

IN THE SUPREME COURT OF FLORIDA

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IN RE: AMENDMENT TO FLORIDA *
RULES OF CRIMINAL PROCEDURE *
3.851 *
* * * * *

CASE NO. 96,646

COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General submits the following comments to the proposed amendments to Florida Rule of Criminal Procedure 3.851, drafted by the Committee on Postconviction Relief in Capital Cases, chaired by the Honorable Stan R. Morris, as well as to those recommended revisions to the Morris Committee's proposals, submitted to this Court on March 3, 2000, by the Florida Bar Criminal Procedure Rules Committee:

1. The comments of the Attorney General and proposed amendments to Rule 3.851, submitted to the Morris Committee on or about April 29, 1999, are attached to this pleading and hereby incorporated by reference. The amendments to Rule 3.851 proposed by the Morris Committee on September 30, 1999, are in consonance with many of these prior comments, and this office continues to endorse the proposals of the Morris Committee, to the extent that the Morris Committee proposals are consistent with the provisions

of the newly enacted Death Penalty Reform Act of 2000. This legislation, it must be noted, specifically enacted substantial portions of the Morris Committee's proposals as law.

2. On March 3, 2000, the Florida Bar Criminal Procedure Rules Committee submitted to this Court comments on the work product of the Morris Committee, as well as proposed revisions of its final report. With all due respect, the proposals of the Rules Committee do not, in any material respect, improve the substance of the Morris Committee's work product, and in many respects, run counter to the letter and spirit of the Death Penalty Reform Act of 2000. Specifically, the State disagrees with the Rules Committee's proposed amendments to 3.851(c)(I)(C), 3.851(f), 3.851(h)(1), and (3). The Morris Committee's delineation of those grounds which would not constitute an adequate basis for an extension of time for the filing of postconviction pleadings was reasonable, in light of past experience, as was the Morris Committee's setting of timeframes for the disposition of capital collateral appeals. Likewise, the Morris Committee's shortening of the time for the filing of a notice of appeal in capital collateral proceedings (from 30 to 15 days) was reasonable, given the certainty that every adverse capital collateral ruling will be appealed, and no valid purpose is served by further delay.

The State's strongest disagreement with the Rules Committee's revisions relates to 3.851(f), which itself relates to a matter outside the Morris Committee's proposals- incorporation of the holding of Carter v. State, 706 So.2d 873 (Fla. 1997), into Florida's Rules of Criminal Procedure. This matter is not germane to the Morris Committee's recommendations, and should await the presentation of other proposals by the Rules Committee and not be incorporated into these proceedings. The State also respectfully maintains the position asserted in its rehearing petition in Carter, to the effect that the only standard of mental competency which is relevant to capital collateral proceedings is that set forth in Rule 3.811, governing competency to be executed. Applying a lesser standard in capital collateral proceedings, and creating the possibility that some issues in a case will be litigated, while others are held in what could be perpetual abeyance, is completely inconsistent with the intent of the proposed amendments submitted by the Morris Committee, as well as the Florida Legislature in its enactment of the DPRA. The State respectfully moves this Honorable Court to reject the Rules Committee's proposed revisions to the Morris Committee's amendments.

WHEREFORE, the Office of the Attorney General files the instant comments.

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 all counsel of record, this 10th day of March, 2000.

RICHARD B. MARTELL
Chief, Capital Appeals