IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, STATE OF FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

v.

CURTIS J. REEVES,
Defendant.
SPN: 683538 /

Case No.: CRC-1400216FAES

Division: 1

RESPONSE TO STATE'S MOTION TO COMPEL THE FILING OF ORIGINAL DEPOSITION TRANSCRIPTS AND TO REGULATE DISCOVERY

COMES NOW, the Defendant, CURTIS J. REEVES, by and through Undersigned counsel, and responds to the State's Motion to Compel the Filing of Original Deposition Transcripts and to Regulate Discovery, and as grounds therefore states as follows:

1. On August 5, 2015 undersigned counsel was served with the State's Motion to Compel the Filing of Original Defense Deposition Transcripts and to Regulate Discovery ("State's Motion").
2. The State asks this Court to direct the Defendant to immediately file with the Clerk of the Court all of the Defense's original deposition transcripts that have been requested to date. The State further requests that all deposition transcripts ordered by the defense in the future also be promptly filed with the Clerk of the Court.
3. The State's Motion relies solely on the Sixth Judicial Circuit's Administrative Order No. PA/PI-Cir-99-35 ("Administrative Order").
4. The Administrative Order does not apply to this case because, among other things, Mr.

Reeves is being represented by a private attorney and has not utilized county funds to obtain the deposition transcripts. This Court has no authority to compel the filing of deposition transcripts for the sole purpose of circumventing the prosecution's obligation to purchase their own copies. Such an interpretation of the Administrative Order may result in the violation of Mr. Reeve's constitutional right to a fair trial. Further, such a requirement would result in an unjust taking without reasonable compensation to both the court reporters and the defense. The Administrative Order, when read and interpreted in its entirety, as it should, clearly dictates the procedure on how court-appointed counsel, public defenders, and state attorneys obtain deposition transcripts paid for by public funds.

5. For the reasons stated below, the State's Motion should be denied.

MEMORANDUM OF LAW

The State's Motion should be denied because the Administrative Order does not apply to Mr. Reeves, a defendant who is being represented by privately retained counsel and uses his own funds to pay deposition-related costs. Instead, this Administrative Order applies only to county-funded attorneys who seek to use specific public funds to pay for deposition transcripts. To interpret it any other way would be contrary to the rules of statutory construction and render the Administrative Order an unlawful exercise of the chief judge's judicial powers. Further, any other reading of this Administrative Order would be contrary to the law and to the constitutional rights of the defendant.

Interpreting Administrative Orders

The Florida Supreme Court has held that reading provisions of a statute or law in isolation is contrary to the key tenants of statutory construction. The method to properly interpreting the

Administrative Order is explained in *E.A.R. v. State*, 4 So.3d 614 (Fla. 2009). In that case the Florida Supreme Court held:

> The intent of the Legislature is the polestar of statutory construction. *See, e.g., Borden v. East-European Ins. Co.,* 921 So.2d 587, 595 (Fla. 2006). To discern this intent, the Court looks "primarily" to the plain text of the relevant statute, and when the text is unambiguous, our inquiry is at an end. *Id.* However, if a part of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the same statute or others *in pari materia,* the Court will examine the entire act and those *in pari materia* in order to ascertain the overall legislative intent. *Id.* at 629, *citing Fla. Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So.2d 1260, 1264 (Fla. 2008) (other citations omitted).

The *E.A.R.* Court further held that "[t]he doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Id, citing Fla. Dep't of State v. Martin*, 916 So.2d 763, 768 (Fla. 2005). The legislation "as a whole, including the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence" must be considered before ascertaining the intent of the creator. *Id.* (citations omitted).

In reading this statute *in pari materia*, it is clear that the intent of this Administrative Order is two-fold. The intent of this Administrative Order is to both control this group of publicly-funded attorneys from ordering transcriptions of all depositions while also minimizing the costs of duplicating them by sharing in their production.

I. The Administrative Order Does Not Apply to this Defendant

A clear examination of the Administrative Order in conjunction with the applicable law pertaining to administrative orders and judicial authority reveals that the only proper interpretation

is that it does not apply to a defendant who is represented by private counsel and who pays for his deposition transcripts.

The Administrative Order: The Preamble

The findings and stated purposes of the Administrative Order are contained in its preamble. An analysis of these findings and stated purposes is relevant to the question of whether the Administrative Order applies to this Defendant. The preamble states:

> **Because the transcription of all depositions in criminal cases are not necessary** in order for counsel for the defendant and counsel for the state to proceed through a criminal prosecution while also providing the defendant with all protection and rights guaranteed by the federal and state constitutions, Florida Rules of Criminal Procedure, and Florida Statutes;
>
> Because the original transcript of a trial proceeding designated for appeal is required to be forwarded to the appellate court and is not maintained by the trial court; and
>
> In order to provide for the uniform treatment throughout the circuit of transcripts of depositions and other proceedings in criminal cases; and
>
> In order to provide copies of depositions and other transcripts in criminal proceedings at a reasonable rate **when the cost is paid with county funds**; and
>
> In order to provide a means whereby Fla. R. Crim. P. 3.220(d)(2) may be administered; it is hereby (emphases added).

The first paragraph of the preamble acknowledges that transcription of every deposition in criminal cases are not necessary for the prosecution or the defense to properly prepare for trial. This portion of the preamble is merely asserting that the court is not required to expend public funds and allow these publicly-funded attorneys to order each and every deposition transcript. In other words, this Administrative Order provides a basis for the court to refuse a motion by publicly-funded attorneys to order deposition transcripts that are not necessary.

The second and third paragraphs of the preamble can only be read in reference to the fourth paragraph pertaining to the payment of deposition transcripts paid for with county funds. Given that there is no need to order each and every deposition transcript, the only reason for uniformity with the treatment of records on appeal (paragraph 2) and deposition transcripts (paragraph 3) would be if county funds are utilized for court-appointed counsel, public defenders, and state attorneys.

The purpose of the Administrative Order is abundantly clear when considering the legal requirements to pay for deposition transcripts in criminal cases. The chief judges of the circuits:

> after consultation with the circuit court and county court judges in the circuit, shall enter an administrative order developing and implementing a circuit-wide plan for the court reporting of all proceedings **required to be reported at public expense** using either full or part time court employees or independent contractors. Fla. R. Jud. Admin. 2.535 (h)(3). (emphasis added).

For the purposes of implementing s. 14, Art. V of the Florida State Constitution, "[r]easonable court reporting and transcription services necessary to meet constitutional requirements" are provided from state revenues appropriated by general law. F.S. § 29.004 (3). The Florida Statutes specifically direct that state revenues appropriated by general law be expended to pay the reasonable court reporting and transcription services necessary for state attorney's offices, F.S. § 29.005 (2), and elements of the public defenders' offices and criminal conflict and civil regional counsel offices, F.S. § 29.006 (2).

Furthermore, the legislature clearly stated that it wants the "court system, state attorneys, public defenders, criminal conflict and civil regional counsel, and private court-appointed counsel" to enter into contractual agreements to share, on a pro rata basis, the costs associated with court reporting services. F.S. § 29.018. Under this cost-sharing system for due-process services,

the "trial court administrator of each circuit shall recover the costs of court reporter services and transcription." F.S. § 29.0195; *see also* Administrative Order No. 2007-080 PA/PI-CIR ("section 29.0195, Florida Statutes, requires the Trial Courts Administrator of each circuit to recover expenditures for State-funded services, including costs for transcription services"). Consistent with this directive, the Florida Supreme Court by administrative order stated a best practice would be for all trial courts "using state funded court employees to provide transcription services for public defenders, state attorneys, and court-appointed counsel [to] operate under [a] cost sharing arrangement." *In re. Court Reporting Services in Florida's Trial Courts*, No. AOSC 11-22, Standards of Operation and Best Practices for Court Reporting Services in Florida's Trial Courts, XVII.A.1.

Given the above and the language of the Administrative Order, this Order clearly does not apply to Mr. Reeves who is represented by private counsel and is paying for his own transcripts. The private defense bar is not part of any cost-sharing agreement for deposition transcripts.

Section A of the Administrative Order: "Transcription"

The first section of the ordered and adjudged portion of the Administrative Order is titled "Transcription." This section merely provides a mandatory set of procedures that publicly-funded attorneys must use to first get permission to order deposition transcripts. Section A of the Administrative Order is therefore only applicable to cases where county funds are expended for deposition transcripts. Section A states:

> 1. No transcript of a deposition for which Pasco or Pinellas County may be obligated to expend funds shall be ordered by a party unless it is ordered by the Court on a showing that the deposed witness is material or on showing of good cause.

> 2. Motions to transcribe shall be filed in a timely manner and shall be heard by the applicable Criminal Administrative Judge in Pinellas County or the Pasco Administrative Judge or his or her designee. A motion to transcribe stating good cause as grounds may be considered by the Court *ex parte* or *in camera.*
>
> 3. No **court contract court reporter** shall transcribe a deposition taken in a criminal case upon the request of a party absent a copy of a court order authorizing the transcription. (emphasis added).

The provisions of Section A are totally inapplicable to any defendant represented by a private attorney who expends his own funds in ordering deposition transcripts. Section A.1 states that a party is prohibited from ordering a deposition transcript unless that party first petitions the court and demonstrates that the witness is material to the case. In fact, this section of the Administrative Order actually indicates that it is the "court" that orders the transcription. Private attorneys are not required to meet such an obligation under any rule, administrative order, or any other law. Private attorneys representing their clients order their deposition transcripts at their will without any significant restrictions. *Palm Beach Newspapers, Inc. v. Burk*, 504 So.2d 378, 383 (Fla. 1987). Section A.2 delineates the process for filing and hearing such a motion. Section A.3 directs that a **court contract court reporter** – who, by definition has signed a contract to follow specific rules and conditions – shall prepare a deposition transcript only after a court order is granted. Given that this Defendant is not indigent and is not utilizing a **court contract court reporter**, this Administrative Order is again clearly inapplicable to him.

Section B of the Administrative Order: "Filing of Transcripts"

Section B of the Administrative Order titled "Filing of Transcripts" must be read in conjunction with Section A, "Transcription." Section B is the second process a

publicly-funded attorney must follow after the court has ordered that the deposition be transcribed. Section B states:

> 1. **The original transcript** of a deposition or other proceeding in a criminal case shall be filed in the court file, unless upon an attorney's request the chief judge authorizes otherwise.
>
> 2. At the time of filing an original deposition or other transcript in a criminal proceeding filed in Pasco County, the court contract court reporters providing services in Pasco County shall provide a photocopy of the original transcript to the Office of the State Attorney, the Office of the Public Defender or the court appointed counsel for an indigent defendant.
>
> 3. At the time of filing an original deposition or other transcript in a criminal proceeding filed in Pinellas County, the Clerk of the Circuit Court for Pinellas County shall provide a photocopy of the original transcript to the Office of the State Attorney, the Office of the Public Defender or the court appointed counsel for an indigent defendant. (emphasis added).

Paragraph 1 of Section B outlines what the court-appointed attorney, public defender, and/or state attorney is to do once the deposition is transcribed pursuant to court order. They are to file that deposition with the court. The court owns said deposition transcript because it both ordered its production and paid for it with public funds. *See* Fla. R. Jud. Admin. 2.535 (d) ("[t]hc chief judge of the circuit in which a proceeding is pending, in his or her official capacity, is the owner of all records and electronic records made by an official court reporter or quasi-judicial officer in **proceedings required to be reported at public expense and proceedings reported for the court's own use**") (emphasis added). Notably, neither this latter Rule of Judicial Administration nor the Administrative Order mandate when in time a publicly-funded attorney must file a court ordered transcript.

The court, however, does not own a deposition transcript paid for with private funds. Had the court intended to have this provision of the Administrative Order apply to all criminal depositions of defendants represented by private counsel it would have not used the singular "[t]he original transcript" in this paragraph. Instead, it would have simply said "all deposition transcripts in all criminal cases." Paragraph 1 of Section B therefore does not mandate that all defendants who are represented by private counsel file their privately paid deposition transcripts.

Paragraph 2 again reinforces that the provisions of Section B titled "Filing of Transcripts" only apply to court-appointed counsel, public defenders, and state attorneys in Pasco County who have received deposition transcripts paid for by public funds. This paragraph specifically directs the **court contract court reporters** to provide the copies to the three aforementioned parties. Paragraph 3 delineates a process for Pinellas County. This paragraph does not direct any private court reporting agency to do the same.

Section C of the Administrative Order: Costs of Transcription

Section C, like Sections A and B, also clearly indicates that the provisions of this order only apply to court ordered deposition transcripts paid for with county funds and is therefore inapplicable to this case. Section C states:

> 1. When the costs are paid with county funds, the **court contract court reporters** providing services in Pasco County and the Clerk of the Circuit Court for Pinellas County may charge a fee to copy an original transcript; however, such fee shall not exceed $.25 per page.
>
> 2. Transcription costs of **court appointed counsel** shall be assessed in accordance with the contracts between the Court and the Court Contract Court Reporters.
>
> 3. Fla. R. App. P. 9.140 requires that the original transcript designated for appeal be included in the record submitted by the

> Clerk of the lower tribunal. The Clerks of Court for Pasco and Pinellas Counties may, at their own expense, maintain a copy of any such transcript. (emphases added).

Section C.1 unambiguously establishes the per page price of copies of deposition transcripts for **court contract court reporters** when "the costs are paid with county funds." Section C.2 again is strictly limited to court appointed counsel. Section C.3 only applies in cases of an appeal. Section C, in its entirety, therefore solely pertains to circumstances involving expenditure of county funds by publicly-funded attorneys who have been granted an order to transcribe a deposition.

Given the above, this Administrative Order is inapplicable to Mr. Reeves because he is privately purchasing his deposition transcripts. When construing the Administrative Order in conjunction with the canons of statutory construction and the applicable law pertaining to state-funded due process services, it is clear that the State's Motion should be denied in its entirety.

II. The Chief Judge Cannot Order A Defendant Paying for His Own Transcripts to File Them

Applying the Administrative Order to Mr. Reeves would place it in conflict with other rules, laws, and the Constitution of the United States and the State of Florida, thereby rendering it an invalid exercise of the chief judge's powers. For this alternate reason, Undersigned counsel requests that this Court deny the State's Motion.

Court Rules and Local Court Rules

Court rules, local court rules, and administrative orders are utilized to facilitate the judicial process. A court rule is a "rule of practice or procedure to facilitate the uniform conduct of litigation applicable to all proceedings, all parties, and all attorneys." Fla. R. Jud. Admin. 2.120 (a). The Florida Rules of Criminal Procedure are one example of a court rule. A local court rule is

a "rule of practice or procedure for circuit or county application only that, because of local conditions, supplies an omission in or facilitates application of a rule of statewide application and does not conflict therewith" or a "rule that addresses other matters that are required by the Florida Constitution, general law, rules of court, or a supreme court opinion to be adopted by or in a local rule." Fla. R. Jud. Admin. 2.120 (b)(1)-(2). Florida Rule of Judicial Administration 2.215 details the process by which a chief judge of a circuit must present a local court rule to the Florida Supreme Court for approval.

Administrative Orders

A circuit chief judge, in his or her capacity as the administrative officer within a circuit, "may enter and sign administrative orders" without the need for approval from the Florida Supreme Court. Fla. R. Jud. Admin. 2.215 (b)(2). An administrative order is "[a] directive **necessary** to administer properly the court's affairs but not **inconsistent** with the constitution or with court rules and administrative orders entered by the supreme court." Fla. R. Jud. Admin. 2.120 (c) (emphases added). Florida Rule of Judicial Administration 2.215 (e)(2) allows, however, a member of the Florida Bar or a judge to request the Supreme Court Local Rules Advisory Committee for a decision on the question of whether an administrative order is actually a court rule or a local court rule.

The Proper Scope of Administrative Orders

Appellate courts have addressed numerous circumstances where administrative orders conflict with a court rule, local court rule, statute, or the constitution. In *Hatcher v. Davis*, 798 So.2d 765 (Fla. 2d DCA 2001), a chief judge of a circuit issued an administrative order that allowed the attorneys for the plaintiffs in child support enforcement proceedings to schedule

hearing dates. The Second District Court held that because a Florida Family Law Rule of Procedure expressly granted hearing officers the power to schedule hearings, the administrative order granting plaintiff's attorneys that power was invalid. The Second District held that "[i]f a chief judge issues an administrative order which attempts to amend a statute or rule by adding terms and conditions, that administrative order is invalid." *Id.* at 766. Therefore, if and when an administrative order results in the meaningful creation of a new court rule it is invalid.

The Second District has also held that overly broad directives within administrative orders are invalid if they conflict with a court rule or statute. In *State ex. Rel. Times Pub. Co. v. Patterson*, 451 So.2d 888 (Fla. 2d DCA 1984), the Second District considered a legal challenge to an administrative order that allowed the State Attorney's Office or a Defendant to seal statements, or portions of statements, exchanged pursuant to a rule of criminal procedure. Although an existing statute allowed for a process to seal portions of statements, the Second District held that the challenged administrative order was overly broad and therefore invalid. The appeals court held that these provisions were overly broad because it could lead to the sealing of entire statements in contravention of the Public Records Act. *Id.* at 891-892. The administrative order was also declared invalid because said provision "effectively eliminate[d]" a statutory provision for inspecting requests to seal *in camera*. *Id.* at 892. Although the administrative order afforded a procedure for interested persons to file a motion requesting access to the sealed documents and have a hearing on the matter – thereby circumventing the substantive problem with the relevant conditions - it was nonetheless invalidated by the Second District due to the above-described conflicts. *Id.* at 890. For these reasons, the applicable law in the Second District is that overly

broad administrative orders that effectively undermine, contradict, or invalidate a statutory provision or court rule are also invalid. *Id.* at 891-892.

Other District Courts have also invalided administrative orders that conflict with court rules or a statute. *See Blalock v. Pena*, 569 So.2d 778, 779 (Fla. 1st DCA 1990) (administrative order setting compensation rates for court reporters conflicted with a Florida Supreme Court rule and was therefore invalid); *Melkonian v. Goldman*, 647 So.2d 1008 (Fla. 3d DCA 1994) (administrative order invalidated because it conflicted with a Florida Supreme Court rule); *Hewlett v. State*, 661 So.2d 112, 115-116 (Fla. 4th DCA 1995) (administrative order invalidated because it conflicted with a statute).

For these reasons, administrative orders must be "**necessary to administer properly the court's affairs**" without being in conflict "**with the constitution or with court rules and administrative orders entered by the supreme court.**" Fla. R. Jud. Admin. 2.120 (c)(emphasis added).

If Applied to Mr. Reeves, the Administrative Order Would Impermissibly Create a New Court Rule

Under the applicable law and rules, a chief judge of a circuit lacks the power to direct a defendant with a private attorney to file deposition transcripts paid for with personal funds. As a preliminary matter, the Administrative Order acknowledges that "the transcription of all depositions in criminal cases are not necessary" to complete a criminal prosecution. Given that administrative orders are "**directive[s] necessary to administer properly the court's affairs,**" this Administrative Order cannot direct a defendant to engage in an *unnecessary* activity. Fla. R. Jud. Admin. 2.120 (c) (emphasis added).

The filing of private deposition transcripts also do not foster or further the proper administration of the court's affairs. This Administrative Order is only necessary to properly administer the court's affairs when it comes to ordering deposition transcripts by publicly-funded attorneys. This Administrative Order allows the court to review the ordering process and the expenditure of public funds for their transcription.

Further, although the preamble cites to Florida Rule of Criminal Procedure 3.220 (d)(2), that rule merely encourages prosecutors and the defense to cooperate in the exchange of 3.220 (d)(1) discovery. Rule 3.220 (d)(1) requires that a defendant who elects to participate in reciprocal discovery must provide: (1) a written list of the names and addresses of all witnesses whom the defendant expects to call as witnesses at the trial or hearing; Fla. R. Crim. P. 3.220(d)(1)(A)); (2) disclosure of "statements" of any person the defendant intends to call at any future hearing or trial; Fla. R. Crim. P. 3.220(d)(1)(B)(i)); (3) disclosure of materials relating to expert witnesses; Fla. R. Crim. P. 3.220(d)(1)(B)(ii)); and (4) disclosure of "tangible papers" and "objects" to be introduced at a hearing or trial; Fla. R. Crim. P. 3.220(d)(1)(B)(iii)).

There is no requirement anywhere in this Rule of Criminal Procedure, or in any other body of law, that directs a defendant paying for his own deposition transcripts to also file them with the court or clerk and/or to provide them to the prosecution. In fact, even in a trial setting "a deposition is not required to be filed with the court in order for the deposition to be used for impeachment purposes." *Smith v. State*, 594 So.2d 846, 847 (Fla. 2d DCA 1992); *see also* Fla. R. Jud. Admin. 2.430 (e)(3) (referencing that discovery proceedings are not always transcribed).

In addition, the fact that the Rules of Criminal Procedure cite to the Rule of Civil Procedure 1.310 further proves that defendants who purchase their own deposition transcripts do not need to

file them with the court or clerk. The procedure for taking depositions in criminal cases is largely controlled by the Florida Rules of Civil Procedure. *See* Fla. R. Crim. P. 3.220 (h)(1); *see also Palm Beach Newspapers, Inc.*, 504 So.2d at 383. The Rules of Civil Procedure specify that deposition transcripts "may" be filed only if they are necessary to determine an issue pending before a court. It would be incongruent to believe that litigants in civil cases are restricted from filing deposition transcripts, but in criminal cases a defendant who likewise pays for his own transcripts is required to file them all.

Granting the State's Motion would therefore result in the *de facto* creation of a new rule of criminal procedure. This would render the Administrative Order invalid, and for this reason the State's Motion should be denied.

The Filing of All Criminal Deposition Transcripts Would Have Grave Constitutional Ramifications and Will Violate This Defendant's Right to a Fair Trial

If this Court grants the State's Motion, it would create a conflict between this Administrative Order and the constitutional rights of Mr. Reeves. One crucial reason why an administrative order cannot direct defendants to file criminal deposition transcripts for which they paid is because it could substantially harm and interfere with their right to a constitutionally sound and fair trial. This is because filed transcripts become public records available for public access. *Lewis v. State*, 958 So.2d 1027, 1028 (Fla. 5th DCA 2007) ("transcripts fit within the broad definition of 'public records' found in section 119.011 (11)").

The Florida Supreme Court, which has broadly considered the above concerns, held that a defendant's right to a fair trial is more important than the right of the public to access criminal deposition transcripts before trial. *Palm Beach Newspapers, Inc.*, at 379. In ruling that the press does not have a right to pretrial discovery depositions in criminal cases which have not been filed,

the Supreme Court engaged in a thorough discussion on the competing interests between public access to pre-trial deposition transcripts in criminal cases and the rights of defendants to have fair trials. The *Burk* Court commented that:

> [t]he question of public access to pretrial criminal proceedings directly implicates a variety of constitutional rights: the due process right to a fair trial under the fifth and fourteenth amendments; the rights to a speedy and public trial by an impartial jury in the venue where the crime was allegedly committed under the sixth amendment; the rights of the public and press under the first amendment; and the privacy rights of the accused and other trial participants under the first amendment and article I, section 23 of the Florida Constitution. It also implicates the state's interest in inhibiting disclosure of sensitive information and the right of the public to a judicial system which effectively and speedily prosecutes criminal activities. It is the balance between these rights which is at issue. *Id.* at 379-280.

After performing the appropriate legal balancing test, the *Burk* Court relied upon *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984) and held that the right of a defendant to have a fair trial is clearly more important than the press's interest in having the pretrial ability to obtain copies of depositions which are not filed with the court. *Id.* at 382. The Florida Supreme Court summarized *Seattle Times Co.* as follows:

> [t]he discovery rights of parties under modern practice is very broad. Discovery may be had on any nonprivileged matter which is relevant to the subject matter of the pending action. It is not limited to evidence which will be admissible at trial so long as the information sought is reasonably calculated to lead to the discovery of admissible evidence. There is no distinction drawn between private information and that to which no privacy interests attach. Discovery rules permit extensive intrusion into the affairs of both parties and non-parties and discovery may be judicially compelled. Liberal discovery produces information which may be irrelevant to the trial and which, if publicly released, would be damaging to the reputation and privacy of both parties and non-parties. The parties are granted discovery rights as a matter of legislative or judicial grace. Non-parties do not possess discovery rights and cannot compel the disclosure of information. There is no independent right outside the trial process to the information sought. **Society in general, and the courts specifically, has a substantial interest in preventing abuse of judicially compelled discovery. Deposition proceedings are not public components of a trial unless made so by the parties. Such proceedings were not open to the public at common law and, as a matter of modern practice, are**

> **normally conducted in private.** Thus, restrictions on discovered information which has not been admitted at trial are not restrictions on a traditionally public source of information. Palm Beach Newspapers, Inc., 504 So.2d at 382 (emphasis added).

The *Burk* Court proceeded to caution that the harm from pre-trial public access to criminal deposition transcripts could not be properly remedied or avoided with protective orders. *Id.* at 383. This is because pre-trial access to criminal deposition transcripts:

> presents unacceptable hazards to other constitutional rights because of uncertainty as to the nature and content of the information. The purpose of depositions is to develop evidence by discovering what potential witnesses may know about the subject of the trial. It is not possible beforehand to know with any degree of certainty what information will be discovered. In this respect, a deposition proceeding is unlike a pretrial suppression hearing or a preliminary hearing on probable cause where the parties and the court know beforehand what will be discussed. Thus, it is not feasible for a potential witness, for example, to seek a protective order in advance of the deposition and it is too late to do so if the information becomes public knowledge. The often irrelevant and inadmissible evidence discovered during a deposition has the substantial potential of hazarding the right to a fair trial, the privacy rights of both parties and non-parties, and the right to a trial in the venue of the alleged crime. Aside from the impracticability of seeking protective orders beforehand, seeking such orders "would necessitate burdensome evidentiary findings and could lead to time consuming interlocutory appeals." [citation omitted]. The effect such a procedure would have on the speedy trial rights of the accused and public is obvious. **Moreover, [pretrial access to criminal deposition transcripts] would not serve the purpose of criminal discovery — assisting in the trial or resolution of criminal charges — and would carry us even farther from the central aim of a criminal trial — trying the accused fairly.** *Id.* at 383. (emphasis added).

Given all of the above, it cannot be legitimately argued that a chief circuit judge can override all of the Florida Supreme Court's aforementioned concerns via an administrative order. The more reasonable, prudent, and legally-sound conclusion is that the State's position on this issue is untenable and that their motion should be denied.

There is a serious and substantial risk of irreparable prejudice to Mr. Reeves having a fair trial if he is required to file all of the deposition transcripts. This is a high-profile case that has been the subject of extensive press coverage. In fact, on February 13, 2014 this Court specifically designated this proceeding as being of significant public interest and made all court records electronically available to the public. Thus, if the State's Motion is granted dozens of deposition transcripts will soon be available on the publicly available website for this case. For the reasons described in *Burk* and the facts and circumstances in this case, it is abundantly clear that this Administrative Order cannot be construed as requiring a defendant like Mr. Reeves to file his deposition transcripts for which he paid because it would be contrary to the Constitutions of the United States and the State of Florida.

These compelling factors are immeasurably more important that the State's interest in avoiding payment for the deposition transcripts. The purpose of this proceeding is to ensure that Mr. Reeves is afforded a fair and just trial. *Id.* at 383.

For these reasons, any administrative order that directs a defendant with a private attorney paying for his own deposition transcripts to also file them is ultimately impermissibly creating a new rule of criminal procedure that is unconstitutional. *Palm Beach Newspapers, Inc.*, at 382-384. This would be an impermissible exercise of a chief judge's judicial powers.

For the above stated reasons, Undersigned counsel asks that this Court deny the State's Motion in its entirety.

WHEREFORE, the Defendant, CURTIS J. REEVES, respectfully requests this Honorable Court deny the State's Motion in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery/Facsimile to the Office of the State Attorney, Dade City, Florida this 7th day of August, 2015.

[redacted]

Richard Escobar, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
rescobar@escobarlaw.com
Florida Bar No. 375179
Attorney for Defendant