

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA
RULES OF CRIMINAL PROCEDURE
3.851, 3.852, AND 3.993

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CASE NO. SC96646

COMMENTS AND SUGGESTED MODIFICATIONS TO PROPOSED AMENDMENTS

COMES NOW the Attorney General of Florida, by and through undersigned counsel, and files these comments and suggestions for modification of the proposed rules set forth in Amendments to Florida Rules of Criminal Procedure 3.851, 3.852, and 3.993, 25 Fla.L.Weekly S285 (Fla. April 14, 2000) (Amendments I), and Amendments to Florida Rule of Criminal Procedure 3.851, 3.852, and 3.993, 25 Fla.L.Weekly S395 (Fla. May 17, 2000) (Amendments II), and provides as follows:

Preliminary Statement

Without recapping the extraordinary efforts undertaken by the Court, the Morris Commission, and a plethora of interested persons, it would appear that postconviction rules for capital cases are

about to undergo yet another revision. No doubt much of the work done is needed and should serve to clarify problem areas. While it is tempting to view the newly proposed rules attached to this Court's April 14, 2000, and May 17, 2000, orders as the final product in a long journey, there are still "enhancements" that need to be made in order to capture this Court's "attempt to strike a balance between the State's and public's legitimate interest in the prompt and efficient processing of capital cases and this Court's duty to ensure that such cases are processed in fair, just, and humane manner that conforms to the constitutional requirements." (Amendment I, 25 Fla.L.Weekly at S286).

The State has identified a number of modifications that will address concerns, clarify problem areas and hopefully capture the intent of the Court's belief that this process is a fair, just and humane manner that conforms to constitutional requirements. Attached to these comments are the State's proposed modifications of Rule 3.851, 3.852, and 3.993. (The State's modifications are in bold capital lettering and placed between brackets).

In drafting the State's modifications, particular emphasis was given to the following changes: (a) the Court's proposed rules do not require a timely, fully-pled postconviction relief motion; (b) the Court's proposed rules are more expansive rather than

restrictive with regard to the adherence to finite deadlines and as such, serve to defeat strict adherence to the rules; (c) in spite of universal comment to the contrary, the Court's proposed rules require mandatory evidentiary hearings in all initial postconviction cases without guidelines as to the scope or limitations regarding the relevancy or need for such hearings; (d) the Court's proposed rules presumably, inadvertently, permits capital defendants to relitigate issues on collateral attack that were raised and rejected by the appellate courts; (e) the Court's proposed rules authorizes successive motions without any limitations, thus allowing for repetitious litigation without justification; and (f) the Court's proposed rules fail to provide sanctions against the State, defense or the trial court for the failure to perform their duties in a timely, competent manner, and inadequately provide a supervisory or tracking mechanism by either the trial court or this Court with regard to the processing of these cases statewide. The State, in utilizing the Court's proposed amendments to Florida Rules of Criminal Procedure 3.851, 3.852, and 3.993, attach to the orders dated April 14, 2000, and

May 17, 2000, has amended each rule in such a fashion that would address the aforementioned problems.¹

This Court, in both its April 14, 2000, and May 17, 2000, orders, also invited comments from interested parties seeking "as to the proper and practical application of these rules to defendants in the various stages of the appellate and postconviction process. We are particularly concerned that changing the applicable time periods and procedures while the postconviction process is underway will only cause more confusion and delay. Therefore, we seek comments as to which of the proposed provisions can be applied to defendants who were sentenced prior to the effective date of the rule, including, but not limited to: (1) those for whom counsel has not been appointed as of the effective date; (2) those who have had collateral counsel appointed but who have not yet filed a postconviction motion; and (3) those who have had counsel appointed and have postconviction motions pending." (Amendment I, 25 Fla.L.Weekly at S287).

¹ Although submitting modifications to the Court's proposed rules, the State would strongly urge that after hearing oral argument, the Court not adopt new rules, but rather enforce the current Rules 3.851, 3.852 and 3.993, and return the matter to the Morris Commission for further consideration of all the proposals presented to the Court. While it is evident that the court has diligently labored on the proposed rules, it is also evident that the mechanics of the proposed rules require further review.

I. COMMENTS REGARDING PROPOSED RULE 3.851

1. Rule 3.851(a)(1), Scope and Purpose.

The true precursor to any capital rule for postconviction relief was Witt v. State, 387 So.2d 922 (Fla. 1980), wherein the Court recognized the importance of finality in any criminal justice system, specifically that "litigation must, at some point, come to an end." The Court observed:

There is no evidence that subsequent collateral review is generally better than contemporaneous appellate review for ensuring that a conviction or sentence is just. Moreover, an absence of finality cast a cloud of tentativeness over the criminal justice system, benefitting neither the person convicted nor society as a whole.

387 So.2d at 925.

The State would submit that by specifically conforming the scope and purpose of Rule 3.851 to the teachings as set forth in Witt, supra, clarity of purpose and constitutionally authorized restrictions as to the scope, will serve justice. The State has divided the Court's Rule 3.851(a) into three paragraphs, to fully explain the purpose and scope of its rule modifications.

Subsection (a)(1) specifically sets forth those four major categories wherein all postconviction claims must fall. Specifically, whether: trial counsel rendered ineffective

assistance of counsel; newly discovered evidence has been uncovered through due diligence that would demonstrate by clear and convincing evidence that the defendant is innocent of the crime or sentence of death; the State willfully withheld material evidence at trial that would show by clear and convincing evidence that the defendant is innocent of the crime or sentence of death, and significant legal decisions rendered by the United States Supreme Court or the Supreme Court of Florida would seriously bring into question the correctness of the judgment or sentence of death. In recognizing specific areas of redress, the State's rule provides clear, distinct guidelines from which all may draw understanding as to the scope of these proceedings.

In seeking to embrace the concept that a defendant is entitled to "one fair and full opportunity" to air claims in postconviction litigation, subsection (a)(2) has been created to providing a defendant one comprehensive opportunity to litigate his claims yet still abide by a plethora of caselaw from the Courts, that preserve procedural bars which prevent relief based on claims that could have or should have been raised at trial and if properly preserved, on direct appeal of the judgment and sentence. Moreover, no claim of ineffective assistance of collateral counsel may be recognized in postconviction litigation.

Finally, in subsection (a)(3), the State proposes that the rule set out that postconviction litigation shall not become a retrial of the original trial. Manifest injustice for purposes of this rule, regarding whether to grant or deny an extension of time to file an initial motion for postconviction relief or any other motion for delay, is viewed under a clear, plain undisputable error analysis.

2. Rule 3.851(b), Appointment of Postconviction Counsel.

The Court's proposed rule initiates postconviction litigation by appointing collateral counsel fifteen (15) days after the judgment and sentence of death is imposed. The State would submit that a better commencement date would be fifteen (15) days after the "notice of appeal has been filed." Traditionally, only one notice of appeal is filed and there is no confusion when that occurs. Moreover, having the appointment of collateral counsel commence after the notice of appeal has been filed, eliminates any confusion with regard to any motions for new trial or post-trial events to be prepared by trial counsel who still represents the defendant. Because the State believes that appointment of counsel should come fifteen (15) days after the notice of appeal has been filed, subsequent subsections of the State's proposed Rule 3.851 have been modified to reflect same.

Subsection (b)(3) and (b)(4) have also been modified as they pertain to the withdrawal of counsel based on a conflict of interest or other reasons. Subsection (3), requires a specific reason for withdrawal based on conflict of interest or good cause demonstrated for said withdrawal and, procedures are set out in the rule to permit a trial court inquiry as to any conflict.² Funding or staffing shortfalls can not constitute good cause. Subsection (4) provides that should a capital collateral regional counsel file a motion to withdraw, the trial court shall appoint another capital collateral regional counsel or registry counsel if other capital collateral regional counsels also have a conflict of interest. See Section 27.53(3), Florida Statutes (1999), and Section 13, of the Death Penalty Reform Act of 2000, declared invalid in Allen v. Butterworth, 25 Fla.L.Weekly S277 (Fla. April 14, 2000).

3. Section 3.851(c), Preliminary Procedures.

Subsections (c)(3) and (c)(4) of the preliminary procedures have also been modified. Subsection (3) under the State's proposal would also require the clerk to transmit copies of the trial record to the trial court and the record repository, as well as to the parties listed in that provision. The record repository was

² See comparable provision for public defender's conflict of interest, Section 27.53(3), Florida Statutes (1999).

created to serve as a neutral warehouse for the retention of files created in a given case. By immediately transmitting copies of the trial record to the repository, any confusion as to whether a party received a full record would be resolved by the identical record found in the repository.

With regard to subsection (4), addressing the duties of defense counsel and the prosecuting attorney, the State has suggested that not only postconviction counsel receive information from the defendant's trial counsel, but that all information and documents in the trial counsel's files also be sent to the record repository under seal. By again making the record repository the collecting entity of all records involved in a defendant's case, elimination of lost files and misplaced records can be accomplished. Likewise, the State has suggested in its modifications of the proposed rule that the State Attorney's Office provide the record repository with copies of all pretrial and trial discovery and all contents of the State's files with the exception of confidential or exempt materials. In this way the record repository will be the source from which all information is obtained by defense counsel and, should any questions arise with regard to lost or undisclosed records, the record repository file will either support or not support a claim.

4. Rule 3.851(d), Time Limitations.

The State proposes that in light of modifications made to Rule 3.852, Capital Postconviction Public Records Production, the time for filing an initial motion for postconviction relief should be six months or 180 days after the judgment and sentence of death become final. As will be discussed more completely in reviewing modifications made by the State to Rule 3.852, it is submitted that 180 days from the finality of the judgment and sentence will be adequate time for collateral counsel to prepare a postconviction motion. As this Court acknowledged in its April 14, 2000, order, while shortening the period for filing a motion for postconviction relief from one year to six months after the judgment and sentence become final, the time period for filing a motion will be shortened but, " . . . we are actually lengthening the time postconviction counsel has to prepare. Under our proposal, counsel, who will be appointed immediately after the death sentence is imposed, will have until shortly after this Court's mandate issues in which to prepare and file the postconviction motion." (Amendment I, 25 Fla.L.Weekly at S286). Likewise, as further acknowledged by the Court: "Under our proposed rules, the issue of public records should be resolved well before the postconviction motion is due to

be filed in the circuit court." (Amendment I, 25 Fla.L.Weekly at S287).

Perhaps the most controversial aspect of the Court's proposed rule concerns permitting extension of time beyond the 180 days, to file an initial postconviction motion. The State has proposed that no extensions of time be granted unless manifest injustice would result based on the specific provisions found in subsection (d)(1)(a). While the State is not unmindful that it is highly unlikely this Court will remove all extension provisions, the failure of the Court to require capital defendants and their counsel to abide by the present rules has created the most chaos and source of delay. While no opinion of this Court has acknowledged this, in reality, a liberal extension of time policy is the greatest source of delay in the postconviction litigation.

Lastly, the State should be permitted an extension of time not to exceed thirty (30) days within which to file any response to a postconviction motion on a showing of good cause. Postconviction counsel will have been familiar with the issues to be raised on postconviction for at least two to three years prior to a motion for postconviction relief being filed. The State, on the other hand, will have only forty-five (45) days from the filing of the initial motion within which to respond. An extension for an

additional thirty (30) days for the State's response will not cause an excessive delay to the process.

5. Rule 3.851(e), Contents of Motion.

The next most controversial aspect of the Court's proposed rule is the lack of a requirement that a defendant file a fully pled motion. The State would urge that this Court rethink its proposal and incorporate not only the State's definition of fully pled motion but require that as to all factual basis for any claim the defense be required to attach any documents to be used and the names and addresses of persons supporting the claim with any affidavits obtained from those witnesses. The Court has recognized the need for this in its creation of the successive motion Rule 3.851(g).

Logically, no issue can be properly joined until and unless a responding party has a full understanding of the nature of a complainant's claim. In any other type of litigation, a complaint must be fully and fairly presented in order to allow the defense or respondent to answer. This Court, contrary to a majority of the comments submitted, believes that holding an evidentiary hearing in all initial postconviction litigation will resolve issues and eliminate delays. The only way such a result will occur is if a defendant files a fully pled motion that provides to the State and

the trial court clear, concise claims supported by factual allegations with the names and addresses of all pertinent witnesses, relevant documents and other evidence supporting the claims asserted.³

6. Rule 3.851(f), Procedure; Evidentiary Hearing; Disposition.

The initial case management conference to be held within forty (40) days after the State files its answer is a critical step in processing any motion for postconviction relief. The State would submit that in order for the initial case management conference to be meaningful at all, the Court adopt the State's modifications that make the initial case management conference a Huff hearing where counsel for the defense and State present argument as to the basis for any evidentiary hearing on the factual claims raised. While this Court believes that an evidentiary hearing should be set in all initial postconviction cases, the better view would be to permit the trial court to ascertain which factual issues need

³ Of course it should not be overlooked that the defense will have had ample opportunity to develop the claims culminating in a fully pled motion because collateral counsel will have both the benefit of entering the case early on and having public records disclosure concluded prior to the time any motion for postconviction relief is due. Gathering witnesses and evidence only after the motion for postconviction is filed defeats any purpose in appointing collateral counsel during the pendency of the direct appeal.

further evidentiary development. See State's modifications to (f)(5). See Thompson v. State, ___ So.2d ___ (Fla. April 13, 2000), 25 Fla.L.Weekly S346. Not all factual claims require further evidentiary development. Moreover, preservation of an issue, relevancy, timeliness of claim and materiality should all be factored into whether an issue requires evidentiary development.

In addition, at the initial case management conference, the parties are to exchange all documentary exhibits that they intend to offer; provide an exhibit list; exchange a witness list and provide any expert witness reports. In order for this to be accomplished, and the State to be able to respond fully, a capital defendant will have had to have filed a fully pled motion with the names of witnesses, the affidavits supporting factual claims and the documents the defense intends to use to support those claims. If a fully pled motion is not filed, it is impossible to comprehend how the State can responsively and simultaneously provide witness lists and documents to rebut less than fully pled issues.

The State has expanded subsection (f)(6) to include subsequent and final case management conferences. Specifically, the trial court may hold any additional case management conferences necessary to ensure that any ordered evidentiary hearing takes place within the time frame set forth. However, at least fifteen (15) days

prior to any evidentiary hearing, the trial court shall hold a final case management conference to ensure that no last minute delays occur with regard to the hearing. Prior efforts to institute any type of case management in postconviction has resulted in unnecessary delays and the failure to timely conduct evidentiary hearings of legitimate issues. The State's proposal, to-wit: A case management system controlled by the trial court, will ensure that the parties adhere to the requirements set forth in this rule.

7. Rule 3.851(g), Successive Motions.

As written, the Court's proposed subsection (g), entitled Successive Motions, has departed significantly from the current Rule 3.850(f), provision that specifically allows the trial court to dismiss a second or successive motion if the court finds that the motion "fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant or the attorney to assert those grounds in a prior motion constituted an abuse of procedure governed by these rules." The State would urge that this Court re-adopt the language contained in Rule 3.850(f), as part of the capital postconviction rule. Additionally, the State has proposed in subsection (g) that the

newly discovered evidence must allege evidence that, when viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would have found the defendant guilty of the underlying offense or impose the death sentence.

While the State agrees rules governing successive litigation in postconviction are needed, the State urges the Court to re-adopt the successive motion concept found in Rule 3.850(f), as the basis upon which the trial courts will be guided in addressing these issues. The successive provisions of Rule 3.850(b) work and are predicated on a wealth of caselaw that is well-reasoned and understood.

8. Rule 3.851(i), Sanctions.

The State proposes that an additional subsection (i) be added to Rule 3.851, authorizing sanctions for the failure to comply with provisions of these rules. Delays in processing these postconviction rules in capital litigation have been the source of much frustration and litigation by the courts and the parties. Part of the Legislature's intent in enacting the Death Penalty Reform Act of 2000 was to ensure that timely and complete postconviction litigation occurred. Without sanctions or the possibility of sanctions being imposed for the failure to adhere to

this Court's rules, the current proposed rules will become equally ineffective. The State would urge adopting the instant subsection as part of its proposed rules.

II. COMMENTS REGARDING PROPOSED RULE 3.852

1. Rule 3.852(a), Purpose, Applicability and Scope.

The State would initially modify the Court's proposed rule governing capital postconviction public records production by including a statement as to the purpose for the rule: to allow capital defendants to secure public documents in order to pursue postconviction claims. There is a difference between securing public documents in order to pursue postconviction litigation and the rights of any Florida citizen to secure public records. The Court should create rules that permit capital defendants to secure public documents under this rule and not attempt to regulate or adopt procedures under Chapter 119, Florida Statutes.

2. Rule 3.852(d), Actions Upon Filing of a Notice of Appeal.

The next proposed change by the State is that public records procedures commence fifteen (15) days after a notice of appeal has been filed in the trial court. This change would conform to the appointment of collateral counsel based on the notice of appeal filing date, rather than a more elusive imposition of sentence date.

Section (d)(2)(d) is created by the State to require the State Attorneys to "provide a notice of intent to rely on a public records exemption pursuant to Section 119.07(3)(b), or (3)(1), Florida Statutes. Likewise (e)(2) also provides that any law enforcement agency must provide a notice of intent to rely on a public records exemption under Section 119.07(3)(b) or (3)(1), Florida Statutes. In this way, notice is provided both the court and the defense that public record exemptions exists, and allows for the *in camera* inspection as provided in the next subsection.

3. Rule 3.852(e), Actions Upon Receipt of Notice of Appeal.

The State, in maintaining that the filing of a notice of appeal is a finite point from which to calculate all time requirements, would urge that in this subsection, the time periods for transmitting public records to the repository or to the clerks of the court regarding confidential or exempt materials, should be expanded to the original ninety (90) day period. Clearly, the time frame for securing public documents and records has expanded. Adding an additional thirty (30) days to the Court's proposed sixty (60) day time frame will hopefully assist the state attorneys or law enforcement agencies in timely processing documents in their possession.

The State proposes adding a subsection (4) which would require within 180 days after the filing of a notice of appeal, the State Attorney and all law enforcement agencies notify the trial court that an *in camera* inspection is required to review any current exemptions from public records. At the *in camera* inspection, the court would review the exempted materials and ascertain whether any documents should be released to postconviction counsel for the limited purpose of preparing for postconviction litigation. By requiring this *in camera* inspection six months after the notice of appeal has been filed, the trial court will be able to assess whether any of the exempted materials may assist postconviction counsel in the preparation of any Rule 3.851 motion and allow the state attorney or law enforcement agencies to address the basis for withholding confidential or exempted records.

4. Rule 3.852(n), Authority of the Court.

The State has created a requirement that the trial court conduct a status conference 180 days after the receipt of written notification of the filing of a notice of appeal to determine whether an *in camera* inspection is needed for confidential or exempt documents pursuant to the state attorneys' and law enforcement agencies' notices. The court shall conduct additional

status conferences every ninety (90) days thereafter to ensure that all provisions of the public records production rule are met. The State also proposes that quarterly reports be made to the Chief Judge of the circuit and the Florida Supreme Court in order that statewide uniformity of application of the rules occur.

The State urges in subsection (n)(2)(c), the trial court's authority to extend any times herein apply only to the initial postconviction periods. In this way, litigation in any successive mode would require strict adherence to the time frames set out.

5. Rule 3.852(o)(3), Scope of Production and Resolution of Production Issue.

The State would strongly suggest that the difficulty in controlling public records production and the adherence to the rules in the past has been the failure to have control over the process. The Court's proposed rule provides that mediation under the civil rules might be a way of handling public records disputes. Adding another layer of dispute review is unworkable and unwise. The trial court is in the best position and should be the only person that resolves any public records disputes. As this Court has so strongly stated in its two recent orders, the courts and the parties must adhere to any rules created with regard to public records production and resolution of all public records disputes

must occur prior to the date the motion for postconviction relief is to be filed to make these new rules work.

6. Rule 3.852(q), Sanctions.

Subsection (q) requires that sanctions may be imposed for the failure to materially comply with either the production or the time frame set forth in this rule. In this way, the trial court will have the necessary controls over the parties in order to ensure compliance with the rule.

III. IMPACT OF PROPOSED RULES 3.851, 3.852, AND 3.993 TO PENDING CASES

This Court recognized in its April 14, 2000, order that "changing applicable time periods and procedures while the postconviction process is underway will only cause more confusion and delay." (Amendment I, 25 Fla.L.Weekly at S287). The Court seeks comments concerning which of the proposed provisions of the new rules should be applied to defendants who were sentenced prior to the effective date of the rule. The State would propose that five categories exist requiring modification with regard to the implementation of these new proposed rules.

1. No Counsel/Notice of Appeal Filed - Those defendants who have a notice of appeal filed but no initial appellate brief filed should have collateral counsel appointed within fifteen (15) days

following the effective date of these rules. All provisions of the new rules shall be in effect for these defendants.

2. No Counsel/Initial Appeal Brief Filed - In those defendants' cases where appellate counsel has filed his initial brief, collateral counsel should be appointed within fifteen (15) days following the effective date of the new rules and those defendants shall have one year from the date mandate issues on the direct appeal within which to file a motion for postconviction relief pursuant to the new Rule 3.851. Upon the appointment of collateral counsel, new Rule 3.852 will also be in effect.

3. Collateral Counsel/No Postconviction Motion Filed - Defendants in this circumstance where collateral counsel has been appointed, however the time for filing a motion for postconviction relief has not occurred or a valid extension has been given by the trial court, will have one year from the effective date of the new Rule 3.851 within which to file a motion for postconviction relief. New Rule 3.852 will be in effect for all purposes except that the effective date of the new Rule 3.851 will be the triggering mechanism for public records production instead of the notice of appeal as set forth in the rule.

4. Collateral Counsel/Shell 3.850 Motion Filed - In those circumstances where counsel has worked on the case and in fact

filed a "shell Rule 3.850 motion" in order to comply with a past due date for said motion, those defendants shall have 180 days from the effective date of the new Rule 3.851 within which to file a "fully pled" motion for postconviction relief. Within thirty (30) days of the effective date of the new Rule 3.852, the trial court shall hold a status conference to ascertain the status of any outstanding public records production matters.

5. Collateral Counsel/Complete 3.850 Motion Filed - With regard to those individuals who have filed a complete 3.850 motion and are awaiting further proceedings, the State would suggest that the current rules governing postconviction litigation for capital defendants stay in effect until the completion of those cases. For example, in the Danny Rolling case, a fully pled 3.850 motion and State's answer has been filed. The case has been set for evidentiary hearing in mid-July. Thus the matter should be allowed to proceed under the current rules. It would appear that there is no purpose served in further delaying the processing of fully pled 3.850 motions by enforcing the new rules to cases where postconviction litigation is well underway. For example, in other cases where Huff hearings have been set or the trial court has determined those claims for which evidentiary hearing is warranted,

nothing in these new rules should impact or further delay processing those postconviction motions.

It is suggested that the Court require the Commission on Capital Cases to provide the Court, the State, the CCRC's and other interested parties with a breakdown of the cases falling within the aforementioned categories prior to the effective date of the new rules.

IV. ATTACHED STATE MODIFICATIONS TO COURT PROPOSED RULE 3.851, 3.852 AND 3.993

The State has attached its modifications to the Court's proposed rules as discussed above in order that the Court might have a full understanding of the State's comments as to why these modifications are needed.⁴ Clearly the bulk of the Court's rules remain intact, however as previously noted the modifications proposed by the State will help to address concerns regarding delays, the need for fully pled motions, the need to limit the scope of successive motions, the need to ensure adherence to time limitations, the requirement that trial courts carefully track the progress of postconviction litigation during both the public records production phase and the postconviction filing phases, and

⁴ The State has not addressed every modification proposed, but rather has chosen to select the most pressing matters to review. Many other modifications provide valid points and should be considered as part of the "total" rules.

the need for sanctions to ensure that the parties strictly abide by the rules. It is believed that by instituting the State's modifications, progress can be made in postconviction litigation that is "fair, just and humane" and conforms to constitutional requirements.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Hon. Stan Morris, 201 E. University Avenue, Ste. 302, Gainesville, FL 32601-5461; Hon. Philip Padovano, 301 S. Martin Luther King, Jr. Blvd., Tallahassee, FL 32399-1850; Hon. O.H. Eaton, 301 N. Park Avenue, Sanford, FL 32771-1243; Hon. John Kuder, 190 W. Government Street, 6th Floor, Pensacola, FL 32501-5773; Hon. Charles Kahn, 301 Martin Luther

King, Jr., Blvd., Tallahassee, FL 32399-1850; Hon. Susan Schaeffer, 545 1st Avenue, North, St. Petersburg, FL 33701-3717; Hon. Scott Silverman, 1351 NW 12th Street, Ste. 712, Miami, FL 33125-1627; Hon. Joseph Farina, 73 W. Flagler Street, Ste. 511, Miami, FL 33130-1707; Hon. Belvin Perry, 425 N. Orange Avenue, Orlando, FL 32801-1544; John Goodlette, 4001 Tamiami Trail, North, Ste. 300, Naples, FL 34103-3591; Jerome C. Latimer, Stetson College of Law, 1401 61st Street, South, St. Petersburg, FL 33707-3246; John F. Harkness, Executive Director, Florida Bar, Post Office Box 389, Tallahassee, Florida 32302-0389; John Boggs, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-6523; Billy Hendrix, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-6523; Neal Dupree & Todd Scher, CCRC-South, 101 N.E. 3rd Avenue, Ste. 400, Ft.Lauderdale, FL 33301; Greg Smith & Andrew Thomas, CCRC-North, Post Office Box 5498, Tallahassee, FL 32314-5498; John Moser, CCRC-Middle, 3801 Corporex Drive., Ste. 210, Tampa, FL 33619; Mark Olive & Timothy Schardl, 320 W. Jefferson Street, Tallahassee, FL 32301-1608; Marion Moorman, P.O. Box 9000, Bartow, FL 33830-9000; James Gibson, 251 N. Ridgewood Avenue, Daytona Beach, FL 32114; Bennett Brummer & Christina Spaulding, 1320 NW 14th Street, Miami, FL 33125-1609; Nancy Daniels, Chet Kaufman, W.C. McLain, Mike Minerva, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida

32301; Richard Jorandby, Gary Caldwell, Richard Greene, 421 3rd Street, West Palm Beach, FL 33401; Stephen Krosschell, 14020 Roosevelt Blvd., Clearwater, FL 33762-3804; Johnnie Byrd, P.O. Box TT, Plant City, FL 33564-9040; Arthur Jacobs, 401 Centre Street, 2nd Floor, P.O. Box 1110, Fernandina Beach, FL 32035-1110; Larry Henderson, 112 Orange Avenue, Ste. A, Daytona Beach, FL 32114-4310; Michael Dodson, 2305 Forsythe Ct., Tallahassee, FL 32308-3011, and to Elliott Metcalf, Jr., 2071 Ringling Blvd., 5th Floor, Sarasota, FL 34237-7036, this 1st day of June, 2000.

CAROLYN SNURKOWSKI
Assistant Attorney General

[The following language added by the State to the Court's Proposed Rule 3.851 is noted in bold capital lettering and placed between brackets.]

Rule 3.851. Collateral Relief After Death Sentence Has Been Imposed And Affirmed On Direct Appeal

(a) Scope and Purpose.

(1) This rule shall apply to all motions and petitions for any type of postconviction or collateral relief brought by defendants in state custody who have been sentenced to death and whose conviction and death sentence have been affirmed on direct appeal. A defendant under sentence of death imposed by a court established by the laws of Florida claiming the right to **[RELIEF]** on the ground that the judgment was entered or that the sentence was imposed in violation of the Constitution or laws of the United States or of the State of Florida, that the court was without jurisdiction to enter the judgment or to impose the sentence, that any plea was given involuntarily, or that the judgment or sentence is otherwise subject to collateral attack **[BECAUSE**

A. TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL;

B. NEWLY DISCOVERED EVIDENCE HAS BEEN UNCOVERED THROUGH DUE DILIGENCE THAT WOULD DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS INNOCENT OF THE CRIME OR SENTENCE OF DEATH;

C. THE STATE WILLFULLY WITHHELD MATERIAL EVIDENCE AT TRIAL, THAT WOULD SHOW BY CLEAR AND CONVINCING EVIDENCE THE DEFENDANT IS INNOCENT OF THE CRIME OR SENTENCE OF DEATH;

D. SIGNIFICANT LEGAL DECISION(S) RENDERED BY THE UNITED STATES SUPREME COURT OR THE SUPREME COURT OF FLORIDA SERIOUSLY BRING INTO QUESTION THE CORRECTNESS OF THE JUDGEMENT OR SENTENCE OF DEATH,]

may move, in the court that entered the judgment or imposed the sentence, to vacate, set aside, or correct the judgment or sentence.

[(2)] The purpose of this rule is to provide the means, **[IN ONE COMPREHENSIVE OPPORTUNITY]**, by which a defendant under sentence of death can raise claims of error **[AS PROVIDED ABOVE]** which were unavailable at

the time of trial or direct appeal. **[THIS RULE DOES NOT AUTHORIZE RELIEF BASED ON GROUNDS THAT COULD HAVE OR SHOULD HAVE BEEN RAISED AT TRIAL AND IF PROPERLY PRESERVED, ON DIRECT APPEAL OF THE JUDGMENT AND SENTENCE. NO CLAIM OF INEFFECTIVE ASSISTANCE OF COLLATERAL COUNSEL MAY BE RAISED PURSUANT TO THIS RULE.]**

[(3) THE PURPOSE OF THIS RULE IS TO ENSURE THAT POSTCONVICTION LITIGATION DOES NOT BECOME A RETRIAL OF THE ACTUAL TRIAL. MANIFEST INJUSTICE AS USED IN THIS RULE SHALL MEAN, THAT CLEAR, PLAIN, UNDISPUTABLE ERROR RESULTED AND THAT SUCH CONCLUSION IS CLEARLY EVIDENT IN LIGHT OF THE REASONS SET FORTH IN THE MOTION FOR AN EXTENSION OF TIME TO FILE THE INITIAL MOTION FOR POSTCONVICTION RELIEF OR MOTION SEEKING ANY OTHER DELAY.]

[(4)] Unless otherwise provided herein, a defendant who had postconviction counsel appointed prior to the effective date of this rule shall proceed in accordance with the rules in effect at the time counsel was appointed.

(b) Appointment of Postconviction Counsel.

(1) Within 15 days after **[THE NOTICE OF APPEAL HAS BEEN FILED]**, the sentencing court shall issue an order appointing the appropriate office of the Capital Collateral Regional Counsel.

(2) In cases in which the death sentence has been imposed prior to the effective date of this rule but postconviction counsel has not been appointed, the chief judge of the circuit court in which the defendant was sentenced shall appoint the appropriate office of the Capital Collateral Regional Counsel by 30 days after the effective date of this rule.

(3) Within 30 days from the appointment, the Capital Collateral Regional Counsel shall file a notice of appearance in the trial court or a motion to withdraw based on a **[SPECIFIC]** conflict of interest or **[OTHER GOOD CAUSE SHOWN FOR WITHDRAWAL. THE TRIAL COURT SHALL REVIEW AND MAY INQUIRE OR CONDUCT A HEARING INTO THE ADEQUACY OF THE MOTION TO WITHDRAW WITHOUT INQUIRING INTO DISCLOSURE OF ANY**

CONFIDENTIAL COMMUNICATIONS. THE COURT SHALL PERMIT WITHDRAWAL UNLESS THE COURT DETERMINES THAT THE ASSERTED CONFLICT IS NOT PREJUDICIAL TO THE CAPITAL DEFENDANT. FUNDING OR STAFFING SHORTAGES SHALL NOT BE A BASIS FOR WITHDRAWAL.]

(4) Within 15 days after the Capital Collateral Regional Counsel files a motion to withdraw, the chief judge or assigned judge shall appoint new postconviction counsel **[FROM ANOTHER CAPITAL COLLATERAL REGIONAL COUNSEL OR FROM THE REGISTRY COUNSEL LIST OF QUALIFIED ATTORNEYS, IF THE OTHER CAPITAL COLLATERAL REGIONAL COUNSEL ALSO FILE MOTIONS TO WITHDRAW BASED ON A SPECIFIC CONFLICT OF INTEREST.]**

(c) Preliminary Procedures.

(1) Judicial Assignment. Upon appointment of postconviction counsel, the chief judge shall assign the case to the judge who presided over the defendant's capital trial if that judge is active and otherwise available to serve or a trial judge qualified to conduct capital proceedings under the Rules of Judicial Administration.

(2) Status Conferences. The assigned judge shall conduct a status hearing not later than 90 days after the assignment, and shall hold status conferences at least every 90 days thereafter until **[ANY]** evidentiary hearing has been completed or the motion has been ruled on without a hearing. The attorneys may appear by telephone at such status conferences, with leave of the trial court. Such requests shall be liberally granted. Pending motions, except those requiring the presence of the defendant, and disputes involving public records, shall be heard at the status conferences, unless otherwise ordered by the court.

(3) Trial Record. The clerk of the trial court shall serve copies of the trial record **[TO THE REPOSITORY, THE TRIAL COURT]**, the postconviction counsel, the state attorney, and the attorney general at the time the clerk serves copies of the record pursuant to rule 9.140(e)(4).

(4) Duties of Defense Counsel and Prosecuting Attorney. Within 15 days of appointment of postconviction counsel, the defendant's trial counsel shall provide to **[THE RECORD REPOSITORY UNDER SEAL AND TO]** postconviction counsel

all information pertaining to the defendant's capital case which was obtained during the representation of the defendant. Postconviction counsel shall maintain the confidentiality of all confidential information received. Within **[90 DAYS OF FILING OF THE NOTICE OF APPEAL]**, the state attorney's office that prosecuted the defendant shall provide to **[THE RECORDS REPOSITORY]** copies of all pretrial and trial discovery and all contents of the state's file, except for information that the prosecuting attorney has a legal right under state or federal law to withhold from disclosure.

(5) Defendant's Presence Not Required. The defendant's presence shall not be required except at the evidentiary hearing on the merits of any claim and at any hearing involving conflict with or removal of collateral counsel.

(d) Time Limitations.

(1) Initial Postconviction Motions. A motion filed under this rule is an initial postconviction motion if no court has previously ruled on a postconviction motion challenging the same judgment and sentence.

(A) Time for Filing. An initial motion to vacate judgment of conviction and sentence of death shall be filed by a defendant who is sentenced to death on or after the effective date of this rule within **[180 DAYS]** after the judgment and sentence become final. A defendant who was sentenced to death and did not have postconviction counsel appointed before the effective date of this rule shall file an initial postconviction motion within **[180 DAYS]** after the judgment and sentence become final or **[180 DAYS]** of the appointment of postconviction counsel under subdivision (b)(2), whichever occurs last. **[NO]** initial motion shall be filed or considered beyond the time limitation of this subdivision unless the motion alleges that:

(i) the **[NEW]** facts **[UPON]** which the claim is predicated were unknown to the defendant, or the defendant's attorney, **[COULD NOT HAVE BEEN TIMELY UNCOVERED,]** and could not have been ascertained by the exercise of due diligence;

(ii) the fundamental constitutional right **[ANNOUNCED BY THE UNITED STATES SUPREME COURT OR THE FLORIDA SUPREME COURT]** was not established within the period provided for by this rule, **[IS APPLICABLE TO THE DEFENDANT,]** and has been held to apply retroactively; or

(iii)the defendant retained **[PRIVATE]** counsel to timely file a 3.851 motion and counsel, through neglect, failed to file the motion **[AND MANIFEST INJUSTICE WOULD RESULT.]**

(B) Finality. **[ONLY]** for the purposes of this rule, a judgment is final when the Florida Supreme Court issues a mandate affirming the judgment and sentence of death on direct appeal. The availability of or the filing of a petition for writ of certiorari in the United States Supreme Court shall not affect the finality of the judgment and sentence. However, if the United States Supreme Court accepts certiorari, then the judgment and sentence is final upon disposition of the petition for writ of certiorari by the United States Supreme Court.

(C) Extensions.

[(1)] An extension of time to file an initial postconviction motion may be granted by the circuit court only upon a showing that a manifest injustice would result absent such relief **[BASED ON THE PROVISIONS SET FORTH IN SUBDIVISION (d)(1)(A), OF THIS RULE. ANY PENDING PUBLIC RECORDS DEMANDS FILED PURSUANT TO CHAPTER 119, FLORIDA STATUTES, SHALL NOT BE A BASIS FOR AN EXTENSION OF TIME TO FILE AN INITIAL MOTION FOR POSTCONVICTION RELIEF.**

(2) THE STATE SHALL BE PERMITTED ONE EXTENSION OF TIME NOT TO EXCEED 30 DAYS WITHIN WHICH TO FILE ANY RESPONSE TO THE POSTCONVICTION MOTION ON GOOD CAUSE SHOWN.]

(2) Extraordinary Remedies. Any petition for habeas corpus claiming ineffective assistance of appellate counsel shall be filed in the Supreme Court of Florida simultaneously with the initial brief filed on behalf of the death-sentenced defendant in the appeal of the circuit court's order on the initial motion for postconviction relief filed under this rule.

(3) The time limitations in this subdivision are established with the understanding that each defendant sentenced to death will have counsel appointed **[PURSUANT TO]** subdivision (b) of this rule.

(e) Contents of Motion.

A **[FULLY PLED]** motion filed under this rule shall not exceed 50 pages exclusive of attachments, including the judgment and sentence and exhibits. The **[FULLY PLED MOTION SHALL CONSTITUTE A MOTION THAT HAS IDENTIFIED ALL KNOWN ISSUES, ASSERTED ALL KNOWN FACTS AND SUCCINCTLY SET FORTH THE BASIS UPON WHICH POSTCONVICTION RELIEF MAY BE GRANTED. THE]** motion shall be under oath and shall include:

(1) the judgment and sentence under attack and the court which rendered the same;

(2) a statement of each issue raised on appeal and the disposition thereof;

(3) if a previous postconviction motion has been filed, the disposition of all previous claims raised in postconviction litigation and the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions;

(4) the nature of the relief sought;

(5) a **[FULLY]** detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought **[INCLUDING THE ATTACHMENT OF ANY DOCUMENTS; THE NAMES AND ADDRESSES OF PERSONS SUPPORTING THE CLAIM AND THE ATTACHMENT OF ALL AFFIDAVITS OBTAINED BY THE DEFENSE FROM SUCH PERSONS;]** and

(6) a detailed allegation as to the basis for any purely legal or constitutional claim for which an evidentiary hearing is not required, and the reason that this claim could not have been or was not raised on direct appeal.

The motion shall be accompanied by a separate memorandum of law not to exceed 25 pages as to the applicable case law supporting the granting of relief as to each separately-pled claim. **[NO CLAIMS]** that were raised on appeal or should have or could have been raised on appeal, **[MAY BE RAISED IN POSTCONVICTION OR WARRANT POSTCONVICTION PROCEEDINGS.]**

(f) Procedure; Evidentiary Hearing; Disposition.

(1) Filing and Service. All pleadings in the postconviction proceeding shall be filed with the clerk of the court and served on the assigned judge, opposing party and the attorney general. Upon the filing of any original court paper in the postconviction

proceeding, the clerk of the court shall determine that the assigned judge has received a copy. All motions other than the postconviction motion itself shall be accompanied by a notice of hearing.

(2) Duty of Clerk. Upon the filing of a motion for postconviction relief, the clerk of court shall immediately forward the motion and file to the assigned judge.

(3) Answer. Within 45 days of the filing of an initial motion, the state shall file its answer. The answer shall not exceed 50 pages exclusive of attachments and exhibits. The answer shall address the legal insufficiency of any claim in the motion, respond to the allegations of the motion, address any procedural bars **[AND PROVIDE A MEMORANDUM OF LAW AS TO EACH.]**

(4) Amendments. An initial motion filed under this rule may be amended up to 30 days **[FOLLOWING THE STATE'S ANSWER TO THE ORIGINAL MOTION]**. A motion to amend **[SHALL]** set forth the reason the claim was not **[PRESENTED]** earlier and **[MUST PROVIDE A BASIS FOR THE FAILURE TO RAISE ANY CLAIM IN THE INITIAL MOTION. AN AMENDED CLAIM]** shall not be a basis for granting a continuance of the evidentiary hearing. The state shall file an amended answer within 20 days after the amended motion is filed.

(5) **[INITIAL]** Case Management Conference **[AND EVIDENTIARY HEARING]**. Within 40 days after the state files its answer to an initial motion, the trial court shall hold **[AN INITIAL CASE MANAGEMENT CONFERENCE AT WHICH TIME THE COURT SHALL DETERMINE, BASED ON THE FACTUAL ISSUES RAISED, WHICH ISSUES, IF ANY, SHALL REQUIRE FURTHER EVIDENTIARY DEVELOPMENT]**. **[B]**oth parties shall disclose all documentary exhibits they intend to offer at **[AN]** evidentiary hearing; provide an exhibit list that includes all such exhibits; exchange a witness list with the names and addresses of any potential witnesses; **[AND PROVIDE NOTICE OF ANY MENTAL HEALTH EXPERT TO BE OFFERED PURSUANT TO SUBSECTION (f) (7)]**. All expert witnesses shall be so designated with copies of all expert reports attached. The trial court also shall:

(A) review the witness and exhibit lists with the parties;

(B) schedule an evidentiary hearing, to be held within 90 days, on claims listed by the defendant **[AND DETERMINED BY THE COURT, TO REQUIRE]** factual **[DEVELOPMENT]**; and

(C) hear argument on any purely legal claims not based on disputed facts.

(6) **[SUBSEQUENT AND FINAL CASE MANAGEMENT CONFERENCE];** Amendment of Witness or Exhibit Lists. **[THE TRIAL COURT MAY HOLD ANY ADDITIONAL CASE MANAGEMENT CONFERENCES AS REQUESTED BY THE PARTIES OR BY THE COURT. AT LEAST 15 DAYS]** prior to **[ANY]** evidentiary hearing, the trial court **[SHALL HOLD A FINAL CASE MANAGEMENT CONFERENCE TO ENSURE THE]** part**[IES ARE PRECLUDED FROM AMENDING ANY FURTHER,]** the exhibit or witness list **[AND SET THE FINAL WITNESS LIST; SET THE ORDER OF EVIDENCE AND ENSURE THAT NO DELAYS OCCUR REGARDING THE HEARING.]**

(7) Mental Health Expert. If the defendant intends to offer expert testimony of his or her mental status, the state **[SHALL BE GIVEN NOTICE OF THE MENTAL HEALTH EXPERT AT THE INITIAL CASE MANAGEMENT CONFERENCE AND]** shall be entitled to have the defendant examined by its own mental health expert. If the defendant fails to cooperate with the state's expert the court may, in its discretion, proceed as provided in rule 3.202(e). Reports provided by any expert witness shall be disclosed to opposing counsel upon receipt.

(8) Transcript**[, POST HEARING MEMORANDUMS]** and Final Order. Immediately following the evidentiary hearing, the court shall order a transcript of the hearing which shall be filed within 30 days **[AND PROVIDED TO THE PARTIES. WITHIN 10 DAYS OF RECEIPT OF THE TRANSCRIPT THE PARTIES MAY FILE POST HEARING MEMORANDUMS, NOT TO EXCEED 25 PAGES.]** Within 30 days of receipt of the transcript, the court shall render its order, ruling on each claim considered at the evidentiary hearing and all other claims raised in the motion making detailed findings of fact and conclusions of law with respect to each claim, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review. The order issued after the evidentiary hearing shall resolve all the claims raised in the motion and shall be considered the final order for purposes of appeal. The clerk of the court shall promptly serve upon all parties a copy of the final order, with a certificate of service.

(9) Rehearing. No motion for rehearing shall be permitted.

(g) Successive Motions. This subdivision applies to all successive postconviction motions filed after the effective date of this rule. A motion filed under this rule is successive if a court has previously ruled on a postconviction motion challenging the same judgment and sentence. Successive motions pending on (the effective date) are governed by the rules in effect prior to that date. **[A SUCCESSIVE MOTION SHALL BE SUMMARILY DENIED IF THE COURT DETERMINES THAT THE SUCCESSIVE MOTION FAILS TO ALLEGE NEW OR DIFFERENT GROUNDS FOR RELIEF; THE PRIOR DETERMINATION WAS ON THE MERITS, OR IF THE NEW AND DIFFERENT GROUNDS ARE ALLEGED, THOSE GROUNDS CONSTITUTE AN ABUSE OF PROCEDURE GOVERNED BY THESE RULES.]**

(1) Contents of Motion. A successive motion shall not exceed 25 pages, exclusive of attachments, and shall include all of the pleading requirements of an initial motion and, if based upon Brady, or Giglio, **[OR NEWLY DISCOVERED EVIDENCE WHERE THE FACTS UNDERLYING THE CLAIM, IF PROVEN AND VIEWED IN LIGHT OF THE EVIDENCE AS A WHOLE, WOULD BE SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT NO REASONABLE FACT FINDER WOULD HAVE FOUND THE DEFENDANT GUILTY OF THE UNDERLYING OFFENSE OR IMPOSED THE DEATH SENTENCE. ANY SUCCESSIVE MOTION SHALL]** also contain the following:

(A) the names, addresses and telephone numbers of all witnesses supporting the claim together with any affidavits obtained by defendant from such witnesses;

(B) a statement **[AS TO WHETHER THE NEWLY DISCOVERED]** witness will be available to testify under oath to the facts alleged in the motion or affidavit;

(C) if evidentiary support is in the form of **[NEWLY DISCOVERED]** documents, copies of all documents shall be attached; and

(D) as to any **[NEWLY DISCOVERED]** witness or **[NEWLY DISCOVERED]** document listed in the motion or attachment to the motion, a statement of the reason why the witness or document was not previously available, **[WHY THROUGH DUE DILIGENCE THE WITNESS OR DOCUMENT COULD NOT HAVE BEEN**

UNCOVERED AND WHEN THE WITNESS OR DOCUMENT WAS UNCOVERED.]

(2) Answer. Within **[30]** days of the filing of a successive motion, the state shall file its answer. The answer shall not exceed 25 pages exclusive of attachments and exhibits. The answer shall specifically respond to each claim in the motion[, **PROVIDE A MEMORANDUM OF LAW AS TO EACH CLAIM,**] and state the reason(s) that an evidentiary hearing is or is not required.

(h) Appeals.

An appeal may be taken to the Supreme Court of Florida within 30 days from the entry of a final order on **[ANY]** motion for postconviction relief.

[(I) SANCTIONS. FAILURE TO MATERIALLY COMPLY WITH PROVISIONS OF THESE RULES MAY RESULT IN THE GRANTING OR SUMMARY DISMISSAL WITH PREJUDICE OF ANY MOTION FOR POSTCONVICTION RELIEF. THE TRIAL COURT SHALL HOLD A HEARING AS TO ANY ALLEGED MISCONDUCT AND TAKE APPROPRIATE ACTIONS UP TO AND INCLUDING THE GRANTING OR DISMISSAL OF ANY POST CONVICTION RELIEF MOTION.]

[The following language added by the State to the Court's Proposed Rule 3.852 is noted in bold capital lettering and placed between brackets. The State has deleted those portions of the Court's proposed rule that conflict with the changes submitted herein.]

Rule 3.852 Capital Postconviction Public Records Production

(a) PURPOSE, Applicability and Scope.

(1) [THE PURPOSE OF THIS RULE IS TO PROVIDE AN ORDERLY, TIMELY POSTCONVICTION PUBLIC RECORDS PROCEDURE WHICH SETS FORTH THE MEANS BY WHICH CAPITAL DEFENDANTS CAN SECURE PUBLIC DOCUMENTS IN ORDER TO PURSUE POSTCONVICTION CLAIMS.] This rule is applicable only to the production of public records for capital postconviction defendants

[AND IS TO BE USED IN LIEU OF ANY PUBLIC RECORDS PROVISIONS SET FORTH IN CHAPTER 119, FLORIDA STATUTES. THIS RULE] does not change or alter the time periods specified in Florida Rules of Criminal Procedure ~~3.850 and~~ 3.851, **[AND]** does not affect, expand, or limit the production of public records for any purpose other than use in a proceeding held pursuant to ~~rule 3.850 or~~ rule 3.851.

(2) This rule shall not be a basis for renewing requests that have been initiated previously or for relitigating issues pertaining to production of public records upon which a court has ruled prior to ~~October 1, 1998~~ (effective date of rule).

(3) This rule is to be used in conjunction with the forms found at Florida Rule of Criminal Procedure 3.993.

(b) Definitions.

(1) "Public records" has the meaning set forth in section 119.011(1), Florida Statutes ~~(1997)~~.

(2) "Trial court" means:

(A) the judge who imposed the sentence of death; or

(B) the judge assigned by the chief judge pursuant to rule 3.851.

(3) "Records repository" means the location designated by the secretary of state pursuant to section 119.19(2), Florida Statutes ~~(Supp. 1998)~~, for archiving capital postconviction public records.

(4) "Collateral counsel" means a capital collateral regional counsel from one of the three regions in Florida; a private attorney who has been appointed to represent a capital defendant for postconviction litigation **[FROM THE REGISTRY OR OTHERWISE APPOINTED BASED ON EXCEPTIONAL CIRCUMSTANCES]**; or a private attorney who has been hired by the capital defendant or who has agreed to work pro bono for a capital defendant for postconviction litigation.

(5) "Agency" and "person" mean an entity or individual as defined in section 119.011(2), Florida Statutes ~~(1997)~~, that is subject to the requirements of producing public records for inspection under section 119.07(1)(a), Florida Statutes ~~(1997)~~.

(6) "Index" means a list of the public records included in each container of public records sent to the records repository, or to the clerk of court.

(c) Filing and Service.

(1) The original of all notices, requests, or objections filed under this rule must be filed with the clerk of the trial court. Copies must be served on the trial court, the attorney general, the state attorney, collateral counsel, and any affected person or agency, unless otherwise required by this rule.

(2) Service shall be made pursuant to Florida Rule of Criminal Procedure 3.030(b).

(3) In all instances requiring written notification or request, the party who has the obligation of providing a notification or request shall provide proof of receipt.

(4) Persons and agencies receiving postconviction public records notifications or requests pursuant to this rule are not required to furnish records filed in a trial court prior to the receipt of the notice.

(d) Action Upon Issuance of Mandate [FILING OF A NOTICE OF APPEAL.]

(1) Within 15 days after ~~receiving written notification of the Supreme Court of Florida's mandate affirming the sentence of death, the attorney general shall file with the trial court a written notice of the mandate and serve a copy of it upon the state attorney who prosecuted the case, the Department of Corrections, and the defendant's trial counsel. The notice to the state attorney shall direct the state attorney to submit public records to the records repository within 90 days after receipt of written notification and to notify each law enforcement agency involved in the investigation of the capital offense to submit public records~~ [A NOTICE OF APPEAL HAS BEEN FILED IN THE TRIAL COURT,] the state attorney who prosecuted the case shall provide written notice to each law enforcement agency involved in the investigation of the capital case and the Department of Corrections. The notice shall direct the agencies and the department to submit public records to the records repository or, if the records are confidential or exempt, the clerk of the court in the county in which the capital case was tried within 90 [90] days after receipt of written notification the notice. If available, the notice shall include the defendant's date of birth, sex, race, and police-case numbers included in the state attorney's file. The notice to the

~~Department of Corrections shall direct the department to submit public records to the records repository within 90 days after receipt of written notification.~~

(2) Within ~~90~~**[90]** days after ~~receiving written notification of issuance of the Supreme Court of Florida's mandate affirming a death sentence~~, **[A NOTICE OF APPEAL HAS BEEN FILED IN THE TRIAL COURT]**, the state attorney who prosecuted the case shall:

(A) copy, index, and deliver to the records repository, or if the records are confidential or exempt from disclosure, to the clerk of the court in the county in which the capital case was tried, all public records that were produced in the state attorney's investigation or prosecution of the case, and;

(B) provide written notification to the attorney general of compliance with subdivision (A), certifying that, to the best of the state attorney's knowledge or belief, all public records in the state attorney's possession have been copied, indexed, and delivered to the records repository, or if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried; and bear the costs of compliance with this subdivision;

(C) provide written notification to the attorney general of the name and address of any additional person or agency that has ~~public records information~~ pertinent to the case which has not previously been provided to collateral counsel.

[(D) PROVIDE A NOTICE OF INTENT TO RELY ON A PUBLIC RECORD EXEMPTION PURSUANT TO SECTION 119.07 (3)(b) OR (3)(1), FLORIDA STATUTES.]

(3) Within ~~90~~**[90]** days after ~~receiving written notification of issuance of the Supreme Court of Florida's mandate affirming a death sentence~~, **[A NOTICE OF APPEAL HAS BEEN FILED IN THE TRIAL COURT]**, the defendant's trial counsel shall provide written notification to the attorney general of the name and address of any additional person or agency with information pertinent to the case which has not previously been provided to collateral counsel.

(4) Within 15 days after receiving written notification of any additional person or agency pursuant to subdivision (d)(2) or (d)(3) of this rule, the attorney general shall notify all persons or agencies identified pursuant to subdivisions (d)(2) or (d)(3) that these persons or agencies are required ~~by section 119.19(65)(b), Florida Statutes (Supp. 1998)~~, to copy,

index, and deliver to the records repository, or if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried all public records pertaining to the case that are in their possession. ~~The~~ Each person or agency shall bear the costs ~~related to copying, indexing, and delivering the records~~ of its own compliance.

(e) Action Upon Receipt of Notice of Mandate ~~[APPEAL.]~~

~~(1) Within 15 days after receipt of a written notice of the mandate from the attorney general, the state attorney shall provide written notification to each law enforcement agency involved in the specific case to submit public records to the records repository within 90 days after receipt of written notification. A copy of the notice shall be served upon the defendant's trial counsel.~~

~~(2) Within 90 days after receipt of a written notice of the mandate from the attorney general, the state attorney shall copy, index, and deliver to the records repository all public records that were produced in the state attorney's investigation or prosecution of the case. The state attorney shall bear the costs. The state attorney shall also provide written notification to the attorney general of compliance with this section, including certifying that, to the best of the state attorney's knowledge or belief, all public records in the state attorney's possession have been copied, indexed, and delivered to the records repository as required by this rule.~~

~~(31) Within 90 [90] days after receipt of written notification of the mandate [NOTICE OF APPEAL] from the attorney general state attorney, the Department of Corrections shall copy, index, and deliver to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried all public records determined by the department to be relevant to the subject matter of a proceeding under ~~rule 3.850 or~~ rule 3.851, unless such copying, indexing, and delivering would be unduly burdensome. The department shall bear the costs. The secretary of the department shall provide written notification to the attorney general of compliance with this ~~section~~ subdivision, certifying that, to the best of the secretary of the department's knowledge or belief, all such public records in the possession of the ~~secretary of the~~ department have been copied, indexed, and delivered to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried.~~

~~(42) Within 90 [90] days after receipt of written notification of the mandate [NOTICE OF APPEAL] from the state attorney, a law enforcement agency shall copy, index, and~~

deliver to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried all public records which were produced in the investigation or prosecution of the case. **[AT THAT TIME, A LAW ENFORCEMENT AGENCY SHALL PROVIDE A NOTICE OF INTENT TO RELY ON PUBLIC RECORDS EXEMPTIONS PURSUANT TO SECTION 119.07 (3)(7) OR (3)(1), FLORIDA STATUTES.]** Each agency shall bear the costs of its own compliance. The chief law enforcement officer of each law enforcement agency shall provide written notification to the attorney general of compliance with this ~~section~~ subdivision, ~~including~~ certifying that, to the best of the chief law enforcement officer's knowledge or belief, all such public records in possession of the agency or in possession of any employee of the agency, have been copied, indexed, and delivered to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried.

(53) Within ~~90~~ **[90]** days after receipt of written notification ~~of the mandate~~ from the attorney general pursuant to subdivision (d)(4) of this rule, each additional person or agency identified pursuant to subdivision (d)(2) or (d)(3) of this rule shall copy, index, and deliver to the records repository all public records which ~~were produced during the prosecution of~~ pertain to the case, except those which have been previously provided to collateral counsel. ~~The~~ **Each** person or agency shall bear the costs of its own compliance. The person or agency shall provide written notification to the attorney general of compliance with this subdivision and shall certify, to the best of the person or agency's knowledge and belief, all such public records in the possession of the person or agency, except those which have been previously provided to collateral counsel, have been copied, indexed, and delivered to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried.

[(4) WITHIN 180 DAYS AFTER THE FILING OF THE NOTICE OF APPEAL, THE STATE ATTORNEY AND ALL LAW ENFORCEMENT AGENCIES SHALL NOTIFY THE TRIAL COURT THAT AN IN CAMERA INSPECTION IS NEEDED TO REVIEW ANY CURRENT CONFIDENTIAL OR EXEMPTED RECORDS FROM PUBLIC RECORDS PRODUCTION UNDER SECTION 119.07 (3)(b) OR (3)(1), FLORIDA STATUTES. THE TRIAL COURT SHALL SET A TIME CERTAIN FOR AN IN CAMERA INSPECTION, REVIEW ANY CONFIDENTIAL OR EXEMPTED MATERIALS AND DETERMINE WHETHER ANY DOCUMENT MAY BE RELEASED TO POSTCONVICTION COUNSEL FOR THE LIMITED PURPOSE OF PREPARING FOR POSTCONVICTION LITIGATION.]

(f) Action Upon Issuance of Mandate.

(1) Within 15 days after receiving written notification of the Supreme Court of Florida's mandate affirming the sentence of death, the attorney general shall file with the trial court a written notice of the mandate and serve a copy of the notice on collateral counsel, [THE DEFENDANT AND THE STATE ATTORNEY].

(fg) Exempt or Confidential Public Records.

(1) Records Delivered to Clerk of Court. Any public records delivered to the records repository pursuant subject to these rules that are confidential or exempt from the requirements of section 119.07(1), Florida Statutes, or article I, section 24(a), Florida Constitution, must be separately contained, without being redacted, and sealed [PURSUANT TO THE TIME REQUIREMENTS OF THESE RULES.] The container must be delivered to the clerk of court in the county in which the capital case was tried. The outside of the container must clearly identify that the public record is confidential or exempt and that the seal may not be broken without an order of the trial court. The outside of the container must identify the nature of the public records and the legal basis for the exemption. Records that are exempt from public records production under section 119.07(3)(b) or (3)(1), Florida Statutes, must be delivered to the clerk of court in a separate container, the outside of which must specifically identify the section(s) under which the records are exempt.

(2) In Camera Inspection. Upon the entry of an appropriate court order, sealed containers subject to an inspection by the trial court shall be shipped to the clerk of court. The containers may be opened only for inspection by the trial court in camera. The moving party shall bear all costs associated with the transportation and inspection of such records by the trial court. The trial court shall perform the unsealing and inspection without ex parte communications and in accord with procedures for reviewing sealed documents [AND ENSURE THAT THE CONFIDENTIAL NATURE OF ALL DOCUMENTS IS PROTECTED].

(3) After Mandate Issues on Direct Appeal. Within 30 days after the filing of the notice of mandate on direct appeal by the attorney general, the trial court shall issue an order unsealing all records that were identified as being exempt from public records production under sections 119.07(3)(b) or (3)(1), Florida Statutes, and the clerk of court shall forward the records to the records repository.

(gh) Upon Designation of Collateral Counsel Demand for Additional Public Records.

(1) Within ~~90~~30 days after ~~collateral counsel is appointed, retained, or appears pro bono~~ receipt of written notification of the mandate from the attorney general, or at such later time as may be set by the trial court, ~~such collateral~~ counsel ~~shall~~may send a written demand for additional public records to each person or agency submitting public records or identified as having information pertinent to the case under subdivisions (d)(2) or (d)(3) of this rule. If the written demand includes requests for records associated with particular named individuals, the demand shall also include:

(A) a brief statement describing each named person's role in the capital case and relationship to the defendant; and

(B) the race, sex, and date of birth of each named person, if collateral counsel has such information.

(2) Within ~~90~~30 days of receipt of the written demand, each person or agency notified under this subdivision shall deliver to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried any additional public records in the possession of the person or agency that pertain to the case and shall certify to the best of the person or agency's knowledge and belief that all additional public records have been delivered to the records repository; or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried. If no additional public records are found, the person or agency shall recertify that the public records previously delivered are complete.

(3) Within ~~60~~[30] days of receipt of the written demand, any person or agency may file with the trial court an objection to the written demand described in subdivision ~~(gh)~~(1). The trial court shall hold a hearing and issue a ruling within 30 days after the filing of any objection, ordering a person or agency to produce additional public records if the court determines each of the following exists:

(A) Collateral counsel has made a timely and diligent search as provided in this rule.

(B) Collateral counsel's written demand identifies, with specificity, those additional public records that are not at the records repository.

(C) The additional public records sought are relevant to the subject matter of a proceeding under rule ~~3.850 or rule~~ 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence.

(D) The additional public records request is not overly broad or unduly burdensome.

(hi) Cases in Which ~~Mandate was Issued~~ [A NOTICE OF APPEALS WAS FILED] Prior to Effective Date of Rule.

(1) ~~If the mandate affirming a defendant's conviction and sentence of death was issued prior to October 1, 1998, and no initial public records requests have been made by collateral counsel by that date, the attorney general and the state attorney shall file notifications with the trial court as required by subdivisions (d) and (e) of this rule.~~ In cases in which the [A NOTICE OF APPEAL] has been [FILED] but collateral counsel has not been appointed, been retained, or appeared pro bono prior to [effective date of rule], the time periods for providing written notification pursuant to subdivisions (d)(1), (d)(2), and (d)(3) of this rule shall run from the date collateral counsel is appointed pursuant to rule 3.851, retained, or appears pro bono.

(2) ~~If on October 1, 1998, a defendant is represented by collateral counsel and has initiated the public records process, collateral counsel shall, within 90 days after October 1, 1998, or within 90 days after the production of records which were requested prior to October 1, 1998, whichever is later, file with the trial court and serve a written demand for any additional public records that have not previously been the subject of a request for public records. The request for these records shall be treated the same as a request pursuant to subdivisions (d)(3) and (d)(4) of this rule, and the records shall be copied, indexed, and delivered to the repository as required in subdivision (e)(5) of this rule.~~ In cases in which [A NOTICE OF APPEAL] has been [FILED] and collateral counsel has been appointed, been retained, or appeared pro bono prior to [effective date of rule], public records production shall be governed by the rules in effect prior to that date.

(3) (j) After Death Warrant Signed.

(1) Within 10 days of the signing of a defendant's death warrant, collateral counsel may request in writing the production of public records from a person or agency from which collateral counsel previously requested public records. A person or agency shall copy, index, and deliver to the repository any public record:

- (A) that was not previously the subject of an objection;
- (B) that was received or produced since the previous request; or
- (C) that was, for any reason, not produced previously.

The person or agency providing the records shall bear the costs of copying, indexing, and delivering such records. If none of these circumstances exist, the person or agency shall file with the trial court and serve on the parties an affidavit stating that no other records exist and that all public records have been produced previously. A person or agency shall comply with this subdivision within 10 days from the date of the written request or such shorter time period as is ordered by the court.

~~(4)~~**(k) Proof of Receipt of Notice.** In all instances ~~in subdivision (h)~~ which require written notification, the receiving party shall provide proof of receipt by return mail or other carrier.

(i) Limitation on Postproduction Request for Additional Records.

(1) In order to obtain public records in addition to those provided under subdivisions ~~???~~(e), ~~(f)~~, (g), (h) and (hi) of this rule, collateral counsel shall file an affidavit in the trial court which:

(A) attests that collateral counsel has made a timely and diligent search of the records repository; and

(B) identifies with specificity those public records not at the records repository; and

(C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and

(D) shall be served in accord with subdivision (c)(1) of this rule.

(2) Within ~~30~~15 days after the affidavit of collateral counsel is filed, the trial court shall order a person or agency to produce additional public records only upon finding each of the following:

(A) collateral counsel has made a timely and diligent search of the records repository;

(B) collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository;

(C) the additional public records sought are either relevant to the subject matter of a proceeding under ~~rule 3.850~~ or rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and

(D) the additional records request is not overly broad or unduly burdensome.

(jm) Copying of Public Records. ~~Collateral counsel~~ The Secretary of State shall provide the personnel, supplies, and any necessary equipment to copy records held at the records repository.

(kn) Authority of the Court. **[IN PROCEEDINGS UNDER THIS RULE THE COURT SHALL:**

(1) CONDUCT A STATUS CONFERENCE WITHIN 180 DAYS AFTER RECEIPT OF WRITTEN NOTIFICATION OF THE FILING OF A NOTICE OF APPEAL AND CONDUCT ADDITIONAL STATUS CONFERENCES EVERY 90 DAYS THEREAFTER TO ENSURE THAT ALL PROVISIONS OF THIS RULE ARE FOLLOWED.

(2) ON A QUARTERLY BASIS, PROVIDE CASE MANAGEMENT REPORTS TO THE CHIEF JUDGE OF THE CIRCUIT AND THE FLORIDA SUPREME COURT.]

In proceedings under this rule the trial court may:

[(a)] compel or deny disclosure of records;

[(b)] conduct an in-camera inspection;

[(c)] extend the times in this rule **[AS IT APPLIES TO THE INITIAL POSTCONVICTION PERIODS]** upon a showing of good cause;

[(d)] impose sanctions upon any party, person, or agency affected by this rule including initiating contempt proceedings, taxing expenses, extending time, ordering facts to be established, and granting other relief; and

[(e)] resolve any dispute arising under this rule unless jurisdiction is in an appellate court.

(fo) Scope of Production and Resolution of Production Issues.

(1) Unless otherwise limited, the scope of production under any part of this rule shall be that the public records sought are not privileged or immune from production and are either relevant to the subject matter of the proceeding under ~~rule 3.850~~ or rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence.

(2) Any objections ~~or to production of public records under this rule shall be filed within 30 days of receipt of the notice or demand which is the subject of the objection, unless otherwise provided herein.~~ Any motions to compel production of public records pursuant to this rule shall be filed within 30 days after the end of the production time period provided by this rule. Counsel for the party objecting or moving to compel shall file a copy of the objection or motion directly with the trial court. The trial court shall hold a hearing on the objection or motion on an expedited basis.

(3) The trial court **[SHALL RESOLVE ALL PUBLIC RECORDS DISPUTES WITHIN A REASONABLE TIME AND NO APPEALS WILL BE PERMITTED FROM THE GRANTING OR DENIAL OF ANY PUBLIC RECORDS REQUEST. IT SHALL BE THE RESPONSIBILITY OF THE TRIAL COURT TO RESOLVE ALL PUBLIC RECORDS DISPUTES PRIOR TO THE DATE THE MOTION FOR POSTCONVICTION RELIEF IS REQUIRED TO BE FILED PURSUANT TO THESE RULES. NO EXTENSION OF TIME OR DELAY IN THE FILING DATE OF A RULE 3.851 MOTION BASED ON THE PENDENCY OF ANY PUBLIC RECORDS MATTERS SHALL BE PERMITTED.]**

(mp) Destruction of Records Repository Records. Sixty days after a capital sentence is carried out, after a defendant is released from incarceration following the granting of a pardon or reversal of the sentence, or after a defendant has been resentenced to a term of years, the attorney general shall provide written notification of this occurrence to the secretary of state with service in accord with subdivision (c)(1). After the expiration of the

60 days, the secretary of state may then destroy the copies of the records held by the records repository that pertain to that case, unless an objection to the destruction is filed in the trial court and served upon the secretary of state and in accord with subdivision (c)(1). If no objection has been served within the 60-day period, the records may then be destroyed. If an objection is served, the records shall not be destroyed until a final disposition of the objection.

[(q) SANCTIONS. FAILURE TO MATERIALLY COMPLY WITH EITHER THE PRODUCTION OF PUBLIC RECORDS OR THE TIME FRAMES SET FORTH IN THIS RULE MAY RESULT IN THE GRANTING OR SUMMARY DISMISSAL WITH PREJUDICE OF ANY POST CONVICTION MOTION. THE TRIAL COURT MAY HOLD ANY HEARING AS TO ANY ALLEGED MISCONDUCT AND TAKE THE APPROPRIATE ACTION UP TO AND INCLUDING THE GRANTING OR DISMISSAL OF ANY POSTCONVICTION RELIEF.]

[The State has modified the forms hereinafter reported by using bold capital lettering and placing the changes between brackets.]

Rule 3.993. Forms Related to Capital Postconviction Records Production

~~(a) Notice to State Attorney of Affirmance of Death Penalty.~~

_____ In the Circuit Court of the _____
_____ Judicial Circuit, in and for _____
_____ County, Florida
_____ Case No. _____
_____ Division _____

State of Florida,

_____ Plaintiff,

v.

_____,

_____ Defendant.

~~**NOTICE TO STATE ATTORNEY OF AFFIRMANCE OF DEATH PENALTY**~~

TO: _____
_____ [name of state attorney and circuit]

_____ The Attorney General of the State of Florida, pursuant to Florida Rule of Criminal Procedure 3.852(d)(1), gives notice that on the _____ day of _____, _____, the Florida Supreme Court issued its mandate affirming the death sentence in this case.

_____ Within 15 days of receipt of this notice, you should provide written notice to each law enforcement agency involved in this case.

_____ Within 90 days after receipt of this notice, you and each law enforcement agency involved in this case, should copy, index, and deliver to the records repository of the Secretary of State all public records, except for those previously filed in the trial court, which were produced in the investigation or prosecution of this case.

_____ I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on _____, _____, and _____,
_____ [name of trial court] _____ [name of state attorney] _____ [name of trial counsel for defendant] this
_____ day of _____, _____.

_____ [name and address of attorney general]

(b) Notice to Secretary of Department of Corrections of ~~Affirmance~~ Imposition of Death Penalty.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

Defendant.

**NOTICE TO SECRETARY OF DEPARTMENT OF CORRECTIONS OF ~~AFFIRMANCE~~
[FILING OF NOTICE OF APPEAL IN THE TRIAL COURT] OF DEATH PENALTY AND
TO PRODUCE PUBLIC RECORDS**

TO: _____
[name of Secretary of Department of Corrections]

~~The Attorney General of the State of Florida~~ State Attorney of the _____ Judicial Circuit of the State of Florida pursuant to Florida Rule of Criminal Procedure 3.852(d)(1), gives notice that on the _____ day of _____, _____, the ~~Florida Supreme Court issued its mandate affirming the death sentence~~ defendant in this case. **FILED A NOTICE OF APPEAL IN THE TRIAL COURT.**

Within ~~90~~ **[90]** days after receipt of this notice, you should copy, index, and deliver to the records repository of the Secretary of State all public records determined by your department to be relevant to the subject matter of a proceeding under Florida Rule of Criminal Procedure ~~3.850 or~~ 3.851 unless the production of such records would be unduly burdensome. Any public records that are the subject of this notice but which are confidential or exempt must be separately contained, without being redacted, sealed and delivered to the Clerk of the Circuit Court of the _____ Judicial Circuit, in and for _____ County, Florida, Records that are exempt under section 119.07(3)(b) or (3)(l), Florida Statutes, must be delivered to the clerk of court in a separate container, the outside of which must specifically identify the section(s) under which they are exempt.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on _____,
[name of trial court] [name of Secretary of Department of Corrections]
_____, and _____,
[name of attorney general] [name of ~~trial counsel for defendant~~ collateral counsel]
this _____ day of _____, _____.

[name and address of ~~attorney general~~state attorney]

(cb) Notice by State Attorney to Law Enforcement Agency of Imposition of Death Penalty.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

Defendant.

NOTICE OF AFFIRMANCE [APPEAL] OF DEATH PENALTY [FILED IN THE TRIAL COURT] AND [NOTICE] TO PRODUCE PUBLIC RECORDS

TO: _____
[name of chief law enforcement officer]

The State Attorney of the _____ Judicial Circuit of the State of Florida, pursuant to Florida Rule of Criminal Procedure 3.852(e)(1)(d)(1), hereby gives notice to _____, that was involved in this case by [name of chief law enforcement officer and agency] investigation, arrest, prosecution, or incarceration, that on the ____ day of _____, _____, the ~~Florida Supreme Court issued its mandate affirming the death sentence~~ defendant in this case was sentenced to death.

Within ~~90~~ 90 days after receipt of this notice, you and each law enforcement agency involved in this case should copy, index, and deliver to the records repository of the Secretary of State all public records, except those filed in the trial court, which were produced in the investigation, arrest, prosecution, or incarceration of the defendant in this case. Any public records that are the subject of this notice but which are confidential or exempt must be separately contained, without being redacted, sealed and delivered to the Clerk of the Circuit Court of the _____ Judicial Circuit, in and for _____ County, Florida. Records that are exempt under section 119.07(3)(b) or (3)(l), Florida Statutes, must be delivered to the clerk of court in a separate container, the outside of which must specifically identify the section(s) under which they are exempt.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on _____, _____, _____, and _____,
[name of trial court] [name of chief law enforcement officer]
_____, and _____,
[name of attorney general] [name of collateral counsel]
this ____ day of _____, _____.

[name and address of state attorney]

(dc) Notice of Compliance by State Attorney.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

_____ ,

Defendant.

NOTICE OF COMPLIANCE BY STATE ATTORNEY [AND NOTICE OF INTENT TO RELY ON A PUBLIC RECORD EXEMPTION PURSUANT TO SECTION 119.07 (3)(b) OR (3)(10), FLORIDA STATUTES.]

TO: _____
[name and address of attorney general]

The State Attorney for the _____ Judicial Circuit gives notice to the Attorney General of compliance ~~by delivery of public records involving this case to the records repository of the Secretary of State with Florida Rule of Criminal Procedure 3.852(d)(2)(B) and certifies that, To~~ the best of my knowledge and belief, all public records in my possession, except for those previously filed in the trial court which were produced in the investigation or prosecution of the case have been copied, indexed, and delivered to the records repository of the Secretary of State ~~as required by Florida Rule of Criminal Procedure 3.852(e)(2). or, if the records are confidential or exempt, to the Clerk of the Circuit Court of the~~ _____ Judicial Circuit, in and for _____ County, Florida.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on _____, and _____, this _____ day of _____, _____.
[name of trial court] [name of attorney general]
[name of collateral counsel]

[name and address of state attorney]

(ed) Notice of Compliance by the Secretary of the Department of Corrections.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

_____ ,

Defendant.

**NOTICE OF COMPLIANCE BY THE SECRETARY
OF THE DEPARTMENT OF CORRECTIONS**

TO: _____
[name and address of attorney general]

The Secretary of the Department of Corrections, having received notice of the ~~affirmance~~imposition of the death penalty in this case from the ~~Attorney General~~State Attorney for the _____ Judicial Circuit on the _____ day of _____, _____, hereby gives notice of compliance with Florida Rule of Criminal Procedure 3.852(e)(1) and certifies that, to the best of my knowledge and belief, all public records determined by the Department to be relevant to the subject matter of a proceeding under Florida Rule of Criminal Procedure ~~3.850 or~~ 3.851, except for those previously filed in the trial court, have been copied, indexed, and delivered to the records repository of the Secretary of State or, if the records are confidential or exempt, to the Clerk of the Circuit Court of the _____ Judicial Circuit, in and for _____ County, Florida.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on _____, _____,
[name of trial court] [name of attorney general]
_____, and _____,
[name of state attorney] [name of collateral counsel]
this _____ day of _____, _____.

[name and address of Secretary of
Department of Corrections]

(fe) Notice of Compliance by Law Enforcement Agency.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

_____ ,

Defendant.

NOTICE OF COMPLIANCE BY LAW ENFORCEMENT AGENCY [AND NOTICE OF INTENT TO RELY ON A PUBLIC RECORDS EXEMPTION PURSUANT TO SECTION 119.07 (3)(b) OR (3)(1), FLORIDA STATUTES.]

TO: _____
[name and address of attorney general]

_____ that was involved
[name of chief law enforcement officer and agency]
in this case by an investigation, arrest, prosecution, or incarceration, hereby gives notice to the Attorney General of compliance by ~~delivery of public records involving this case to the records repository of the Secretary of State with Florida Rule of Criminal Procedure 3.852(e)(2). I further~~ and certifies that, to the best of my knowledge and belief, all public records in possession of this agency or in the possession of any employee of this agency, except for those previously filed in the trial court, which were produced in the investigation or prosecution of the case have been copied, indexed, and delivered to the records repository of the Secretary of State or, if the records are confidential or exempt, to the Clerk of the Circuit Court of the _____ Judicial Circuit, in and for _____ County, Florida.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on

_____, _____,
[name of trial court] [name of attorney general]

_____, and _____,
[name of state attorney] [name of collateral counsel]

this _____ day of _____, _____.

[name and address of chief law enforcement officer]

(gf) Notice to Attorney General of Person or Agency Having Pertinent Information.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

_____ ,

Defendant.

**STATE ATTORNEY'S NOTICE TO ATTORNEY
GENERAL OF PERSON OR AGENCY HAVING PERTINENT INFORMATION**

TO: _____
[name and address of attorney general]

The undersigned _____ hereby gives notice to the Attorney General of
[name of state attorney]
the following name(s) and address(es) of any person or agency having information pertinent to this case
in addition to those persons and agencies who previously furnished public records to the records
repository of the Secretary of State:

[list names and addresses of persons or agencies]

Please provide prompt written notification to each identified person or agency of their duty to
deliver all such public records, except for those previously filed in the trial court or furnished to
collateral counsel, pertaining to this case to the records repository of the Secretary of State or, if the
records are confidential or exempt, to the Clerk of the Circuit Court of the _____ Judicial Circuit, in
and for _____ County, Florida.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on
_____, _____, and
[name of trial court] [name of attorney general]
_____, this _____ day of _____, _____.
[name of public defender or defense collateral counsel]

[name and address of state attorney]

(fmg) Notice to Attorney General of Person or Agency Having Pertinent Information.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

_____ ,

Defendant.

**TRIAL COUNSEL'S NOTICE TO ATTORNEY
GENERAL OF PERSON OR AGENCY HAVING PERTINENT INFORMATION**

TO: _____
[name and address of attorney general]

The undersigned _____, for
[name of public defender or other counsel]

_____, hereby gives notice to the Attorney General of the
[name of defendant]

following name(s) and address(es) of persons or agencies ~~in addition to those previously furnished to collateral counsel~~ which may have information pertinent to this case in addition to those persons and agencies who previously furnished public records to the records repository of the Secretary of State.

[list names and addresses of persons or agencies]

Please provide prompt written notification to each identified person or agency of their duty to deliver all such public records, except for those previously filed in the trial court or furnished to collateral counsel, pertaining to this case to the records repository of the Secretary of State, or if the records are confidential or exempt, to the clerk of the Circuit Court of the _____ Judicial Circuit, in and for _____ County, Florida.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on

_____, _____,
[name of trial court] [name of attorney general]

and _____, and _____,
[name of state attorney] [name of collateral counsel]

this ____ day of _____, 19____.

[name and address of trial counsel]

(ih) Notice by Attorney General to Person or Agency Having Pertinent Information.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

_____ ,

Defendant.

**NOTICE BY ATTORNEY GENERAL TO PERSON
OR AGENCY HAVING PERTINENT INFORMATION**

TO: _____
[name and address of person or agency]

Pursuant to Florida Rule of Criminal Procedure 3.852(d)(2), the undersigned has been notified by _____, that you have public records
[name of trial counsel or state attorney]

pertinent to this case. Pursuant to the provisions of rule 3.852(e)(53), you must:

1. Within ~~90~~60 days of receipt of this notice, copy, index, and deliver to the records repository of the Secretary of State or, if the records are confidential or exempt, to the Clerk of the Circuit Court of the _____ Judicial Circuit, in and for _____ County, Florida all public records in your possession, except for those previously filed in the trial court or furnished to collateral counsel, which are pertinent to this case; and

2. Provide written notice to me that you have complied with these provisions. Records that are exempt under section 119.07(3)(b) or (3)(l), Florida Statutes, must be delivered to the clerk of court in a separate container, the outside of which must specifically identify the section(s) under which they are exempt.

I HEREBY CERTIFY that a true and correct copy of the pleading has been served on _____, ~~and~~ _____,

[name of person or agency]

[name of trial court]

,and

[name of state attorney]

[name of collateral counsel]

this _____ day of _____, _____.

[name and address of attorney general]

(j) Notice of Compliance by Person or Agency.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

_____,

Defendant.

NOTICE OF COMPLIANCE BY PERSON OR AGENCY

TO: _____
[name and address of attorney general]

The undersigned, pursuant to Florida Rule of Criminal Procedure 3.852(e)(53), having received notice from the Attorney General on the ____ day of _____, _____, ~~to copy, seal, index, and deliver all public records in my possession or in the possession of the undersigned agency to the records repository of the Secretary of State,~~ hereby gives notice of compliance to the Attorney General and ~~further~~ certifies that all such public records in my possession or in the possession of the undersigned agency pertaining to this case, except for those previously filed in the trial court or furnished to collateral counsel, to the best of my knowledge and belief, have been copied, indexed, and delivered to the records repository of the Secretary of State or, if the records are confidential or exempt, to the Clerk of the Circuit Court of the _____ Judicial Circuit, in and for _____ County, Florida.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on _____,
[name of trial court] [name of attorney general]
_____, and _____,
[name of state attorney] [name of collateral counsel]
this ____ day of _____, _____.

[name and address of person or agency]

(*) Defendant's Demand for Production of Additional Public Records Pertaining to Defendant's Case.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

_____,

Defendant.

**DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC
RECORDS PERTAINING TO DEFENDANT'S CASE**

TO: _____
[name and address of person or agency]

The defendant, by and through undersigned counsel, hereby makes demand of _____, pursuant to Florida Rule of Criminal Procedure 3.852(~~h~~), for additional public records pertinent to this case.

1. Undersigned counsel represents that, after a timely and diligent search, the records specifically described below:

- (a) are relevant to a pending proceeding pursuant to rule 3.850~~1~~ or
- (b) appear reasonably calculated to lead to the discovery of admissible evidence; and
- (c) have not previously been obtained in discovery or from a previous public records request from either the above-named person or agency or any other; and
- (d) are not presently available from the public records repository.

2. The public records requested are as follows:

[list public records requested]

3. [if request includes records associated with particular named individuals, give a brief statement of each named person's role in the capital case and relationship to the defendant, and the race, sex, and date of birth of each named person, if you have such information]

34. Pursuant to rule 3.852(h), any objection to production, including any claim of exemption, must be filed with the trial court and served upon all counsel of record within ~~60~~[30] days of receipt of this demand, or such objection will be deemed waived.

45. Pursuant to rule 3.852(h), you shall, within ~~90~~[30] days after receipt of this demand:

(a) copy, index, and deliver to the records repository of the Secretary of State any additional public records in your possession or the possession of your agency which pertain to this case; and

(b) certify that, to the best of your knowledge and belief, all additional public records have been delivered to the records repository of the Secretary of State; ~~and/or~~

(c) recertify that the public records previously delivered are complete if no additional public records are found; and

(d) deliver any public records that you claim are confidential or exempt in a sealed container, without being redacted, to the Clerk of the Circuit Court of the _____ Judicial Circuit, in and for _____ County, Florida.

[name of attorney for defendant]

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on

_____, _____,
[name of trial court] [name of person or agency]

_____, and _____,
[name of attorney general] [name of state attorney]

this _____ day of _____, _____.

[name and address of ~~attorney for defendant~~ collateral counsel]

(fk) Objection to Defendant's Request for Production of Additional Public Records Pertaining to Defendant's Case and Motion for Hearing.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

_____,

Defendant.

OBJECTION TO DEFENDANT'S REQUEST FOR PRODUCTION OF ADDITIONAL PUBLIC RECORDS PERTAINING TO DEFENDANT'S CASE AND MOTION FOR HEARING

The undersigned person or agency, having received defendant's demand for production of additional public records pertaining to defendant's case on the ____ day of _____, _____, hereby files this objection and respectfully moves the court to hold a hearing to determine if the requirements of rule 3.852-____(h)(3) have been met. The grounds for this objection are:

[state grounds with specificity and identify the records]

Respectfully submitted,

[name of attorney]
Attorney for _____
[name of person or agency]

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on _____, _____,
[name of trial court] [name of ~~attorney for defendant~~state attorney]
~~and~~ _____, _____,
[name of attorney general] [name of collateral counsel]
this ____ day of _____, ____.

[name of attorney]

(m) Notice of Delivery of Exempt Public Records to ~~Records Repository~~ Clerk of Circuit Court.

In the Circuit Court of the _____
Judicial Circuit, in and for _____
County, Florida
Case No. _____
Division _____

State of Florida,

Plaintiff,

v.

Defendant.

NOTICE OF DELIVERY OF EXEMPT PUBLIC RECORDS TO ~~RECORDS REPOSITORY~~ CLERK OF CIRCUIT COURT

TO: ~~Records Repository~~ The Clerk of the Circuit Court of the _____
Judicial Circuit, in and for _____ County, Florida

[address of ~~records repository~~ clerk of court]

The undersigned, _____, hereby gives notice ~~to the records repository of the Secretary of State that certain delivered~~ that certain records that are confidential or exempt from the requirements of section 119.07(1), Florida Statutes have been delivered to you. These public records have been separately contained, without being redacted, have been sealed, and the nature of the public records and the legal basis under which the public records are exempt have been identified. Records that are exempt under section 119.07(3)(b) or (3)(l), Florida Statutes, have been delivered to the clerk of court in a separate container, the outside of which specifically identifies the section(s) under which they are exempt.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on _____, _____,
[name of trial court] [name of ~~records repository~~ clerk of court]
_____, _____, and
[name of attorney general] [name of state attorney]
_____, this ____ day of _____, ____.
[name of collateral counsel]

[name and address of person or agency]

~~(c) Notice of Delivery of Exempt Public Records to the Clerk of Circuit Court:~~

_____ In the Circuit Court of the _____
_____ Judicial Circuit, in and for _____
_____ County, Florida
_____ Case No. _____
_____ Division _____

State of Florida,

_____ Plaintiff,

v.

_____,

_____ Defendant.

**NOTICE OF DELIVERY OF EXEMPT PUBLIC RECORDS
TO CLERK OF CIRCUIT COURT**

TO: _____
_____ [name and address of clerk of circuit court]

_____ The Secretary of State, by and through the undersigned, having received an appropriate court order pursuant to rule 3.852, hereby gives notice that the sealed container(s) of exempt public records has/have been shipped to the above-listed clerk of circuit court. Pursuant to the provisions of Florida Rule of Criminal Procedure 3.852(f)(2) these public records may only be opened for an inspection by the trial court in camera.

_____ I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on _____,
_____ [name of trial court] _____ [name of clerk of circuit court],
_____, and _____,
_____ [name of attorney general] _____ [name of collateral counsel]
this _____ day of _____, _____.

_____ [name of secretary of state]

By: _____
_____ [name of representative of secretary of state]

(m) Notice of Affirmance of Death Sentence.

In the Circuit Court of the
Judicial Circuit, in and for
County, Florida
Case No.
Division

State of Florida,

Plaintiff,

v.

_____.

Defendant.

NOTICE OF AFFIRMANCE OF DEATH SENTENCE.

The Attorney General of the State of Florida pursuant to Florida Rule of Criminal Procedure 3.852(f), gives notice that on the _____ day of _____, _____, the Florida Supreme Court issued its mandate affirming the death sentence in this case.

Florida Rule of Criminal Procedure 3.852(g)(3) requires that, within 30 days after the filing of this notice, records that were delivered to the clerk of court and identified as exempt from public records production under section 119.07(3)(b) or (3)(l), Florida Statutes, must be unsealed and forwarded to the records repository.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on

_____.

[name of collateral counsel]

this _____ day of _____, _____.

[name and address of attorney general]