksonville to pay all costs associated with that evidentiary hearing set for the 29th day of April, 1997, or, in the alternative, to reset this matter at a time after additional funds have been appropriated for the operation and maintenance of Defendant's counsel, the Office of the Capital Collateral Representative, on the grounds and for the reasons that the failure of the legislature of the State of Florida to appropriate sufficient funds for the operation and maintenance of Defendant's counsel, coupled with actions by the Florida Supreme Court and the State of Florida, have left Defendant's counsel without any funds with which to present Defendant's case. Defendant estimates such costs to be in excess of'the amount of

$16,971.00. In support hereof, Defendant would show to the court as follows:

1. Mr. Hoffman is guaranteed effective representation during his postconviction proceedings by state law. **Spalding v. Dugger,** 526 So. **2d 71** (Fla. 1988); **Spaziano v. State,** 660 So. 2d 1363 (Fla. 1995). Petitioner is also entitled to habeas counsel who can provide meaningful assistance. **"[T]he** right to counsel necessarily includes a right for that counsel meaningfully to research and present defendant's . . . **claims."** **McFarland,** 114 S. Ct at 2573 (emphasis added). However, past and present circumstances outside the control of Mr. Hoffman or his attorney have and will continue to impede counsel's ability to conduct that evidentiary hearing scheduled in this matter.

2. Effectivepostconvictionrepresentationinvolveuresearch and investigation of several aspects of a case as well as the ability to present witnesses on a client's behalf. Mr. Hoffman is being denied effective postconviction representation in this case by several circumstances. Those circumstances include: the underfunding of **CCR;** that the workload of the attorneys, investigators and staff of the CCR prevents counsel from providing effective assistance; that undersigned counsel (and the second chair and investigator assigned to assist him on this case) have been constrained by their individual workloads to such an extent that they have been unable to provide effective representation of **Mr.** Hoffman; that CCR is understaffed and unable to fill present vacancies; that there is a general uncertainty about the future of

the provision of postconviction counsel to death sentenced inmates in Florida by CCR; and that the Office of the Capital Collateral Representative is without funds to pay the costs associated with that hearing presently set for the 29th day of April, 1997.

3. CCR has been and remains underfunded. Rule 3.851 of the Florida Rules of Criminal Procedure reduced the filing time for 3.850 motions from two (2) years to one (1) year.' That change became effective January 1, 1994. CCR, which was underfunded even before the one (1) year limit of Rule 3.851 was enacted, has never received the increase of funding necessary to operate under the one (1) year time limit. During 1994, the number of direct appeal affirmances by the Florida Supreme Court was the highest in the Court's history. The Legislature during the 1995-96 fiscal year did not appropriate the extra funds to compensate for that additional and unpredicted caseload. As a result, CCR was unable to achieve new Rule 3.851 filings at the same rate as the influx of new cases. In the spring of 1995, the Florida Supreme Court compressed the filing dates for Rule 3.851 motions to a rate of one (1) per week. That schedule exceeded CCR's capacity. The 1995 session of the Legislature did not increase CCR's funding beyond its previous level for the 1995-96 fiscal year. With more cases than it could prepare and file habeas corpus petitions in within the time required by Rule 3.851, and without funds to increase its staff any further, CCR asked the Florida Supreme Court to: (1)

'Despite being considered a one (1) year rule, once counsel is assigned to a case under Rule 3.851, there remains only eleven (11) months in which to prepare the Rule 3.851 motion.

find that CCR is not fully funded, (2) repeal the one (1) year time limit as required by the express terms of Rule 3.851, and (3) stay its orders for designation of counsel and filing of habeas corpus petitions in specified cases. In part as a result of this request, the Florida Supreme Court extended the due date for the assignment of counsel and subsequent filing of Rule 3.851 motions in cases such as this one. Under the Florida Supreme Court's orders to assign counsel, CCR has assigned counsel to over forty-four (44) new cases since April, 1996. The Legislature's response to the situation was to appropriate additional funds for the hiring of additional staff and the opening of branch offices during the 1996-97 fiscal year. The branch offices of CCR were opened by January, 1997, but are yet to be fully functional as the Legislature did not provide adequate funding. For example, there is inadequate funding for staffing or equipment of the branch offices.

4. Counsel's lack of funds with which to present Mr. Hoffman's case is not attributable to counsel or Mr. Hoffman. Therefore, the State, through Duval County and/or the City of Jacksonville, must bear such costs.

5. The workload of the attorneys, investigators and staff of the CCR since counsel was assigned to this case has prevented counsel from adequately researching and investigating this case for preparation of a habeas corpus petition. The work load of the attorneys, investigators and staff of the CCR has increased dramatically during the past five (5) years. Funding has not kept up. Moreover, in the past six (6) months the Florida Supreme Court

has undertaken steps to make cases more active. As an apparent result of the implementation in April, 1996 of a rule requiring the Circuit Courts to report the status of pending postconviction cases to the Florida Supreme Court together with the impact of Justice Wells' follow-up requests to those Courts for hearings to be set in pending cases', the pace of hearings, including evidentiary hearings, has increased dramatically. This, combined with an increased pace in all cases and an increased case load generally, has broken both the human and fiscal resources of Defendant's counsel. This excessive workload is interfering with counsel's ability to fully investigate and present this motion and preventing him from presenting his case at the scheduled evidentiary hearing: As such, any failure to fully investigate and prepare this motion is due to no fault of Mr. Hoffman and he should be allowed the funds necessary to present his case in the manner it would have been presented had his counsel been appropriated adequate resources.

6. Additionally, CCR has been and remains understaffed. As of March 1, 1997, the client load of cases assigned to CCR counsel has grown to one hundred eighty-six (186), with CCR scheduled to assign counsel to four (4) additional clients as of March 21,

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'Counsel would note that counsel is only aware of Justice Wells' requests because a few Circuit Court judges have provided CCR attorneys with copies of memoranda received by their Chief Judge from Justice Wells. No CCR attorney has been made a party to these communications. But it is apparent that they have had the effect of drastically increasing the pace of proceedings which CCR attorneys must prepare for and attend.

1997.[3] In 1991, CCR represented eighty-three (83) clients; today that number has grown to one hundred eighty-six (186) clients with assigned counsel. Since 1991, CCR's client load has grown by two-hundred twenty-four percent (224%), however funding has not been accordingly increased.

7. Additionally, in early March, 1997, Florida Rule of Criminal Procedure 3.852 went into effect. That rule provides for the procedures by which counsel for death sentenced inmates in Florida must pursue their entitlement to public records in the State of Florida. Rule 3.852 requires that all requests for records be filed with the court and with opposing counsel. Rule 3.852 requires that a strict schedule be followed by counsel in making follow-up and supplemental requests and filing motions to compel whenever non-compliance with a request occurs. These changes in chapter 119 procedures have resulted in huge increases in the number of pleadings which must be prepared and filed by CCR attorneys and staff as well as making the whole process of tracking requests and responses require additional time.

8. CCR has been and remains understaffed as a result of the previously described underfunding. However, that situation is presently exacerbated by the fact that until the uncertainty of the

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[3] Some of the clients currently assigned counsel and some of those awaiting assignment of counsel are clients with more than one (1) death sentence arising from independent cases. Such a client thus represents more than one (1) case.

Part of the increase in case load is caused by the closing of the federally funded capital resource center in Florida which assisted pro bono attorneys who agreed to represent death sentenced persons in postconviction. Cases dropped by pro bono attorneys must often be accepted by CCR.

future of the provision of postconviction counsel to death sentenced inmates in Florida is resolved, no vacant positions at CCR can be filled and by the fact that CCR presently has three (3) vacant lead attorney positions.[4] In the past four (4) months, three (3) lead attorneys have resigned. Those vacancies cannot be filled due to the fact that the system of providing postconviction counsel in Florida is under review in the Florida Legislature and the very continued existence of CCR, at least in its present form, is under consideration in the Florida Legislature. The bill pending in the Legislature would abolish CCR in its present form entirely on June 30, 1997. Presently one (1) investigator position is also vacant and cannot be filled for the same reasons.

9. These vacancies have-an extremely detrimental effect on CCR's ability to provide representation approaching that which death sentenced inmates in Florida are entitled to. It is of particular import that most of the attorney vacancies are for lead attorney positions which are extremely difficult to fill even under normal circumstances.

10. Moreover, the present degree of uncertainty about the future of the provision of postconviction counsel to death sentenced inmates in Florida by CCR is itself debilitating. The postconviction process is presently being reviewed by the Florida Legislature and the Legislature is presently considering measures to change the provision of postconviction counsel including a

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[4] Furthermore it should be noted that one-third (1/3) of CCR's presently employed attorneys were only hired within the last six (6) months and are still learning the process.

measure to abolish the Office of the CCR. This review began this year when the McDonald Commission was formed to examine ways of providing postconviction counsel to people on death row.

11. The culmination of the afore-described State action has been to deprive Mr. Hoffman of any meaningful opportunity to present evidence in support of the claims set forth in his postconviction motion. CCR is currently without any funds to pay for the costs of Mr. Hoffman's hearing. All funds currently held by CCR must be spent on obligations which are presently due and owing, e.g. current bills, and/or cannot legally be used for purposes other than for which they were budgeted.

12. Because CCR is without funds with which to conduct Mr. Hoffman's evidentiary hearing, -including, but not limited to, even enough funds to provide for the attendance of Mr. Hoffman's makeshift legal team, and Mr. Hoffman is both entitled and required to present evidence in support of his postconviction motion at that evidentiary hearing presently set for April 29, 1997, through May 2, 1997, he must be provided with funds with which he may fulfill his obligation.

13. If Mr. Hoffman is not provided with such funds, he will have been deprived of any meaningful opportunity to present his claims in state court. Under state law, he must be represented by the Office of the Capital Collateral Representative. If that office is prevented from presenting Mr. Hoffman's claims as a result of state action, state action has likewise prevented Mr. Hoffman from presenting his claims.

a

14. Mr. Hoffman must therefore be allowed funds present his claims in the manner he would have presented the same had his counsel initially been appropriated sufficient funds to carry out its statutory duty, or, in the alternative, to a continuance of this matter until such time as such funds are appropriated.

15. The amount required to conduct Mr. Hoffman's hearing, excluding subpoenaed witnesses, is detailed as follows:

LEGAL TEAM COSTS

Travel

Rental Cars		$ 441.00
Mini Van ($34.00/day & .05/mile)	$ 241.50	
Full Size ($28.00/day & .05/mile)	$ 199.50	
Hotel ($90.00/day)		$ 2160.00
4 rooms at	$ 540.00	
Meals ($21.00/day)(4 employees)		$ 420.00
per employee/5 days	$ 105.00	
Per Diem ($50.00/day)		$ 200.00
1 employee/l day	$ 50.00	

EXPERT COSTS

Fees		$ 8800.00
Dr. Gelbort	$ 2800.00	
Dr. Fox	$ 6000.00	
Travel		
Airfare		$ 928.00
Dr. Gelbort	$ 676.00	
Dr. Fox	$ 352.00	
Hotel ($90.00/day)		$ 180.00
Dr. Gelbort	$ 90.00	
Dr. Fox	$ 90.00	
Meals		$ 42.00
Dr. Gelbort	$ 21.00	
Dr. Fox	$ 21.00	

OUT OF STATE LAY WITNESS COSTS

Travel		
Airfare (five witnesses)		$ 1980.00
per witness	$ 396.00	
Hotel ($90.00/day)		$ 1350.00
per witness/3 days	$ 270.00	

Meals		$ 420.00
per witness/4 days	$ 84.00	
INCIDENTALS		$ 50.00
TOTAL ESTIMATED COSTS		$ 16,971.00

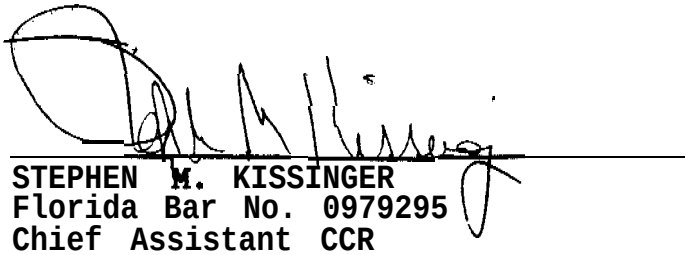
16. In addition, Mr. Hoffman is unable to compensate subpoenaed witnesses in the manner prescribed by law. Such costs also are properly borne by Duval County and/or the City of Jacksonville.

17. Mr. Hoffman requests a hearing on the instant motion. Because no travel costs may be incurred by this office, Mr. Hoffman requests that this matter be heard by phone at the earliest possible date.

18. The general counsel for the City of Jacksonville has been served with a copy of this motion.

WHEREFORE Mr. Hoffman moves this Court for an order directing Duval County and/or the City of Jacksonville to pay such the forgoing sums, being the amounts necessary to present Mr. Hoffman's claims, or, in the alternative, to continue that hearing set in the above-encaptioned matter until such time as the legislature of the State of Florida provides the Office of the Capital Collateral Representative with sums sufficient to properly represent all of its clients.

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by facsimile transmission, to all counsel of record on April 24, 1997.



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