

IN THE SUPREME COURT OF FLORIDA

IN RE: RULES GOVERNING  
CAPITAL POSTCONVICTION  
ACTIONS.

CASE NO. SC00-242

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MOTION FOR CLARIFICATION

COMES NOW State of Florida, by and through undersigned counsels and file this Motion for Clarification of the Order dated February 7, 2000, **In Re: Rules Governing Capital Postconviction Actions**, \_\_\_\_ So.2d \_\_\_\_ (Fla. 2000), 25 Fla.L.Weekly S119, re-adopting rules governing postconviction procedures in capital cases in lieu of the new procedures enacted in Ch. 2000-3, Sec.8 & 9 at 21-25 Laws of Florida (Creating Sec. 924.058 and 924.059, Fla. Stat.) and voiding Sec. 10 at 25 of the Act; as a ground would show:

1. In the interest of proper and orderly processing of postconviction proceedings in capital cases, this Court determined that interim procedures were warranted in postconviction litigation and therefore, re-adopted "Rules 3.850, 3.851, and 3.852 as they existed prior to the effective date" of the Death Penalty Reform Act of 2000 (DPRA). The Court's Order states, "[T]he rules readopted herein shall prevail and shall govern all actions for

capital postconviction relief until June 30, 2000, or such time as the Court adopts new rules, whichever occurs first."

2. In addressing only sections of DPRA, Sec. 8-10 at 21-25, the Court acknowledges confusion "among lawyers and judges relative to which rules of criminal procedure are applicable," based ostensibly on pleadings filed by the CCRC and others. A careful reading of DPRA reflects however, that the Legislature enacted substantive legislation which is not impacted by the re-adoption rules (Rules 3.850, 3.851 and 3.852), and most provisions are neither stayed nor tolled by the re-adoption.

3. The actions taken by the Court, in re-enacting specifically repealed rules, have caused even greater confusion because untoward conflicts now exist with DPRA. For example, a substantive change contained in Sec. 3, amending Sec. 119.19, Fla. Stat. at 4-14, regulating public records, requires prosecutors to "promptly provide written notification to each law enforcement agency involved in the case and to the Department of Corrections." While such notification requirements do not directly conflict with "any provision of Rule 3.852," the scope and timeliness of the prosecutor's notification duties and the State's and other agency's obligation to copy, seal and deliver public records to the repository and non-public records to the clerk within a specific time frame, is unexplained. Re-enacted Rule 3.852, requires state agencies and law enforcement to do duplicate work in order to

comply with the delivery of public records under DPRA and the reenacted rule. In order to timely adhere to the mandates of DPRA, a number of state attorneys' offices have attempted to comply with Sec. 3. Notification letters have been transmitted to law enforcement agencies as well as the Department of Corrections to commence processing public records within days of DPRA becoming law. A second round of correspondence was transmitted when this Court issued the February 7<sup>th</sup> Order. Upon closer review of DPRA however, it is clear that no portion of that order impacted the state attorney's obligations to forthwith commence processing of public records within days after a sentence of death has been imposed. Under the rule, the Office of the Attorney General is required to transmit notification letters to a variety of enumerated agencies, only after mandate has issued from the direct appeal. When time limitations are part of the duties and rights proscribed by legislation, they are recognized as substantive law.<sup>1</sup> As such, clarification is warranted so that all parties are clear

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<sup>1</sup> **Lundstrom v. Lyons**, 86 So.2d 771, 772 (Fla. 1956) (statutes of limitations create substantive rights that cannot be abrogated by rules of procedure -- "it cannot be doubted that courts may not by rule of practice either by statutory or inherent rule making authority, amend or abrogate a right resting in either substantive or adjective law."); **S.R. v. State**, 346 So.2d 1018 (Fla. 1977) (citing **Garcia v. State**, 229 So.2d 236 (Fla. 1969) (court held legislation that required an untimely petition in a juvenile matter to be dismissed with prejudice was part of substantive right and substantive statutes superseded a procedural rule that, an untimely petition may be dismissed.); **State v. D.H.W.**, 686 So.2d 1331, 1334-5 (Fla. 1996).

as to their obligations and not required to duplicate public records procedures.

4. Likewise Sections 2<sup>2</sup>, 4<sup>3</sup>, 6<sup>4</sup> and 7<sup>5</sup> of DPRA, all provide substantive provisions that are not discussed, referred to or impacted by the courts reenactment of the former postconviction rules and their effect on capital postconviction litigation. Sec. 6 also impacts the state concerning whether there exists a duty to actively request the trial courts appoint counsel in cases that are

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<sup>2</sup> Sec. 2 of DPRA clarifies the scope of CCRCs' and registry lawyers' responsibilities in postconviction litigation.

<sup>3</sup> Sec. 4 of DPRA bars untimely collateral litigation under a statute of limitations; **see: Merkle v. Robinson**, 737 So.2d 540, 542 (Fla. 1999).

<sup>4</sup> Sec. 6 of DPRA requires the trial courts to appoint the appropriate CCRC office or registry counsel to handle cases where the death sentence has been imposed; limits changes in counsel unless good cause exists; sets commencement of postconviction litigation at a time certain after direct appeal counsel has filed an initial brief; bars claims of ineffectiveness of postconviction counsel; disallows further delays in filing postconviction pleadings due to pendency of public records requests or other litigation; permits a statute of limitations as to the time appellate counsel claims may be raised; and allows for factual innocence claims at any time as long as certain criteria are satisfied under subsection (5).

<sup>5</sup> Sec 7 of DPRA requires a postconviction motion be filed by January 8, 2001, or any earlier date required by rule or law in effect prior to the effective date of the act. If the state or law enforcement are not required to abide by the public records provision, Sec. 3, discovery may not have occurred prior to the time limits for filing postconviction motions. Re-enacted Rule 3.852 requires that such public records be sent to the repository only after mandate has issued on the direct appeal. The new provisions for filing postconviction motions may require filing said motions before the time that public records would be provided in accordance with the repealed rules.

pending on direct appeal. The express purpose of the DPRA is to end unnecessary delays in postconviction litigation. To that end, the Legislature provided that postconviction counsel shall be appointed within a short period following the imposition of the sentence of death in order to ensure that no delays are incurred. Unquestionably while the duty to appoint counsel reposes with the trial court, the responsibility to ensure that a case moves forward rests with the parties. Unless the State moves forward and/or the CCRC's file timely notices that they are opting out of a case within 30 days, pending direct appeal cases will require appointment of counsel by the trial court under DPRA no matter that this Court re-enacted the postconviction rules. Albeit, this Court observed in its February 7<sup>th</sup> Order that the "Public Defender for the Second Judicial Circuit, thus far, has filed ten challenges to the Act," the fact remains that nothing in the February 7<sup>th</sup> Order or in the re-enacted rules, permits the trial courts to ignore Sec. 6 and refrain from appointing either CCRC, registry or private counsel to these cases following the imposition of the sentence of death.

5. By failing to consider a number of critical components of DPRA and merely re-enacting old rules as an interim measure, the Court has created even greater instability in postconviction.<sup>6</sup> The

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<sup>6</sup> For example, Sec. 8 creating in part, Sec. 924.058(2), calls for a fully pled postconviction action be filed under oath. There is clearly no dispute that even under the re-enacted rules a fully pled motion must be filed as required pursuant to Rule 3.850(c). There is no rational basis to delay the effect of this provision until June 30, 2000.

court's extraordinary re-enactment of these "interim measures" requires a duplication and waste of valuable resources for no purpose; expenditure of funds without need and delays in reforming Florida's postconviction process without purpose.<sup>7</sup>

WHEREFORE, this Court should clarify its February 7, 2000 Order to reflect that no provisions of the interim re-adopted rules, specifically, Rules 3.850, 3.851, and 3,852 will delay the enforcement of any provisions of DPRA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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<sup>7</sup> Sec. 9 calls for specific time periods for processing collateral litigation. There is no reasoned basis to suggest that these periods will not accomplish the goals of Sec. 5 of DPRA which are to reduce delays in a timely fashion; to commence collateral litigation at the earliest possible point; to set forth statutes of limitations; to limit successive litigation unless authorized by law; and to prevent the expenditure of finite resources in violation of the provisions of DPRA.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the Honorable Stan Morris, Circuit Court Judge, Alachua County Courthouse, 201 East University Avenue, Suite 302, Gainesville, Florida 32061-5461; to Gregory Smith, CCRC-North, Post Office Drawer 5498, Tallahassee, Florida 32314-5498; to John Moser, CCRC-Middle, 3801 Corporex Drive, Suite 210, Tampa, Florida 33619; to Neil Dupree, CCRC-South, 101 N.E. 3rd Avenue, Suite 400, Ft. Lauderdale, Florida 33301; to Nancy Daniels, Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301; to J. Marion Moorman, Public Defender, Polk County Courthouse, P.O. Box 9000, Bartow, Florida 33830-9000; to Bennett Brummer, Public Defender, 1320 N.W. 14th Street, Miami, Florida 33125; to Richard Jorandby, Public Defender, Criminal Justice Building, 421 Third Street, West Palm Beach, Florida 33401; to James Gibson, Public Defender, The Justice Center, 251 N. Ridgewood Avenue, Daytona Beach, Florida 32114, and to Roger Maas, Commission on Capital Cases, 402 South Monroe Street, Tallahassee, Florida 32399-1300, this 21st day of February, 2000.

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Of Counsel