MEMORANDUM

PSC
Agenda Item No. **3(E)**

TO: Hon. Chairperson and Members
Board of County Commissioners

DATE: **June 10, 2003**

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Resolution urging the Supreme Court of Florida and the Florida Bar to amend Florida Rule of Criminal Procedure 3.220

The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Joe A. Martinez.

Robert A. Ginsburg
County Attorney

RAG/bw

MEMORANDUM
(Revised)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: July 8, 2003

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No.
7-8-03

RESOLUTION NO. _____

RESOLUTION URGING THE SUPREME COURT OF FLORIDA AND FLORIDA BAR TO AMEND FLORIDA RULE OF CRIMINAL PROCEDURE 3.220 TO REQUIRE CRIMINAL DEFENDANTS TO PAY OVERTIME COSTS FOR DISCOVERY OF SO-CALLED "CATEGORY B" OR NON-ESSENTIAL POLICE WITNESSES

WHEREAS, Florida Rule of Criminal Procedure 3.220 (hereafter, "Rule 3.220") permits defendants charged with certain criminal offenses in Florida the right to take the deposition of certain witnesses to aid their defense; and

WHEREAS, Rule 3.220 requires prosecutors in Florida to designate certain witnesses as either Category A witnesses or Category B Witnesses, the former Category generally including those witnesses who have essential testimony related to the case and whose testimony is likely to be used at trial, and the latter Category generally including those witnesses who do not possess essential testimony related to the case and whose testimony is not likely to be used at trial; and

WHEREAS, Rule 3.220 specifically requires law enforcement officers, thereby including officers of the Miami-Dade County Police Department, to appear for depositions under penalty of contempt; and

WHEREAS, the depositions of Miami-Dade Police officers typically must be conducted during an officer's off-duty time, thus requiring the Miami-Dade Police Department to pay the officer overtime wages; and

WHEREAS, the expense of these overtime wages for police officers' depositions is a substantial cost to the taxpayers of Miami-Dade County; and

WHEREAS, many of the officers deposed are so-called Category B Witnesses, whose testimony generally is not relevant or useful to the case at hand; and

WHEREAS, it is fair and equitable to require the criminal defendant who wishes to depose a police officer who is a Category B Witness to assume the overtime costs associated with securing that officer's attendance, with the understanding that Rule 3.220 already requires the County to assume the costs incurred by an indigent defendant who is adjudged insolvent; and

WHEREAS, the authority for amending the Florida Rules of Criminal Procedure lies with the Supreme Court of Florida, typically upon the suggestion, evaluation, and/or recommendation of the Florida Bar,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board urges the Supreme Court of Florida to amend Florida Rule of Criminal Procedure 3.220 to require criminal defendants to pay the overtime costs associated with securing the attendance for deposition of all Miami-Dade Police officers who have been listed as Category B Witnesses.

Section 2. The Board further urges the Florida Bar to propose amendments to Rule 3.220 that would accomplish this result and to transmit such amendments to the Supreme Court of Florida for its review in the ordinary course.

Section 3. The Clerk of the Board is directed to send certified copies of this Resolution to the Supreme Court of Florida and to The Florida Bar.

The foregoing resolution was sponsored by Commissioner Joe A. Martinez and offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorrin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of July, 2003. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Richard B. Rosenthal