

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 00683538 /

Case No.: CRC-1400216FAES

Division: 1 (J. Barthle)

To be Heard in: J and 60 (C.J. Rondolino)

**MOTION TO CHIEF JUDGE REQUESTING AUTHORIZATION TO NOT FILE  
DEPOSITION TRANSCRIPTS**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through Undersigned counsel, and requests pursuant to Administrative Order PA/PI-CIR-99-35<sup>1</sup> and Florida Supreme Court decisional law that Chief Judge Anthony Rondolino authorize him to not file his deposition transcripts with the Pasco County Clerk of Court, and as grounds therefore states as follows:

**INTRODUCTION**

Mr. Reeves' case "has become a matter of public interest," *Reeves v. Nocco*, 141 So. 3d 775, 777 (Fla. 2d DCA 2014), and has been the subject of hundreds of news articles and stories. The criminal prosecution of Mr. Reeves been covered by every known local news organization and many at the state-, national-, and international-level. To date, news stories containing incorrect, mischaracterized, and/or otherwise inadmissible information have already been published.

After an intense level of media interest in this case, on February 14, 2014 the then-Chief Judge of the Sixth Judicial Circuit designated *State v. Reeves* "as a case of significant public

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<sup>1</sup> Administrative Order PA/PI-CIR-99-351 is available here:  
<http://www.jud6.org/legalcommunity/LegalPractice/AOSAndRules/aos/aos99/AO99-35.htm>.  
[last accessed April 29, 2016].

interest” and specifically authorized the Clerk of Court for Pasco County to create a website dedicated to providing public access to the filings: [www.curtisreevestrial.com](http://www.curtisreevestrial.com).<sup>2</sup> This website allows public access to all of the filed pleadings, orders, and court documents in this case.

The State filed motions requesting orders compelling Mr. Reeves to file any and all deposition transcripts with the Pasco County Clerk of Court.<sup>3</sup> The State specifically requested that the trial court order Mr. Reeves to immediately file both any existing and subsequently obtained original transcripts of the defense discovery depositions with the Clerk of Court in Dade City, Pasco County. In its motions, the State contended that Section (B)(1) of Administrative Order PA/PI-CIR-99-35 (“Administrative Order”) - which states that “[t]he 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*” - requires defendants like Mr. Reeves with privately retained attorneys to file said deposition transcripts with the Clerk of Court. If the depositions are filed with the Clerk of Court, the State can obtain copies of them at no cost.

Circuit Court Judge Susan Barthle, in two orders, granted the State’s request and directed Mr. Reeves to file those transcripts.<sup>4</sup> Once Mr. Reeves files those deposition transcripts, however, by operation of law they will both become public records and will be posted on the Pasco County Clerk of Court’s website for all to access and read.

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2 The Chief Judge’s Order for Electronic Public Access to Court Records is available here: <http://curtisreevestrial.com/files/901.pdf>. [last accessed April 29, 2016].

3 The State’s Motion to Com[p]el the Filing of Original Deposition Transcripts and to Regulate Discovery is available here: <http://curtisreevestrial.com/files/575.pdf>. The State’s Motion to Compel the Immediate Filing of Original Deposition Transcripts and to Regulate Discovery is available here: <http://curtisreevestrial.com/files/545.pdf>. [both Motions last accessed April 29, 2016].

4 The trial court’s Order Granting in Part and Denying in Part State’s Motion to Compel the Filing of Original Deposition Transcripts and to Regulate Discovery is available here: <http://curtisreevestrial.com/files/548.pdf>. The Order Granting the State’s Motion to Compel is available here: <http://curtisreevestrial.com/files/527.pdf>. [both Orders last accessed April 29, 2016].

These thousands of deposition transcript pages contain countless questions of, and answers from, prospective trial witnesses. Undersigned counsel and the State have, to date, deposed the numerous laywitnesses that were present at the theater, the investigating and responding law enforcement officers, and the multiple State and Defense expert witnesses. As of today, the parties continue to depose witnesses.

The forced filing of the deposition transcripts in a high-profile criminal prosecution will undoubtedly cause a wholly unpredictable and potentially devastating chain reaction of media coverage. These deposition transcripts contain prejudicial, inadmissible, inflammatory, irrelevant, inaccurate, unreliable, and demonstrably incorrect and false statements. There is no realistic possibility that the news media will refrain from publicizing many of these types of disclosures. Inevitably, prospective Pasco County jurors will be reading, watching, listening to, and viewing news coverage that is prejudicial to Mr. Reeves.

Additional prejudicial news coverage in the months leading up to the trial may cause actual and irreparable harm to Mr. Reeves' ability to select an impartial jury in Pasco County. If this occurs, Mr. Reeves will have no remedy to correct the harm from the filing of the deposition transcripts. Mr. Reeves therefore seeks relief that will protect and secure what the Constitutions of the State of Florida and the United States of America offer to all criminal defendants: the right to a fair trial in the venue where the incident occurred by an impartial and qualified jury.

For this and other reasons detailed below, under Section (B)(1) of the Administrative Order Mr. Reeves requests that the Chief Judge of this Court authorize him to not file the deposition transcripts with the Clerk of Court.

**I. The two Orders threaten Mr. Reeves' constitutional right to a fair trial with an impartial jury in Pasco County**

Public access to all of the deposition transcripts will be imminently dangerous to Mr. Reeves' ability to select an impartial jury in Pasco County. Any filed deposition transcripts will attain the status of a public record and be available for publication and access on [www.curtisreevestrial.com](http://www.curtisreevestrial.com). *Florida Freedom Newspapers, Inc. v. McCrary*, 520 So. 2d 32, 35 (Fla. 1988); *see also 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)").

A defendant in a criminal case has a constitutional right to an impartial trial by jury. *Singer v. United States*, 380 U.S. 24, 36 (1965). Pretrial media coverage can serve to undermine the defendant's right and ability to select an impartial jury. *Sheppard v. Maxwell*, 384 U.S. 333, 360 (1966). This is because a community can become "so infected by knowledge of the incident and accompanying prejudice, bias, and pre-conceived opinions that jurors could not possibly put these matters out of their minds and try the case solely on the evidence presented in the courtroom." *Manning v. State*, 378 So. 2d 274, 276 (Fla. 1979). In particular, pretrial publicity close in time to jury selection can undermine a defendant's right to a fair trial. *Patton v. Yount*, 467 U.S. 1025, 1034-1035 (1984).

Here, Mr. Reeves has a number of serious concerns regarding any pretrial media coverage of the disclosures contained within the dozens of deposition transcripts. In this case, the media has already mischaracterized information in a way that prejudices Mr. Reeves. Additional mischaracterizations could result in further prejudice. The dozens of Defense deposition transcripts contain substantial amounts of prejudicial, inadmissible, and outright false statements.

The Florida Supreme Court, which has broadly considered the above concerns, has 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. v. Burk*, 504 So. 2d 378, 379 (Fla. 1987). 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 pretrial deposition transcripts in criminal cases and the rights of defendants to have fair trials. The *Palm Beach Newspapers* Court opined 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 *Palm Beach Newspapers* 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 *Palm Beach Newspapers* Court proceeded to caution that the harm from pretrial public access to criminal deposition transcripts could not be properly remedied or avoided with protective orders. *Id.* at 383. This is because pretrial access to criminal deposition transcripts:

present[ ] 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).

The Florida Supreme Court's aforementioned concerns illuminate the serious and imminent risks of irreparable harm to Mr. Reeves in this case. This Court has already acknowledged and held that this case has been the subject of extensive press coverage. *Reeves*, 141 So. 3d at 777. Media outlets in the Sixth Judicial Circuit, Florida, nationwide, and around the world have written, discussed, analyzed and opined on this case. It is unfortunately safe to anticipate that during any future jury selection, Mr. Reeves, the State, and the trial court will have

to engage in a uniquely detailed and thorough process to ensure that a fair and impartial jury will be chosen. The end result of the disclosure of all of the deposition transcripts may result in Mr. Reeves being *unable* to select a fair and impartial jury in Pasco County.

Notably, the State's position is that any additional prejudicial effect from the forced filing of the deposition transcripts is irrelevant and should be disregarded. At the August 26, 2015 hearing, the State specifically and candidly contended that:

[A]ny type of articulation of prejudice as to how the State [sic] is prejudiced is not relevant to these proceedings – and I say that very respectfully – because the administrative order says they shall be filed. If there was any inclination that prejudice to the State [sic] had to be a factor taken into consideration, then the administrative order would say, the depositions may be filed upon a finding by the court that there is no prejudice to the State or the defense for filing or not filing. It doesn't say that. Pages 36-37.<sup>5</sup>

The Florida Supreme Court, however, unambiguously held that protecting defendants from experiencing the prejudice that may stem from pretrial disclosure of deposition transcripts is a crucial concern compelled by the Florida Constitution. *Palm Beach Newspapers, Inc.*, at 383; *See also Lewis*, 958 So. 2d at 1028.

This Court should also reject the State's reasoning that because this case has already been subjected to media coverage, any prospective public disclosure of the dozens of deposition transcripts can be handled on an *ad hoc* basis. The State specifically contended that:

But the problem you're dealing with prejudice [sic] as far as the defense's right for fair trial, the horse is out of the barn. There's ways to deal with that. And you know that we have pictures and [a] very high profile case. It's not impossible. And with everything already out there, we're going to have to deal with it. Page 35.

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<sup>5</sup> August 26, 2015 hearing transcript available here: <http://curtisreevestrial.com/files/534.pdf> [last accessed April 29, 2016].

The State, at one point at an August 26, 2015 hearing, also proposed that the trial court can then order that the deposition transcripts be sealed and then hold hearings on any “First Amendment” claims that it anticipated would be raised by various media outlets. Pages 35-36.

Again, the *Palm Beach Newspapers* Court already addressed these latter two issues in a manner favoring Mr. Reeves’ position. The Florida Supreme Court held that “the media did not have a right to pretrial access to unfiled depositions taken in a criminal case” *regardless* of whether there had already been extensive press coverage. *Lewis*, 958 So. 2d at 1028 (citing *Palm Beach Newspapers Inc.*, at 384). The Florida Supreme Court further held that it would be onerous and burdensome for both deposed witnesses to individually file motions for protective orders and for trial and appellate courts to hear said motions. Litigating those protective orders “would necessitate burdensome evidentiary findings and could lead to time consuming interlocutory appeals.” *Palm Beach Newspapers, Inc.*, at 383 (*quoting Seattle Times Co.*, 467 U.S. at 36 n.23). While the State appears unconcerned by these prospective events, Mr. Reeves contends that these foreseeable claims, petitions and hearings on motions will lead to additional media coverage that may ultimately serve to undermine his ability to have a trial with a fair and impartial jury.

**II. The forced filing of deposition transcripts causes Mr. Reeves irreparable prejudice because it undermines counsel’s ability to zealously advocate for his client**

A blanket requirement to file all deposition transcripts with the clerk of court will also have a chilling effect on whether attorneys will meet their very serious ethical duties to zealously represent their clients by seeking information through pretrial discovery. *Palm Beach Newspapers, Inc.* at 383-384. This is because “[p]roviding access to unfiled depositions under the guise of chapter 119... would not only present serious constitutional concerns for both the accused and innocent parties, it would also undermine effective advocacy, as counsel may be inhibited from

asking certain questions fearing that damaging or prejudicial information may be published before trial.” *Id.* at 384.

The “chilling influence[ ]” of pretrial public access to the testimony provided in the depositions will continue throughout the course of this proceeding. *Id.* at 384. If this Motion is not granted, undersigned counsel will be obligated, out of sheer necessity, to conduct discovery the same way that they conduct themselves in the publicly accessible courtroom. Each and every word they utter and speak may potentially be quoted in the newspapers, television news, internet, radio, and other media outlets. Given that the parties continue to depose witnesses, there is an irrefutable certainty that undersigned counsel will compromise their obligation to thoroughly and fully question deposed witnesses due to their need to be mindful of the media’s watchful eye.

**III. Mr. Reeves does not have an adequate legal remedy if the Pasco County jury pool is contaminated from prejudicial pretrial media coverage**

If this Court does not grant this Motion, Mr. Reeves will not have an adequate remedy at law. Once the deposition transcripts are filed, become public records, and are posted on the [www.curtisreevestrial.com](http://www.curtisreevestrial.com) website, the media coverage and promulgation of the transcripts will have already occurred. The harm that results from the error cannot be cured on postjudgment appeal.

If an impartial jury cannot be selected in Pasco County, then Mr. Reeves’ only remedy would be to have a jury trial in a different county. Such an outcome would be contrary to his sixth amendment right under the federal constitution to a trial “by an impartial jury of the... district wherein the crime shall have been committed.” It would also be contrary to Mr. Reeves’ right to a “speedy and public trial by impartial jury in the county where the crime was committed” under Article I, section 16 of the Florida Constitution.

**IV. The Administrative Order does not apply to Mr. Reeves, who has a retained attorney and is using private funds to pay for his deposition transcripts.**

A detailed textual analysis of the Administrative Order's language demonstrates that it does not apply to criminal defendants using private funds to pay for deposition transcripts.

A. 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 interpret 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 Env'tl. 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 the Administrative Order *in pari materia*, it is clear that the intent is two-fold. The intent of this Administrative Order was to both control this group of county-funded attorneys

from ordering transcripts of all depositions while also minimizing the costs of duplication by requiring those lawyers to share the documents amongst themselves.

B. A Detailed Analysis *In Pari Materia* of the Administrative Order

Had the trial court interpreted this Administrative Order in conjunction with the applicable law, the only proper conclusion is that it does not apply to a defendant who is represented by private counsel and who pays for his deposition transcripts.

i. 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 would have been relevant to the question of whether the Administrative Order applied to Mr. Reeves. 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 is not necessary for the prosecution or the defense to properly prepare for trial. This portion of the preamble is merely asserting that the court was, when the Order was valid, 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 provided a basis for the trial court to refuse a motion by publicly-funded attorneys to order deposition transcripts that were 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 was and 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 were 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).

Given the above and the language of the Administrative Order, this Order clearly did not and does not apply to Mr. Reeves, who is represented by private counsel and is paying for his own transcripts.

ii. 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 provided a mandatory set of procedures that publicly-funded attorneys used to first get permission to order deposition transcripts. Section A of the Administrative Order was therefore only applicable to cases where county funds were 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 were not (and are not) applicable to any defendant represented by a private attorney who expended his own funds in ordering deposition transcripts. Section (A)(1) states that a party was prohibited from ordering a deposition transcript unless that party first petitioned the court and demonstrated that the witness was material to the case. In fact, this section of the Administrative Order actually indicates that it was the “court” that ordered the transcription.

Private attorneys were not and 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. Section (A)(2) delineated the process for filing and hearing such a motion. Section (A)(3) directed that a court contract court reporter – who, by definition had signed a contract to follow specific rules and conditions – shall prepare a deposition transcript only after a court order was granted. Given that Mr. Reeves is not indigent and is not utilizing a court contract court reporter, this Administrative Order neither was nor is applicable to him.

iii. 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 was the second process a publicly-funded attorney followed after the court had 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 was to do once the deposition was transcribed pursuant to court order. They were to file that deposition with the court.

Had the chief judge intended to have this provision of the Administrative Order apply to all criminal depositions of defendants represented by private counsel, she would have not used the singular “[t]he original transcript” in this paragraph. Instead, the chief judge would have simply said “all deposition transcripts in all criminal cases.” Paragraph 1 of Section B therefore did not and 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 applied to court-appointed counsel, public defenders, and state attorneys in Pasco County

who had received deposition transcripts paid for with county funds. This paragraph specifically directed the court contract court reporters to provide the copies to the three aforementioned parties. Paragraph 3 delineated a process for Pinellas County. This paragraph did and does not, however, direct any private court reporting agency to do the same.

iv. 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 applied to court ordered deposition transcripts paid for with county funds and was (and is) therefore inapplicable to defendants with privately retained attorneys. 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 established 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 was strictly limited to court appointed counsel. Section (C)(3) only applied in cases of an appeal. Section C, in its entirety, therefore solely pertained to circumstances involving expenditure of county funds by publicly-funded attorneys who had been granted an order to transcribe a deposition.

Given the above, it is clear that had the trial court properly interpreted the Administrative Order by applying the applicable canons of statutory construction, it would have denied the State’s multiple Motions to Compel in their entirety. Here, however, the trial court repeatedly and

candidly acknowledged that it did not and would not interpret the Administrative Order. On August 10, 2015, the trial court stated:

[The] Stat[e] [is] relying on the plain language of B (1) [of the Administrative Order.] [The] Defense is arguing that this administrative order as a whole does not apply to private attorneys.

Both arguments are well-taken by this Court. The issues that I have to wrestle with is the fact that it is an administrative order. Some language is clear. B(1) is clear. And while the Defense's argument that this [Administrative Order] does not apply to [the] private Bar is well-taken, **I can't just ignore an administrative order either.** Pages 30-31 (emphasis added).

The trial court later continued and stated:

**I need to follow administrative orders. And I'm not in the position in a 30-minute hearing to impose my opinion and my thoughts to something that – there is some plain language here and I don't want to be the one to interpret it.** If a new [Administrative Order] is in order, then we'll let Chief Judge Rondolino address any requests you may have and it will go its course there. Pages 31-32 (emphasis added).

As demonstrated and detailed above, the trial court erred. The Administrative Order does not apply to Mr. Reeves.

**V. The Administrative Order does not apply to Mr. Reeves because it has been preempted by revisions to the Florida Constitution and legislation**

The 1999 Administrative Order was impliedly preempted by revisions to the Florida Constitution and the enactment of various legislation. *City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (2008); e.g. § 29.018, Fla. Stat.; *see also Hillsborough County v. Florida Restaurant Ass'n, Inc.*, 603 So. 2d 587, 591 (Fla. 2d DCA 1992) (defining implied preemption). These aforementioned constitutional revisions and statutes mandated state-funding for deposition transcripts.<sup>6</sup> Given that this Administrative Order expressly focuses on creating an orderly process

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<sup>6</sup> The trial court acknowledged on August 26, 2015 that neither Pasco nor Pinellas County paid for any transcripts in this case. The trial court stated: "The county did not – neither county, as far as I know, expended any funds to have those [transcripts] transcribed." Page 43.

to obtain deposition transcripts using county funds, it has been preempted and is no longer legally valid.

Between 1972 and 2004, the previous version of section 14, Article V of the Florida Constitution placed majority responsibility for funding of the judicial branch on local governments. *City of Ft. Lauderdale*, at 39. This changed:

[i]n 1998 [when] a new provision (known as Revision 7) was submitted to the electorate by the Constitution Revision Commission substantially and significantly revising judicial branch funding. The new plan for funding the judicial system primarily placed the burden on the state, with the share of the counties greatly reduced. The principal source of funding was to be general revenues and user fees and costs. It was adopted by the electorate in 1998 and became fully effectuated by 2004. *Id.*

The applicable provisions of section 14, Article V in relation to the Administrative Order *now* state:

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law; and

[. . .]

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

The Florida Supreme Court explained that the revised version of Article V, Section 14(c) specifies that:

the counties are required to fund certain overhead costs (communication services, information systems, construction or lease of facilities, maintenance, utilities, and security of facilities) for ‘the trial courts, public defenders’ offices, state attorneys’ offices, and the offices of the clerks and the circuit and county courts performing court-related functions.’ *Lewis v. Leon County*, 73 So. 3d 151, 154 (Fla. 2011).

In accordance with these constitutional revisions, the legislature passed laws that created a new, encompassing scheme to fund deposition transcript requests. This encompassing scheme ultimately preempts this Administrative Order. This is because “[u]nder the standard for determining implied preemption... the legislative scheme must be so pervasive that it completely occupies the field, thereby requiring a finding that [a law] which attempts to intrude upon that field is null and void.” *Hillsborough County*, at 591 (citation omitted).

Here, Section 29.018, Florida Statutes, states that “[i]t is the intent of the Legislature to provide state-funded due process services to the state court system, state attorneys, public defenders, criminal conflict and civil regional counsel, and private court-appointed counsel,” and that these groups of attorneys may enter into contractual agreements to share, on a pro rata basis, the costs associated with court reporting services. Consistent with this legislative intent, §§ 29.008 and 29.0081, Fla. Stat., also delineate the type of court-related costs for which county governments are responsible. Deposition transcripts are not among the costs for which county governments must pay. Further, 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. § 29.004 (3), Fla. Stat. The Florida Statutes also 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, see § 29.005 (2), Fla. Stat., and elements of the public defenders’ offices and criminal conflict and civil regional counsel offices. § 29.006 (2), Fla. Stat.; *See also* Fla. R. Crim.

P. 3.220 (h)(2) (“No transcript of a deposition for which the state may be obligated to expend funds shall be ordered by a party unless it is in compliance with general law”); *See also Fla. Dep’t of Bus. & Prof’l Reg. v. Gulfstream Park Racing Ass’n, Inc.*, 967 So. 2d 802, 807 (Fla. 2007) (definition of “general law”).

It is clear that Article V, Section 14 of the Florida Constitution and the above-cited statutes establish a “scheme... so pervasive that it completely occupies the field” and that the Administrative Order, which focuses on using county funds to obtain deposition transcripts, is null and void. *Hillsborough County*, at 519. The Preamble unambiguously states that the Administrative Order is meant to “provide copies of depositions and other transcripts in criminal proceedings at a reasonable rate when the cost is paid with county funds.” Paragraph (A)(1) further states that “[n]o 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.” Similarly, Paragraph (C)(1) also pertains to circumstances when county funds are used for transcripts. The references to county funds within the Administrative Order are sufficiently broad so as to render the entire order invalid, thereby making it proper for this Court to grant this Motion on this alternate basis.

**VI. The forced filing of the deposition transcripts will implicate and violate the privacy rights of the deposed parties**

In addition to all of the above problems, there remains the serious concern regarding the privacy rights of the deposed witnesses if these deposition transcripts were made publicly available. *Id.* Although *trials* and *hearings* are normally public proceedings with little to no privacy safeguards, *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988), the Florida Supreme Court acknowledged that privacy rights are a crucial concern in pretrial discovery proceedings like depositions. *Palm Beach Newspapers, Inc.*, at 383-384.

The deposed parties in this case - whether they are innocent bystanders, persons that intentionally thrust themselves into the relevant dispute, or law enforcement – are giving answers that have revealed embarrassing, confidential, sensitive, and personal information. Such statements would be subject to the privacy protections of Section 23 of the Florida Constitution and the delineated court rules. *See, e.g.* Fla. R. Jud. Admin. 2.420 (c)-(h); Fla. R. Crim. P. 3.220 (e) (“The court on its own initiative or on motion of counsel shall deny or partially restrict disclosures authorized by this rule if it finds there is a substantial risk to any person of [1] physical harm, [2] intimidation, [3] bribery, [4] economic reprisals, or [5] unnecessary annoyance or [6] embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to either party”) (emphasis added). The Defense’s deposed witnesses in this case have not been given notice or any meaningful opportunity to pursue the option to prevent or restrict their statements from becoming publicly available. Undersigned counsels affirm that they have a good faith basis to believe that the deposition transcripts contain statements potentially satisfying Florida Rule of Criminal Procedure 3.220(e) and 3.220(l)(1) (“harassment, unnecessary inconvenience, or invasion of privacy” is a basis to restrict disclosure).

**VII. The above-detailed compelling reasons in favor of granting Mr. Reeves authorization to not file the deposition transcripts overshadow any interest the State has in saving money**

That the State is clearly motivated by financial considerations is also highly relevant and revealing. The State can order the transcripts from the court reporter and pay for them just like every other attorney. Instead, the State - under the purported guise of concern about “uniformity” of treatment of deposition transcripts - has invoked an invalid and inapplicable Administrative Order that enables it to avoid substantial financial expenditures for deposition transcripts of its own witnesses.


The State receives a substantial financial advantage when this Administrative Order is applied to Mr. Reeves. Allowing the State free access to the deposition transcripts filed with the Clerk of Court will result in savings of \$50,000 to \$60,000. While the State accrues a financial benefit, however, Mr. Reeves, the deposed witnesses, and the court reporters will be harmed. As explained, Mr. Reeves faces irreparable harm from the filing of deposition transcripts. The deposed witnesses face infringements on their privacy rights. Art. I., § 23, Fla. Const. Finally, the private court reporter will not be paid for his or her labor and services because the State will obtain copies of the deposition transcripts for free.


### **CONCLUSION**

Given the wide array of harms that will emanate from the filing of the deposition transcripts, as well as the compelling legal reasons why this Administrative Order does not apply to Mr. Reeves, this Motion should be granted in its entirety.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and accurate copy of this Motion to Chief Judge Requesting Authorization to Not File Deposition Transcripts has been furnished by United States Postal Service to: the Office of the State Attorney for the Sixth Judicial Circuit, P.O. Box 5028, Clearwater, Florida 33758; Honorable Susan Barthle, 38043 Live Oak Avenue, Room 106A, Dade City, Florida 33523; Honorable Anthony Rondolino (Chief Judge), 545 First Avenue North, Room 400, St. Petersburg, FL 33701; this 29<sup>th</sup> day of April, 2016.

  
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