

February 5, 2013

Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1927

Re: Comment Re: Amendment to Rule 3.220
Case No.: SC12-2235

Dear Supreme Court Justices:

I object to the current suggested amendment and suggest that a few works be added to the rule amendment as follows:

After the amendment, I suggest this be added: “so long as the State Attorney makes the property or material reasonably available to the defendant or his attorney.”

The actual statute, F.S. 92.561 contains language making it clear that defense lawyers still can prepare for trial but, should not *automatically* get copies of child pornography.

The statute says:

§ 92.561. Prohibition on reproduction of child pornography

(1) In a criminal proceeding, any property or material that portrays sexual performance by a child as defined in [s. 827.071](#), or constitutes child pornography as defined in [s. 847.001](#), must remain secured or locked in the care, custody, and control of a law enforcement agency, the state attorney, or the court.

(2) Notwithstanding any law or rule of court, a court shall deny, in a criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that portrays sexual performance by a child or constitutes child pornography so long as

the state attorney makes the property or material reasonably available to the defendant.

(3) For purposes of this section, property or material is deemed to be reasonably available to the defendant if the state attorney provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays sexual performance by a child or constitutes child pornography by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during the discovery process or at a court proceeding.

Personally, I think this rule change and existing statute are not needed and instead, such materials should be treated like autopsy photos and released to the defense team with restrictions made by the trial judge but, I also can understand why the legislature wants to make sure that child pornography must be properly contained. Somehow, this must be balanced against the defense attorney's right to make sure the materials are not a trick or a photo shop. It is very easy for someone to create child pornography with a simple computer. We routinely trust lawyers will all kinds of sensitive materials, trade secrets, undercover communications, autopsy photos, etc. so long as the court crafts the appropriate orders restricting their disclosure.

I feel that if the rule is left as the proposed amendment is now written, judges will think they *never* can work with defense attorneys on reasonable discover requests simply because the rule is far more restrictive than the statute is.

I am a criminal defense attorney in Miami and have been a member of the Bar for 30 years. I was a prosecutor back in the early 80's. In my practice, I frequently handle sensitive matters and have worked with opposing counsel and judges on many court orders that made it possible for me to be properly prepared for trial while showing the utmost respect for sensitive materials that were entrusted to me and my expert witnesses.

I waive my right to be present for oral argument, if set and as always send my thanks to the members of the committees who have worked on this issue.

Very truly yours,

Michael A. Catalano

MAC:cm

Certificate of Service

I hereby certify that a copy of this objection has been sent by email to: Mark Caliel, Esq. Assistant State Attorney (mcaliel@coj.net), Heather Telfer, Bar Liaison (htelfer@flabar.org) and the Florida Supreme Court (e-file@flacourts.org) all by email this 20th day of January, 2013. The original and 9 copies will also be sent to the court by US Mail this same day.

By _____
Michael A. Catalano, Esq.