

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA, :  
Plaintiff, :  
 :  
 : CASE NO.: CR 91-7249-CF-A  
v. :  
 :  
 :  
MARK DEAN SCHWAB, :  
Defendant. :  
/ :

**MOTION TO COMPEL PRODUCTION OF PUBLIC RECORDS AND  
EXTEND TIME FOR FILING SUCCESSIVE 3.851  
MOTION FOR POST CONVICTION RELIEF**

The Defendant, MARK DEAN SCHWAB, by and through the undersigned counsel, and pursuant to the provisions of Florida Rule of Criminal Procedure 3.852 (k), moves for a court order compelling production of public records and for an order extending the time to file the Defendant's Successive Motion for Post conviction Relief under Rule 3.851. In support thereof, the Defendant would state the following:

1. On July 18, 2007 a death warrant was issued for the Defendant.
2. Rule 3.852 (h) (3) provides that:

Within 10 days of the signing of a defendant's death warrant, collateral counsel may request in writing the production of public records from a person or agency from which collateral counsel has previously requested public records. A person or agency shall copy, index, and deliver to the repository any public record:

- (A) that was not previously the subject of an objection;
- (B) that was received or produced since the previous request; or
- (C) that was, for any reason, not produced previously.

The person or agency providing the records shall bear the costs of copying, indexing, and delivering such records. If none of these circumstances exist, the person or agency shall file with the trial court and the parties an affidavit stating that no other records exist and that all public records have been produced previously. **A person or agency shall comply with this subdivision within 10 days from the date of the written request** or such shorter time period as is ordered by the Court.

3. On July 25, 2007, this Court adopted collateral counsel's proposed schedule for filing the Defendant's Successive Motion for post conviction relief which was premised on all agencies complying within the allotted time periods with public records production. Requests for production were timely faxed to the Florida Department of Corrections and FDLE, among numerous others, within 9 days of the warrant on July 28, 2007, along with copies sent by certified mail return receipt requested.. All agencies other than FDLE and the Department of Corrections have responded.

4. Undersigned counsel has spoken to counsel for FDLE and believes that a satisfactory response from that agency will be forthcoming in a reasonable time. Undersigned counsel has also spoken with counsel for the Department of Corrections and believes that a substantial number of records along with a substantial number of claimed exemptions will be produced within the next 48 hours, however any such response will be past the date due, August 6, 2007.

5. In particular, production of records from the Department of Corrections is essential

because of their relevance to a method of execution claim and to a claim based on the Defendant's mental status. The Department of Corrections was on notice of the issuance of the warrant, as is evidenced by the letter scheduling a date for the execution attached to the warrant. The Department of Corrections was also on notice of the likelihood of a method of execution claim as evidenced by its involvement in the Lightbourne litigation.

6. In view of the above, the Defendant moves that the present litigation schedule for filing a motion for postconviction relief and the Case Management Conference be extended by two days, so that the motion will be due by 4:00 pm August 15, 2007 and the Case Management Conference will be conducted at 1:00 pm on August 17, 2007. The Defendant further moves that if the Department of Corrections intends to furnish public records to the Repository by disk or email, that it furnish a copy of same directly to counsel.

Wherefore, the Defendant moves that the times for filing of a motion for postconviction relief and the case management conference be rescheduled as described above, and that the Court order such further relief as may be deemed appropriate at the time this matter this motion is considered.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Motion to Compel Production of Public Records and Extend Time for Filing Successive 3.851 Motion for Post Conviction Relief has been furnished by Fax, E-Mail and United States Mail, first class postage prepaid, to Judge Holcomb, Kenneth Nunnelley,

Robert Holmes, Barbara Davis and Maximillian Changus on August 9,  
2007.

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