

IN THE SUPREME COURT OF FLORIDA

NO. 93,845

FILED

SID J. WHITE

DEC 15 1998

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

IN RE:

AMENDMENTS TO FLORIDA RULES OF CRIMINAL
PROCEDURE - RULE 3.852 (CAPITAL POSTCONVICTION
PUBLIC RECORDS PRODUCTION) AND RULE 3.993
(RELATED FORMS)

COMMENTS OF THE CAPITAL COLLATERAL REGIONAL COUNSEL--SOUTH

COMES NOW THE CAPITAL COLLATERAL REGIONAL COUNSEL--SOUTH, by and through the undersigned attorney, and herein submits the following comments with respect to the above-captioned action.

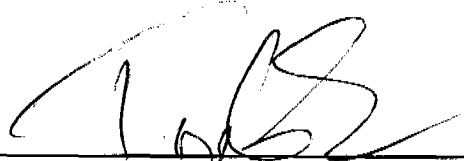
The position of the Capital Collateral Regional Counsel--South [hereinafter CCRC-South] as to the legislation which led to the promulgation of the emergency rule of criminal procedure promulgated by the Court in its opinion of September 18, 1998, was substantially set forth in a pleading responding to a motion filed by the Capital Collateral Regional Counsel-Middle (Attached).¹ CCRC-South herein reasserts the arguments made in that pleading as to the legislature's impermissible and unconstitutional action in passing what was essentially a rule of procedure. Although the Court may look to the legislative action to discern legislative intent, Leapai v. Milton, 595 So. 2d 12 (Fla. 1992), it is this Court alone which has the authority to adopt the appropriate procedure to replace the former Rule 3.852 that was repealed by the legislature in the 1998 session.

CCRC-South submits that the rule under consideration conflicts with the statutory and

¹The undersigned has come to learn that CCRC-Middle's motion has been denied by the Court.

constitutional right of all Florida citizens to have unencumbered access to public records under Chapter 119. See, e.g. Fla. R. Crim. P. 3.852 (h)(3) (if by October 1, 1998, a capital defendant has had a Rule 3.850/3.851 motion denied, "no additional public records request under this rule is permitted by collateral counsel until a death warrant has been signed by the Governor and an execution has been scheduled"). In fact, the rule goes so far as to state that "[c]ollateral counsel shall not solicit another person to make a request for public records on behalf of the capital defendant" and that a trial court "shall impose appropriate sanctions against any collateral counsel violating this subdivision." Fla. R. Crim. P. 3.852 (l). These are unconstitutionally impermissible restrictions on the ability of either a capital defendant or his/her collateral counsel to attempt to obtain public records under Chapter 119 and the Florida Constitution, not to mention an impermissible attempt by the legislature to legislate the practice of law by collateral counsel and any other person in this state who may desire to request public records on behalf of a capital defendant. For example, were a private attorney to inquire of collateral counsel about a particular capital defendant, and were the collateral attorney to indicate that records regarding that particular defendant were in the possession of the State Attorney's Office and the attorney then made a Chapter 119 request for those records, collateral counsel could be subject to sanctions by a court for "soliciting" another person to made a Chapter 119 request. In short, significant portions of the emergency rule conflict with the rights guaranteed by Chapter 119 and the Florida Constitution regarding access to public records in this state.

I HEREBY CERTIFY that a true copy of the foregoing comments has been furnished by United States Mail, first class postage prepaid, to all counsel of record on December 14, 1998.



TODD G. SCHER
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Copies furnished to:

Richard Martell
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Neal A. Dupree
Capital Collateral Regional Counsel

Martin J. McClain
Litigation Director

FILED

Todd G. Scher
Chief Assistant CCRC

DEC 15 1998

December 14, 1998

CLERK, SUPREME COURT

By _____
Chief Deputy CLERK, SUPREME COURT

Tanya Carroll, Docket Clerk
Clerk of the Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1927

Re: Amendments To Florida Rules Of Criminal Procedure - Rule 3.852
(Capital Postconviction Public Records Production) And Rule
3.993 (Related Forms), Case No. 93,845

Dear Ms. Carroll:

Enclosed for immediate filing in the above-captioned case are:

1. The original and seven copies of Capital Collateral Regional Counsel--South's Comments Of The Capital Collateral Regional Counsel--South;
2. Copies of the first and last pages of the Comments Of The Capital Collateral Regional Counsel--South for return to CCR after date-stamping and filing; and
3. A pre-addressed, stamped envelope for use in returning the date-stamped pages to us.

A copy has been provided to opposing counsel of record this date by first class mail.

Thank you for your assistance in this matter.

Sincerely,

Todd G. Scher
Chief Assistant CCRC-South

TGS/sa

cc: Richard Martell, Department Of Legal Affairs