

**IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT**

Case No. 3D08-2272

Lower Tribunal Case No.: 08-1

THE STATE OF FLORIDA

Appellant/Petitioner,

v.

PUBLIC DEFENDER, ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,

Appellee/Respondent.

**APPENDIX TO PUBLIC DEFENDER'S MOTION TO DISSOLVE STAY
AND FURTHER EXPEDITE THE APPEAL**

On Review From an Order of the Eleventh Judicial Circuit

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by the method indicated below to those indicated this 14th day of November 2008.

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Julie E. Nevins

App. A

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

IN RE: REASSIGNMENT AND
CONSOLIDATION OF PUBLIC
DEFENDER'S MOTIONS TO APPOINT
OTHER COUNSEL IN UNAPPOINTED
NONCAPITAL FELONY CASES

CRIMINAL DIVISION

JUDGE: Stanford Blake
SECTION: CF 61

CASE NO.: 08-1
ADMINISTRATIVE ORDER NO.: 08-14

THE STATE OF FLORIDA
Plaintiff,

v.

HAROLD LOVERIDGE,
GANTT ADAMS,
TEDRICK MCINTYRE,
LONNIE CARSWELL
REMIGIO CARRILLO,
RAUL RIVERO,
PABEL MIRANDA,
WILLIE KEELS,
EDWARD SHOEGREEN,
ALEXANDER ROBERTSON,
PATRICIA ANDUJAR,
SILVINO MEDEROS
JOHN THREATS,
JOEL CHARLES,
OSCAR MUNOZ,
FRANCISCO FRAGA-MARTINEZ,
BONNIE LOWERY,
JED GRANT,
JOSE AROCHA,
NYLUS STANTON,
JEFFREY JAMES,

Case No. F08-14858 (CF01)
Case No. F08-12840 (CF02)
Case No. F08-5820A (CF03)
Case No. F08-8919 (CF04)
Case No. F08-17339 (CF05)
Case No. F08-13758 (CF06)
Case No. F08-16093 (CF07)
Case No. F08-22408 (CF08)
Case No. F08-18074 (CF09)
Case No. F08-2462 (CF10)
Case No. F08-5109 (CF11)
Case No. F08-1872 (CF12)
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Case No. F08-17334 (CF14)
Case No. F08-2314 (CF15)
Case No. F08-10548 (CF16)
Case No. F08-19720 (CF17)
Case No. F08-16823 (CF18)
Case No. F08-7374 (CF19)
Case No. F08-11423 (CF20)
Case No. F08-13649 (CF21)

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
PUBLIC DEFENDER'S MOTION TO APPOINT OTHER COUNSEL IN UNAPPOINTED
NONCAPITAL FELONY CASES**

THIS CAUSE came before the Honorable Stanford Blake, Administrative Judge, Criminal Division, of the Eleventh Judicial Circuit Court, at the Richard E. Gerstein Justice Building, 1351 NW 12th Street, Courtroom 2-4, Miami, FL 33125. The matter was heard Wednesday, July 30, 2008, and Thursday, July 31, 2008, on the Public Defender's "Motion to Appoint Other Counsel in Unappointed

Noncapital Felony cases.” Post hearing memoranda was provided to the Court by PD-11 and SAO-11 on August 11, 2008.

The Public Defender of the Eleventh Judicial Circuit (PD-11) filed their motion and a “Certificate of Conflict of Interest,” in felony cases. This Court, through Administrative Order No. 08-14 by Chief Judge Joseph P. Farina, reassigned and consolidated these motions and all subsequent motions containing identical issues for all purposes necessary to effect the prompt disposition of cases and control the docket in the Eleventh Judicial Circuit.

PD-11 asserts that accepting appointments to noncapital felony cases at this time would create conflicts of interest with previously appointed clients and newly appointed clients in cases other than noncapital felony cases. PD-11 argues that the underfunding of the Public Defender’s Office has created excessive caseloads such that PD-11 cannot ethically or legally accept additional noncapital felony cases at this time. In response, the State Attorney’s Office (SAO-11) argues that that the granting of this motion will create chaos in the criminal justice system and lead to the dismissal of serious and violent felony cases. SAO-11 opposes the method that PD-11 has chosen to air its grievances, but does not dispute the fact that PD-11 has felt a severe reduction in its budget, nor the fact that PD-11’s concerns pertaining to underfunding are based on the Public Defender’s sincere convictions.

I

SAO-11 contends it has a right and a duty to respond to PD-11’s motion. It bases this right on Section 27.02, Fla. Stat., which states that “[t]he state attorney shall appear in the circuit and county courts within his or her judicial circuit and prosecute or defend on behalf of the state all suits, applications, motions, civil or criminal, in which the state is a party, except as provided in chapters 39, 984, and 985.” Although SAO-11 relies on Section 27.02, Fla. Stat., to support its argument of standing as a matter of right, case and statutory law indicate that this section is inapplicable to situations involving the public defender’s certification of conflict of interest. Case law supports the view that the court has the discretion to grant requests to be heard on an issue involving the public defender’s request to appoint other counsel. *Escambia County v. Behr*, 384 So. 2d 147, 150 (Fla. 1980) (where the Florida Supreme Court held that the court does not have to allow the county an opportunity to be heard before appointing private counsel in lieu of the public defender.); *In re Order on Prosecution of Appeals by the Tenth Judicial Circuit Public Defender*, 561 So. 2d 1130, 1134 (Fla. 1990).

As further guidance in this matter, Section 27.5303(a), Fla. Stat., titled “Public Defenders; criminal conflict and civil regional counsel; conflict of interest,” states that the court “shall review” the adequacy of the public defender’s representations regarding a conflict of interest without requiring the disclosure of any confidential communications. In addition, the court “may inquire or conduct a

hearing” into alleged conflict. *Id.* Under the plain meaning of the statute, the use of the word “may” renders an inquiry or hearing of the court entirely discretionary. *State v. Meyers*, 708 So. 2d 661, 663 (Fla. 3d DCA 1998); *City of Miami v. Save Brickell Ave., Inc.*, 426 So. 2d 1100, 1105 (Fla. 3d DCA 1983). It follows that that the nature and manner of a discretionary hearing likewise rests within the sound discretion of the court. Thus, this court finds that the State Attorney does not have standing as a matter of right.

However, the State Attorney’s role in the community not only includes prosecuting those charged with committing crimes, but also includes specific duties related to the administration of justice and ensuring the constitutional rights of victims of crimes are protected. In an effort to safeguard these concerns, this Court granted SAO-11’s request to participate in the proceedings as an “amicus curiae” or a friend of the court. The Court allowed SAO-11 great latitude in its participation in this hearing. SAO-11 responded to all PD-11’s pleadings and documentary evidence, cross-examined PD-11’s witnesses, and presented its own witness in opposition of the evidence presented by PD-11’s witnesses.

II

Section 27.51, Fla. Stat., titled “Duties of public defenders” reads in pertinent part:

- (1) The public defender shall represent, without additional compensation, any person determined to be indigent under section 27.52 and:
 - (a) under arrest for, or charged with, a felony.

While the court is concerned that there not be chaos in the criminal justice system, the court must also serve as the protector of due process and meaningful representation of the accused. Public defenders, like all attorneys, are bound by professional ethical obligations. *See State v. Kadivar*, 460 So. 2d 391, 392 (Fla. 4th DCA 1994). The Rules of Professional Conduct include, among other responsibilities, that a lawyer provide competent representation to a client, act with reasonable diligence and promptness in representing a client, and decline or terminate representation if the representation will result in a violation of the rules. R. Regulating Fla. Bar 4-1.1, 4-1.3, 4-1.16. Most importantly here, the rule on conflict of interest requires an attorney to decline a case if there is substantial risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client. R. Regulating Fla. Bar 4-1.7(a)(2).

The Public Defender, Bennett Brummer, as manager and supervisor of other lawyers, has a duty to ensure that all lawyers in his office conform to the Rules of Professional Conduct. R. Regulating Fla. Bar 4-5.1. The evidence presented by PD-11 at the two (2) day hearing on these motions showed that the assistant public defenders of the Eleventh Judicial Circuit function under extreme and

excessive caseloads.¹ Although there is dispute regarding the method in which PD-11 calculated its annual noncapital felony caseload numbers, the testimony and evidence presented at the hearing indicated that the caseload of the felony public defenders in the Eleventh Judicial Circuit, under any recognized standard, far exceeds any recognized standard for the maximum number of felony cases a criminal defense attorney should handle annually. *See* National Advisory Commission on Criminal Justice Standards and Goals limit of 150 cases; Florida Governor's Commission Standard limit of 100 cases; Florida Public Defender's Association limit of 200 cases; and Florida Bench and Bar's limit of 200 cases.

More importantly, the evidence shows that the number of active cases is so high that the assistant public defenders are, at best, providing minimal competent representation to the accused. At the request of this Court, PD-11 provided a chart, referred to as the "Judge Blake" document, which lists the total number of felony appointments for fiscal year 2007-08. This chart indicates the number of cases that were pled at arraignment, no actioned, bound down to misdemeanors, and referred to pretrial intervention for FY 2007-08. It also shows the number of conflict cases and cases where private counsel substituted in as attorney of record. Although this Court is aware that many of these cases require minimal preparation, the Court recognizes that the public defender's office has often performed work, including investigatory functions, on these cases prior to the cases being resolved. Thus, even the numbers reflected in the "Judge Blake" document indicate that PD-11's active caseload is extremely high.

The record further shows that the assistant public defenders assigned to handle "A and B" felony cases (life, 1st and 2d degree) are now being appointed to "C" felony cases (3d degree). These "C" cases encompass approximately sixty percent (60%) of all felony filings. A supervising attorney for PD-11, Stephen Kramer, testified that all supervising attorneys are handling "C" felony cases to the detriment of their ability to handle capital cases and "A and B" felony cases. Assistant Public Defender Amy Weber, an "A" felony attorney, testified that she is in court two out of three weeks because she also has "C" felony cases. From the testimony and evidence presented, "C" felony cases are clogging

¹ PD-11 requested this Court to take judicial notice of the Florida Bar News article, August 13, 2008 discussing cutbacks for funding of the criminal justice system. Arthur "Buddy" Jacobs, Esq., co-counsel for amicus curiae in this case, was quoted as stating that 710 assistant state attorney's positions have been eliminated in the past year around the State, and the 4% budget cut this year will lead to the loss of another 233 prosecutors. From this Court's daily perspective, the assistant state attorney's in the Eleventh Judicial Circuit also have extreme caseloads. If the budgetary problems facing the criminal justice system are not addressed by the legislature, the hard working prosecutors may unwittingly find themselves in violation of the Florida Rules of Professional Conduct that governs every lawyer in the State of Florida. With some assistant state attorneys handling up to 300 cases in the Eleventh Judicial Circuit, in spite of hard work and dedication by these attorneys, it is not a stretch to realize that some victims of crimes of Miami-Dade County are not receiving the attention to their case they deserve. At some point in time, the State Attorney's Office, due to lack of funding, excessive caseloads and the loss of attorneys, may have to decide what cases they can prosecute and which ones they will be unable to handle.

the system and negatively impacting PD-11's felony attorneys' caseload.

Additionally, there is no dispute that PD-11's trial budget has been cut by 9.2% in the past two fiscal years. With the additional holdbacks imposed for Fiscal Year 2008-09, PD-11 is operating under a 12.6 % budget reduction. As a result of the reduced budget, the number of noncapital felony public defenders has declined in the last two fiscal years, and this downward trend is continuing. PD-11 is unable to raise salaries, and a number of assistant public defenders hold second jobs on nights and weekends simply to make ends meet. As noted in Rory Stein's testimony, General Counsel for PD-11, two main reasons for leaving PD-11 were financial (low salaries and lack of raises) and burnout from the excessive workload. At the same time that resources have dwindled, the number of noncapital felony cases assigned to PD-11 has explosively increased by approximately 29% since Fiscal Year 2003-04.

In light of the foregoing, the evidence clearly establishes that PD-11 is in need of relief sufficient to ensure that the assistant public defenders are able to comply with the Florida Rules of Professional Conduct and carry out their constitutional duties.

III

A fundamental rule, strongly grounded in public policy, is that a public body is presumed correct when exercising its discretionary powers within the orbit of laws affecting them. *City of Miami Beach v. Cummings*, 266 So. 2d 122, 125 (Fla. 3d DCA 1972); see *In Re Certification of Conflict in Motions to Withdraw filed by Public Defender of the Tenth Judicial Circuit*, 636 So. 2d 18, 22 (Fla. 1994). The court should not "attempt to interfere in the management of the Public Defender's office, or attempt to instruct the Public Defender how best to conduct his affairs." *In Re Certification of Conflict*, 636 So. 2d at 22. Accordingly, the court's inquiry is limited to an objective assessment of the Public Defender's practices sufficient to confirm that a factual basis exists for the Public Defender's motions. *Id.*

SAO-11 raises several different concerns with PD-11's motions and certificate of conflicts. First, SAO-11 questions PD-11's method of collecting the data and caseload numbers for its caseload statistics. SAO-11 contests PD-11's reliance on state and national methods for defining and counting cases beginning with the appointment of counsel after arrest. Yet, SAO-11 has failed to present any alternative national or Florida caseload standard used by professionals in the field.

SAO-11 further argues that PD-11 should seek relief, as other Public Defenders have done, through non-appointment to misdemeanor cases. However, SAO-11 failed to show that the situation in those circuits are similar to the situation in this circuit, or that the proposed alternative would be effective or feasible in this circuit. Moreover, the Public Defender, Bennett Brummer, testified that he filed his certificates of conflict in the felony divisions "where we had our highest concentration of

dollars and workload in the office, so as to make an impact on the workload of the office.” He also testified that refusing misdemeanors would result in closing the County Court division. Such a move would effectively destroy PD-11’s “farm system” which enables inexperienced attorneys to gain the experience necessary to accept and defend felony cases.

SAO-11 criticizes PD-11’s method for airing its grievances with the legislature and not sitting down and working things out.² However, the record is replete with letters from PD-11 to the legislature, at different times, advising it of PD-11’s excessive workload history. Yet, after the shift in funding in 2004 due to the implementation of Article V, Revision 7, the legislature appropriated funds for only 52 of the 82 county-funded positions for PD-11’s overload special assistant public defenders.

The testimony and evidence presented at the hearing demonstrates that the certifications of conflict are based on fact. Accordingly, this Court finds that a factual basis exists for PD-11’s motion to appoint other counsel in unappointed noncapital felony cases.

IV

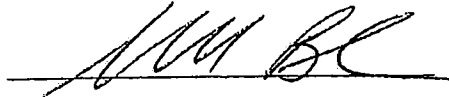
This Court concludes that the testimonial, documentary, and opinion evidence shows that PD-11’s caseloads are excessive by any reasonable standard. As a result, its attorneys are able to provide, at best, minimally competent representation in their assigned cases. Further, it is clear that future appointments to noncapital felony cases will create a conflict of interest in the cases presently handled by PD-11. All the same, it is incumbent upon the court to preserve order in the criminal justice system to ensure the safety of this community. Accordingly, this Court finds that the proper course to be followed in such a situation is for PD-11 to decline to accept appointments to “C” felony cases until such time as this Court determines that PD-11 is able to resume its constitutional duties with respect to these cases. PD-11 must continue to perform its full duties in all “A” and “B” felony cases, and is required to continue its bond hearing duties for all cases on a limited basis only. Further, PD-11’s county-funded early representation unit (ERU) is to continue with their customary responsibilities up to the time of arraignment. At arraignment, the Office of Criminal Conflict and Civil Regional Counsel for the Third District (RRC-3) is to accept all “C” felony cases for indigent persons. If RRC-3 determines that it has a conflict of interest, it is their responsibility to separately move to withdraw and ask the court to appoint other counsel.³ This matter will be set for a recurring 60 day review with

²This Court strongly urges SAO-11 and PD-11 to meet and consider what other options may assist during this budget crisis. All sides must cooperate on a daily basis in the 23 divisions in trying to amicably resolve cases while being realistic about the strength of each of their positions. Since SAO-11 decides on which cases are filed after arrest, attorneys in the pre-filing division have to be very diligent in their filing decisions.

³It should be noted that the Office of Criminal Conflict and Civil Regional Counsel (RRC-3) did not request to participate in the court proceedings as an amicus curiae. However, RRC-3 was noticed in the certificate of service and provided with all legal filings in this matter. Additionally, representatives of RRC-3 were present at all hearings.

weekly "Weed Attorney Assignment Sheets"⁴ to be submitted to the Court to allow it to monitor the status of PD-11's caseload. This order shall take effect on Monday, September 15, 2008. The first review of this Order will be held on Friday, November 14, 2008 at 9:00 am before this Court.

Done and Ordered as of September 3, 2008.



STANFORD BLAKE
ADMINISTRATIVE JUDGE
CRIMINAL DIVISION
ELEVENTH JUDICIAL CIRCUIT

CC: All Parties

⁴The "Weed Attorney Assignment Sheets," authored by C. David Weed, Executive Assistant Public Defender, reveals what each assistant public defender's caseload is on a given day.

App. B

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THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 08-1
(Court Administration)

IN RE: REASSIGNMENT AND
CONSOLIDATION OF PUBLIC
DEFENDER'S MOTION TO APPOINT
OTHER COUNSEL IN UNAPPOINTED
NONCAPITAL FELONY CASES

COPY

TRANSCRIPT OF
PROCEEDINGS

The above-styled cause came on for hearing before the
Honorable STANFORD BLAKE, Judge of the above-styled court at
the Richard E. Gerstein Building, 1351 Northwest 12th Street,
Miami, Florida, on the 11th day of September, 2008, at or
about 1:15 p.m.

- - - -

1 APPEARANCES:

2 KATHERINE FERNANDEZ-RUNDLE,
State Attorney,
3 By: DON HORN, ESQ., and
ANGELICA ZAYAS, ESQ.,
4 Assistants State Attorney,
On behalf of the Amicus Curiae.

5

6 PARKER THOMSON, ESQ., and
JULIA NIVENS, ESQ.,
7 On behalf PD-11.

8

9 GEORGE JOSEPH,
Regional Counsel,
BY: RICHARD JOYCE, ESQ.,
10 Assistant Regional Counsel,
On behalf of the Office of
11 Regional Conflict Counsel.

12 ALSO PRESENT: CARLOS MARTINEZ, ESQ.,
Public Defender Elect.

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1 (The following proceedings were had:)

2 THE COURT: Hello, everyone.

3 MR. HORN: Good afternoon, Judge.

4 THE COURT: Good afternoon, everyone.

5 MR. HORN: I apologize for the late start.

6 THE COURT: No big deal. I am just picking a murder
7 case that will take two months. It's been so easy to do.
8 Citizens love to be on a jury serving.

9 You guys can use the chairs up here. I told the
10 attorneys they could do that.

11 Ms. Zayas, how are you? I heard you were with Judge
12 Brody.

13 MS. ZAYAS: I was.

14 THE COURT: I didn't know she was over here.

15 MS. ZAYAS: Just for the day.

16 THE COURT: Mr. Joyce, I had received the motion
17 filed on behalf of Regional Conflict Counsel.

18 MR. JOYCE: Yes, Your Honor. Sorry it's late.

19 Are you going to call Mr. George by telephone?

20 THE COURT: Actually, I was playing bailiff. He
21 called. I told him we just moved in, our phone system was
22 screwed up. I told him you were going to be here and he
23 said do what you have to do.

24 Let me explain what I received. We are here on the
25 case of State versus the various cases dealing with the

1 Reassignment and Consolidation of Public Defender's Motion
2 to Appoint Other Counsel in Unappointed Noncapital Felony
3 Cases. There were some 21 one cases from various
4 divisions that had been listed.

5 On September 3rd the Court had issued an order
6 basically granting relief in part to the Public Defender's
7 Office, saying that as of September 15th, to give some
8 time to the parties, that they would no longer take C
9 cases, and, by statute, Regional Conflict Counsel would be
10 appointed.

11 There has been a motion for clarification by PD-11,
12 and unless you want to say something, I think, just so
13 that it becomes clear, although I see, Mr. Thomson, as you
14 rock forward in your seat, I think to make sure there is
15 no confusion.

16 MR. THOMSON: That was the sole purpose of the motion
17 was to make sure that Mr. Martinez knew exactly what
18 the --

19 THE COURT: Sure. That's also fair to Mr. George and
20 his office to know what they are going to be getting in
21 addition.

22 Number one, to make it easy, C cases -- because in
23 Miami-Dade County for the last number of years we have
24 always gone by A's, B's and C's. Traditionally A's are
25 life and first degree felonies. B's are second degree

1 felonies. C's are third degree felonies.

2 There are some additions where some cases may be a
3 second degree felony that C prosecutors may handle or C
4 Public Defenders may handle, but to make sure there is no
5 confusion, I'm going to say that C cases, for the purpose
6 of this ruling, are third degree felonies.

7 If a person is accused of two crimes, two counts in
8 an information, for example, they are charged with
9 burglary of a dwelling and grand theft. Burglary of a
10 dwelling is a second degree felony. Grand theft is a
11 third degree felony. The higher felony in the information
12 will be the issue that prevails.

13 So the Public Defender, because they are talking
14 about cases, I wouldn't expect they would conflict out of
15 a count on a defendant.

16 So if the State Attorney's Office files a multiple
17 count information against a defendant, the highest level
18 of the count will control under this order.

19 So if there is one first degree felony and three
20 third degree felonies, the Public Defender's Office -- and
21 all of this presupposes that we are talking about indigent
22 people. The order dealt with if we are talking about
23 people that are indigent and qualify for the Public
24 Defender, then they will continue getting that, to make
25 that clear.

1 Dealing with the Stays of Order -- and I think that's
2 the clarification you needed.

3 MR. THOMSON: Your Honor, I want to make sure.

4 THE COURT: Speak to your client.

5 MR. MARTINEZ: We are clear.

6 MR. THOMSON: You are clear. Then I am clear.

7 THE COURT: All right.

8 Dealing with the Stays of Order filed by the State
9 Attorney's Office.

10 The Court fashioned an order to try to create as
11 little chaos as possible. The Court felt that it was
12 necessary, for proper due process, for relief in part to
13 be granted and for relief in part to be denied.

14 Under 3.130 (c) (1), the last part of that talks
15 about, "If necessary, counsel may be appointed for the
16 limited purpose of representing the defendant only at
17 first appearance or at subsequent proceedings before the
18 judge."

19 The Court still has the Public Defender's Office
20 representing indigent persons on C level cases at first
21 appearance for this limited purpose so that there is not
22 chaos and so that people do not go unrepresented for their
23 first appearance before a judge within 24 hours.

24 The Public Defender's Office does have, I don't know
25 if the word "luxury" would be the word, but they do have

1 the ability of at least having eight Early Representation
2 attorneys funded by the County because it helps in trying
3 to alleviate population problems in the jail and allow
4 them to do some, at least, preliminary representation on
5 on an early basis, and they will continue on that.

6 The Regional Conflict Counsel, the reason I have them
7 appearing at the arraignments in the different courtrooms,
8 is that so the persons in court, if an information is
9 filed, can be represented from the standpoint that,
10 whether right or not, although at times it surely inures
11 to the defendant's benefit because of caseload, there are
12 often times offers are made at arraignment. Many of those
13 persons may still be in custody.

14 The Court thinks there would be some disruption of
15 due process if I do not appoint Regional Conflict Counsel,
16 if the person is indigent, to represent the C defendants.

17 What I expect of your office, Mr. Joyce, is to convey
18 the pleas if a plea is offered, and if a case is resolved,
19 fine.

20 If your office determines you have a conflict
21 afterwards -- and this, in my opinion, is being conveyed
22 by the statute as to why you would be appointed on
23 conflict counsel since I am finding the Public Defender's
24 has a conflict. If your office finds you have a conflict
25 for whatever reasons, you file your motions in front of

1 each of the individual judges. If there is some complaint
2 that it's because of caseload constraints, underfunding,
3 you all decide whatever you want to do to properly
4 represent your office.

5 If you just file the conflicts saying, "We just can't
6 represent the person," then the judge will appoint
7 conflict counsel who have signed the contracts with the
8 Justice Administration Commission, the J.A.C., to
9 represent those persons. Otherwise, the reason the Court
10 has added your office is so that people don't go
11 unrepresented for a period of time until conflict counsel,
12 other than your office, be appointed.

13 I understand the concerns by all parties about the
14 funding. The Court is concerned about funding, but
15 funding is by the Legislature, where they have to fund the
16 third branch of Government, including State Attorneys,
17 Public Defenders, Regional Conflict Counsel.

18 What is before me and what I had to try to fashion is
19 to make sure there is due process to the persons who are
20 indigent and before the Court, and to give at least
21 temporary relief to the Public Defender's Office. I do
22 think that total relief would have created chaos and I
23 don't think total relief was called for.

24 This is one of the reasons why I am having the 60 day
25 review, so I can see the numbers from the Weed reports,

1 see how cases are closing out.

2 There may be at some point a partial modification to
3 my order. Perhaps at some point if the Court determines
4 that the Public Defender's Office, let's say, will take
5 every other C case, if that becomes appropriate in time,
6 so be it. I just don't know. I think out loud so you all
7 know where I am coming from. I don't think it should be a
8 secret.

9 So the motions for stay are denied. If the Appellate
10 Court wishes to issue a stay, then I will, of course,
11 abide by that. Otherwise, this is starting on Monday
12 morning, and your office, Mr. Joyce, can decide whatever
13 proper remedy they wish to seek, along with the State
14 Attorney's Office or along with the Attorney General's
15 Office.

16 I think all of you know there is surely no animosity
17 towards this Court for any of your offices and for all the
18 hard work you do, but I am confronted with a problem. I
19 fashioned an order accordingly, and we will see where it
20 goes.

21 Yes, Mr. Thomson.

22 MR. THOMSON: Mr. Martinez, you had a further
23 question. He can ask the question.

24 THE COURT: For the record, this is Carlos Martinez,
25 who is the Public Defender Elect for the Eleventh -- for

1 PD-11.

2 MR. MARTINEZ: Yes, Judge. We wanted to make sure
3 that the third degree felonies also include the probation
4 violations. There are many cases in which we did not
5 represent the person originally, and under the Florida
6 Public Defender Association Manual, those are new cases
7 for us. So we do not want to be getting all those
8 P.V.H.'s

9 THE COURT: If a person is on probation for a third
10 degree felony and their violation is something other than
11 a new crime that is not a third degree felony -- so let me
12 make this clear. If a person is on probation for a third
13 degree felony, they pick up a new armed robbery --

14 MR. MARTINEZ: We will take that.

15 THE COURT: You will take that case.

16 MR. MARTINEZ: Yes.

17 THE COURT: They pick up a violation of probation
18 because they had a dirty urine or didn't report or
19 whatever would be technical, or even a new third degree
20 felony, then Regional Counsel at arraignment will be
21 appointed.

22 That was a good clarification. Thank you.

23 MR. MARTINEZ: Thank you.

24 THE COURT: Mr. Horn, you are giving a look like, "I
25 think I know what you what you mean, but I want to ask."

1 MR. HORN: Yes. Because I was writing and trying to
2 listen at the same time, I think I missed something.
3 Could you do that last example again?

4 THE COURT: What I said is someone is on probation.
5 Case has been closed. Someone is on probation for a third
6 degree felony. A probation violation is filed. If it is
7 a technical violation or a new case that is a third degree
8 felony, then Regional Conflict Counsel would take over
9 that case and the Public Defender's Office would not be
10 appointed.

11 If the violation of probation is a combination of a
12 new offense, that offense being a second degree or higher,
13 and technical offenses, the Public Defender's Office will
14 take over that case because if that person is indigent,
15 they will be representing that person on the case in
16 chief.

17 MR. THOMSON: Okay.

18 THE COURT: Now, also, this is really getting kind of
19 playing it out further, let's say a person is accused of a
20 violation of probation. They had a dirty urine and they
21 have a new arrest for a second degree felony.

22 If at some point the new case is nolle prosequere or
23 dismissed, I expect the Public Defender's Office is not
24 going to at that point conflict out unless technically.
25 You continue representing that person. But if the initial

1 violation is a felony higher than a third degree felony
2 and technicals, your office will do it.

3 If it's technicals, if it's a third degree, the
4 initial appointment will be of the Regional Conflict
5 Counsel.

6 MR. JOYCE: Your Honor, Richard Joyce from the
7 Regional Conflict Counsel.

8 THE COURT: Yes, Mr. Joyce.

9 MR. JOYCE: Late filing of the motion. Regional
10 Counsel has moved to intervene. I don't know if that is
11 being granted.

12 THE COURT: Well, you know, there's an issue that
13 some higher authority, I'm not talking about Hebrew
14 National, will decide, of whether or not the State
15 Attorney's Office had standing or not.

16 Obviously I thought that, as Amicus, I gave them full
17 and total participation, including full cross-examination,
18 introduction of exhibits, and calling a witness of their
19 own. I know Mr. Horn was at a disadvantage because he
20 only had that paper chart, but he still did a good job.

21 Let me make this clear. I was not trying to take a
22 slap or in any way a knock on the Regional Conflict's
23 Office. All parties were noticed about being here. I
24 don't say whether it was wise or not wise to also ask to
25 join with them.

1 I, after looking at the case law, looking at the
2 evidence presented, trying to prevent chaos in the system,
3 by statute, I think, confers upon you to take the
4 appointments of the Public Defender's Office that I am
5 finding there to a conflict because of their caseload.

6 If you all decide that you want to file a similar
7 motion, you are more than welcome to file whatever remedy
8 you think is necessary for your office. I can't address
9 that because it's not before me.

10 From a matter of intervening, if you say would I
11 consider you as Amicus if you had asked for it, of course
12 I would. Would I have found that you had standing,
13 per se? I don't know because it wasn't ever presented to
14 me.

15 But you more than welcome, I guess, to intervene in
16 whatever appeal since you feel it has some effect on your
17 office. So if you want to take an appeal, feel free to do
18 so.

19 Your motion for granting of stay is denied, however.

20 MR. JOYCE: Okay. So we got in this far.

21 THE COURT: Yes.

22 MR. JOYCE: But the motion to intervene, before we
23 weren't part of the ongoing --

24 THE COURT: Well, when I say "intervene," you are
25 more than welcome to intervene from the standpoint that

1 you want to be an interested party.

2 I do find that this is an issue between PD-11 and the
3 Courts from the prior cases. Of course we did not have a
4 Regional Conflict Counsel.

5 So I am not making any ruling on standing or anything
6 else. You are more than welcome to try to intervene into
7 any appellate remedy, and I am telling you that since now
8 because, by statute, your office has conferred extra
9 cases, you are more than welcome to file whatever you
10 think is appropriate before the Court.

11 MR. JOYCE: Okay. In our motion we think that the
12 appointment, the way it's going, puts us in a position of
13 maybe violating the statute based upon what we are
14 supposed to do and the way we are supposed to accept
15 cases.

16 THE COURT: I understand.

17 MR. JOYCE: Okay.

18 THE COURT: The Court has found that there is a
19 conflict from the Public Defender's Office taking C cases,
20 and the Court finds that your office is the remedy to be
21 appointed in cases the Public Defender's Office has a
22 conflict on.

23 MR. JOYCE: Okay.

24 THE COURT: Any other questions by any side?

25 So unless I hear further from the Third District or

1 any other Court that may decide that there will be a stay,
2 then as of Monday morning, the 15th, I had sent a copy of
3 this order to my colleagues and said unless further
4 notice, this will take place on September 15th. Probably
5 tomorrow, if I have not heard anything, I will tell them
6 how this is going to be.

7 What I really need, Mr. Joyce, from your office, from
8 the standpoint I understand how your office is staffed,
9 but I am going to need people at a reasonable time to be
10 present. If they are going to be in one court first
11 during arraignment time, if you are covering, let's say,
12 Judge Murphy and Judge Thomas, this attorney would try to
13 get to one judge earlier and say to the other judge, "I
14 will be there as soon as I'm done before Judge Murphy,"
15 because at some point you will need to be there for the
16 cases that there may be a conflict on.

17 MR. JOYCE: If I may address. Of course the Court
18 knows that most of our felony attorneys, to get
19 experienced attorneys, are part-time attorneys. We are
20 trying to work with the Court and trying to do what we
21 have to do under the order.

22 We have about 22 attorneys qualified to handle
23 felonies. The problem is that as part-times they have
24 other cases and we are trying to work that out. We may
25 have our sneakers on Monday morning, if we are required

1 to, running about, but we will.

2 The only situation I would address is that a judge or
3 two has said to our Assistant Regional Counsels that they
4 are not going to slow down things if we are not there and
5 they are going to continue, and if they have to, they are
6 going to appoint private court appointed counsel.

7 THE COURT: Well, I will send an e-mail to my
8 colleagues. Just like when there are days when there are
9 long lines in front, I try to suggest for colleagues, who
10 are equal constitutional officers, that it will probably
11 be wise to pass the arraignment calendar, as opposed to
12 issuing a warrant for someone's arrest, because if they
13 get through the line half an hour late, they shouldn't
14 have to have to have that situation.

15 I will let them know that they should be cognizant of
16 the staffing situation you have.

17 That being said, some of my colleagues have said
18 sometimes the Regional Counsel doesn't come in until 11:00
19 or 11:30.

20 I understand, based upon the funding by the
21 Legislature of creating these five Regional Conflict
22 Counsels, that your office felt that it had to be creative
23 in hiring part-time people so that you could cover
24 courtrooms however you saw fit. So the Court is surely
25 cognizant of the difficulties from lack of an underfunding

1 of your office.

2 But your office is going to have to also make sure
3 that the attorneys -- they may be part-time, but they are
4 being paid by funds from the State of Florida. They are
5 receiving insurance from the State of Florida. They are
6 going to be appointed cases when the State of Florida has
7 decided that formal charges are filed. So they are going
8 to have to make themselves available, maybe not at 9:00,
9 so when the arraignment calendar is called first in the
10 division, that they are there.

11 Of course my door has always been open to Mr. George
12 and you and Mr. Levy, and any time there is a problem, I
13 try to, as the Administrative Judge, to help remedy that
14 situation.

15 I will, in my e-mail to my colleagues, if there is no
16 stay, let them know of the problems you may have, but,
17 also, please let your attorneys know that coming in at
18 11:00 or 11:30 is probably unacceptable, too.

19 MR. JOYCE: Okay, and, just for the record, not all
20 of our attorneys have benefits.

21 THE COURT: Okay.

22 MR. JOYCE: We had to get real creative.

23 THE COURT: All right. Any other questions?

24 Thank you all very much.

25 We will be in recess until we go back at 2:00.

1 Thank you all.

2 MR. HORN: Thank you, Judge.

3 (The proceedings were adjourned.)

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REPORTER'S CERTIFICATE

STATE OF FLORIDA:
COUNTY OF DADE :

I, KIM DeABREU, Court Reporter, hereby certify that the foregoing transcript, numbered 1 to and including 18, is a true and correct transcription of my stenographic notes of the Transcript of Proceedings had in the case of IN RE: REASSIGNMENT AND CONSOLIDATION OF PUBLIC DEFENDER'S MOTIONS TO APPOINT OTHER COUNSEL IN UNAPPOINTED NONCAPITAL FELONY CASES STATE, Case Number 08-14 (Court Administraion), before the Honorable STANFORD BLAKE, at the Richard E. Gerstein Building, 1351 Northwest 12th Street, Miami, Florida on the 11th day of September, 2008.

Dated this 11th day of September, 2008.


KIM DeABREU

App. C

**IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT**

THE STATE OF FLORIDA,

CASE NO.: 3D08-2272

L.T. CASE NO.: 08-1

Appellant/Petitioner,

v.

**IN RE: REASSIGNMENT AND
CONSOLIDATION OF PUBLIC
DEFENDER'S MOTIONS TO
APPOINT OTHER COUNSEL IN
UNAPPOINTED NONCAPITAL
FELONY CASES**

Appellee/Respondents

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

AFFIDAVIT OF CARLOS J. MARTINEZ

BEFORE ME, the undersigned authority, personally appeared Carlos J. Martinez, who after being duly sworn, deposes and says:

1. I am the Public Defender-Elect for the Eleventh Judicial Circuit of Florida. I currently am the Chief Assistant Public Defender. I am of age of majority, and the following information is true and correct according to my personal knowledge and belief.

2. The situation in the Office of the Public Defender for the Eleventh Judicial Circuit of Florida ("PD-11") has deteriorated at an accelerating rate since July 30 and 31, 2008, when the

Honorable Stanford Blake heard the evidence reflected in the September 3, 2008, Order Granting in Part and Denying in Part Public Defender's Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases ("Order").

3. Since the Florida legislature finalized the budget on May 2, 2008, PD-11 has experienced significant attrition and does not have the resources to fill the open positions with adequate replacements. Specifically, twenty-four trial attorneys have resigned, eighteen of whom handled noncapital felony cases and four handled appeals. This number does not include seven attorneys who are on various types of leave and cannot be replaced without violating state or federal employment laws. If the current rate of attrition continues, we will lose more than 50 trial attorneys out of 168 PD-11 had at the beginning of this fiscal year.

4. When PD-11 filed the certificates of conflict and motions in late June 2008, PD-11 had 105 attorneys (including all supervising and training attorneys) who handled noncapital felony cases. At the July 2008 evidentiary hearing, PD-11 projected it would soon have 98 attorneys to handle noncapital felony cases. Since the hearing, additional attorneys have resigned, and PD-11 currently anticipates that by the beginning of October 2008 it will have only 94 attorneys to handle noncapital felony cases.

5. As a result, PD-11 had to reduce the number of attorneys in four felony trial divisions. At the time of the July 2008 evidentiary hearing, PD-11 had only one felony division with two attorneys. Now, it has three with two attorneys. Moreover, attorney shortages forced PD-11 to reduce two additional felony divisions from four to three attorneys. Other than with newly-created divisions, in the last twenty years until this crisis, the only felony division PD-11 staffed with less than three attorneys was drug court, which is not a trial division.

6. Four of the attorneys who resigned are, or will be, working for the Office of Criminal Conflict and Civil Regional Counsel for the Third District ("RCC-3"). RCC-3 is hiring part-time attorneys at \$50,000/year. PD-11 cannot compete with that salary for full-time attorneys with two-to-three years' experience. Additionally, RCC-3's "part-time" arrangement allows attorneys to earn additional fees in privately retained cases.

7. PD-11 cannot hire adequate replacement attorneys due to the budget cuts, uncertainty regarding future cuts, and the quarterly holdbacks. First, PD-11 does not have access to its entire fiscal year budget at the beginning of the year. Instead, the state disburses that money in quarterly installments. Second, the Governor denied PD-11's request for an exemption from the quarterly holdbacks, and PD-11's budget already has been subjected to the first- and second-quarter holdbacks. To make up the one percent quarterly holdbacks, PD-11 has reduced its salary base to accommodate the shortage in its budget. Third, there have been news accounts of a possible legislative session in November to impose further budget cuts. It would be irresponsible, and potentially calamitous for the orderly administration of justice, to hire sufficient attorneys and support staff to meet present needs without any assurance that state funds will be available to pay them in the future.

8. Further, PD-11 cannot draw attorneys for the felony divisions from its county court or juvenile court divisions. Eleven attorneys in the county court division have over 200 pending cases, including two attorneys with over 300 pending cases, and one attorney with over 400 such cases. Of the remaining nine county court attorneys, only one attorney has less than 100 pending cases. Similarly, only four out of the twenty attorneys in PD-11's juvenile court division have fewer than 100 pending cases.

9. Other than the relief specified in the Order, no reduction in caseloads appears likely in the felony division. Both the number of felony cases assigned to PD-11 at first appearance and the number of cases PD-11 handles post-arraignment have remained the same or increased slightly since the July 2008 hearing.

10. The deteriorating situation has reached a critical mass. I am in the process of conducting interviews with every attorney working for PD-11. At every level in PD-11, attorneys are worrying that, due to the high caseloads, they are unable to perform in the manner required by the Florida Rules of Professional Conduct. Defendants are also complaining much more frequently that our attorneys are too busy to help them or even provide basic information. Consequently, the morale is lower than ever.

11. Attorneys are also concerned with the increasing cost of living, no raises for two out of the last five years, no future raises in sight, and the expiration of student loan deferrals. The result is that many attorneys are actively seeking employment outside PD-11. More importantly, if PD-11 continues to lose between four and five attorneys each month, as it has for each of the last four months, our turnover rate could be almost double the 18-20% it has been for the last five years.

12. A chain reaction is taking place in which every attorney who leaves and cannot be replaced increases the workload and inefficiency of the remaining attorneys. Those remaining attorneys also begin looking for other employment.

13. The partial relief granted by the Order on appeal in this case is the only hope on the horizon. A stay of the Order would be devastating to PD-11's attempt to retain qualified

and experienced attorneys who can be assigned to felony cases. Replacing experienced attorneys with less experienced attorneys would result in greater inefficiency both for PD-11 and for the administration of justice. Fewer and less experienced attorneys also create a substantial risk that PD-11's clients will not receive the constitutionally required assistance of counsel.

14. I have reviewed the September 11, 2008 Affidavit of Richard Joyce, Executive Assistant Regional Counsel for RCC-3, filed in connection with the State's motion for stay. The higher number in Mr. Joyce's expectation of RCC-3 being assigned 50 to 100 additional felony cases in each felony division is not supported by the documentary and testimonial evidence at the July 2008 hearing. My highest estimate is that RCC-3 will be appointed to 46 third-degree felonies in each division.

15. It is questionable whether RCC-3's reported felony caseload numbers represent the number of cases that the RCC-3 assistant regional counsel have been handling. The total number of RCC-3's cases reported in paragraphs ten and eleven of Mr. Joyce's affidavit as cases currently open or closed by RCC-3 in the criminal felony division is approximately 24% higher than the number of felony cases in which PD-11 filed a conflict between January 1 and September 11, 2008. Further, while *Crist v. Florida Ass'n of Criminal Defense Lawyers, Inc.* was pending in the Supreme Court for about two months in 2008, RCC-3 did not accept any felony case assignments. None of the data in Mr. Joyce's affidavit was presented by the State or RCC-3 at the July 30 and 31, 2008 evidentiary hearing or at the September 2008 hearing.

16. The trial court's order would affect less than 1000 third-degree felony cases per month. The evidence at the hearing established that excluding all cases in FY 2007-08 that

resulted in dispositions of “no action,” “private attorney,” “conflict,” “bind downs to county court,” “pre-trial intervention” and “pleas at arraignment,” PD-11 represented clients in 20,388 felony cases after arraignment. (See PD-11 Hearing Exhibit 16, referred to as the “Judge Blake” document and attached hereto as Exhibit 1). The evidence also established that approximately 900 of those cases were drug court cases that the Order does not affect. The evidence also established that 60% of all cases were third-degree felonies. Sixty percent of 19,488 is 11,693 or approximately 974 cases per month in all 21 criminal divisions, or approximately 46 cases per division. This represents my highest estimate. Due to Judge Blake’s clarification of what constitutes a “C” case at a hearing on September 11, 2008, in my professional judgment, the number of new appointments to RCC-3 could be less than 46 per division per month.

17. As a historical matter, since Revision 7 to Article V, the funding for conflict counsel has fallen short every year except FY 2004-05. In every instance, the Judicial Administration Commission (“JAC”) has requested the Legislative Budget Commission (“LBC”) to make up for shortfalls for private court appointed conflict counsel, sometimes two-or-three times a year. In the past, the LBC and the Legislature has always provided the necessary funding.

18. I am deeply concerned that a stay of the Order would cause further damage to PD-11’s current clients, PD-11’s professional responsibility under the Rules Regulating the Bar, the moral authority of the courts, the public’s perception of fairness, the due process rights of the

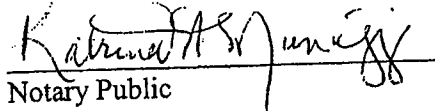
indigent, and the fair and efficient operation of the courts. Were the stay to remain in place, victims, as well as defendants, would continue to see justice delayed and denied due to PD-11's current inability to handle cases due to its excessive caseload.

FURTHER AFFIANT SAITH NOT.



Carlos J. Martinez
Public Defender-Elect for the Eleventh
Judicial Circuit of Florida

Sworn to and subscribed before me
This fifteenth day of September 2008.


Notary Public


NOTARY PUBLIC-STATE OF FLORIDA
 Katrina A. Munaji
Commission # DD461737
Expires: AUG. 21, 2009
Bonded Thru Atlantic Bonding Co., Inc.

Exhibit 1

PDA	PVH, PTI bounce	Total appointed
6,395	967	7,362
38,730	6,665	45,395
35,236	5,600	40,836

Current

FY 07-08

FY 06-07

plea at arr	No action	BDCC	PTI	conflict	PA	Total minus plea @, N.A., BDCC, PTI, conflict, PA
7,234	8,171	1,916	1,118	2,586	3,982	20,388
7,261	6,859	1,705	588	2,971	3,377	18,075

App. D

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA,
Appellant/Petitioner,

CASE NO. SC08-1827
Lower Tribunal No(s): 2008-1
3D08-2272

-vs-

**PUBLIC DEFENDER, ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA,**
Appellee/Respondent.

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

**SUPPLEMENTAL AFFIDAVIT OF CARLOS J. MARTINEZ
IN SUPPORT OF MOTION TO DISSOLVE THE TEMPORARY STAY
ENTERED BY THE THIRD DISTRICT COURT OF APPEAL**

BEFORE ME, the undersigned authority, personally appeared Carlos J.

Martinez, who after being duly sworn, deposes and says:

1. I am the Public Defender-Elect for the Eleventh Judicial Circuit of Florida. I currently am the Chief Assistant Public Defender. I am of age of majority, and the following information is true and correct according to my personal knowledge and belief.

2. I submit this affidavit to supplement the figures I provided in my affidavit from September 15, 2008 (the 'September 15 Affidavit') filed in the Third

District Court of Appeal in support of the Public Defender's Response to the State of Florida's Emergency Motion for Stay and again in this Court in support of the Public Defender's Motion to Dissolve the Temporary Stay Entered by the Third District Court of Appeal.

3. The situation in the Office of the Public Defender for the Eleventh Judicial Circuit of Florida ("PD-11") has continued to deteriorate at an accelerated rate since July 30 and 31, 2008, when the Honorable Stanford Blake heard the evidence reflected in the September 3, 2008, Order Granting in Part and Denying in Part Public Defender's Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases ("Order").

4. When PD-11 filed the certificates of conflict and motions to appoint other counsel in late June 2008 PD-11 had 105 attorneys (including all supervising and training attorneys) who handled noncapital felony cases. At the present time, PD-11 only has 97 attorneys assigned to handle noncapital felony cases. This figure was reached only after the addition of three new lawyers into the felony court division since the July 2008 hearing before Judge Blake.

5. A total of twenty-eight trial attorneys have resigned from PD-11 since the Florida Legislature finalized the FY08-09 budget on May 2, 2008. Twenty-one of the lawyers who resigned handled noncapital felony cases. In

addition to these resignations, five noncapital felony attorneys are on various types of leave. Furthermore, on December 22, 2008, a sixth noncapital felony attorney is scheduled to take maternity leave.

6. Since September 15, 2008, when I gave my prior affidavit, PD-11 has hired five trial lawyers and two appellate lawyers. One of the five trial lawyers is an experienced felony trial lawyer who was assigned to the felony division. The remaining four new hires are inexperienced, first-year lawyers who were assigned to the county court and the juvenile court divisions. In addition, since September 15, 2008, when the first-year lawyers joined PD-11, PD-11 promoted two lawyers from the county court and juvenile court divisions into the felony division.

7. At present, there are 23 lawyers and 2 attorney trainees assigned to the county court division and 21 lawyers to the juvenile court division. Additionally, as a result of reducing the domestic violence division from 8 to 5 attorneys to cover other county court divisions, the caseloads of the lawyers in the domestic violence division have markedly increased. Despite PD-11's efforts to manage the caseloads in the county court and juvenile divisions, the average annual caseload per attorney in the county court division is 2,000 and in the juvenile court division is 382. These caseloads exceed any recognized maximum caseload standard by multiple times.

8. As I stated in my September 15 Affidavit, other than the relief specified in the Order, no reduction in caseloads appears likely in the felony division. Both the number of felony cases assigned to PD-11 at first appearance and the number of cases PD-11 handles post-arraignment have remained the same or increased slightly since the July 2008 hearing. Therefore, unless the existing emergency stay is dissolved, the 97 noncapital felony attorneys will be handling an average of 497 cases per year. This increase in caseload is likely to cause further departures of assistant public defenders. As set forth in Judge Blake's Order, the maximum number of cases a criminal defense attorney should handle annually was set at 150 by the National Advisory Commission on Criminal Justice Standards and Goals and at 200 by the Florida Public Defender's Association and by the Florida Bench and Bar Commission. (See Order at 4.)

9. In addition, the caseloads in the county court and the juvenile divisions are excessive as compared to any recognized standard. As a result, PD-11 cannot promote any more lawyers from the county court or the juvenile court divisions into the felony division to help alleviate the caseloads there.

10. As I stated in my September 15, Affidavit, a stay of the Order will cause further damage to PD-11's current clients, PD-11's professional responsibility under the Rules Regulating the Bar, the moral authority of the courts,

the public's perception of fairness, the due process rights of the indigent, and the fair and efficient operation of the courts.

FURTHER AFFIANT SAITH NOT.



Carlos J. Martinez
Public Defender-Elect for the
Eleventh Judicial Circuit of Florida

Sworn to and subscribed before me
This 7th day of November 2008.


Diane Yanéz
Notary Public

NOTARY PUBLIC-STATE OF FLORIDA
Diane Yanéz
Commission # DD536118
Expires: APR 03, 2010
Atlantic Bonding Co., Inc.

App. E

**IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT**

Case No. 3D08-2272
Lower Tribunal Case No.: 08-1

THE STATE OF FLORIDA,
Appellant/Petitioner,

-vs-

**PUBLIC DEFENDER, ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA,**
Appellee/Respondent.

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

SECOND SUPPLEMENTAL AFFIDAVIT OF CARLOS J. MARTINEZ

BEFORE ME, the undersigned authority, personally appeared Carlos J. Martinez, who after being duly sworn, deposes and says:

1. I am the Public Defender-Elect for the Eleventh Judicial Circuit of Florida. I currently am the Chief Assistant Public Defender. I am of age of majority, and the following information is true and correct according to my personal knowledge and belief.

2. I submit this affidavit to supplement the figures I provided in my affidavit from September 15, 2008 filed in the Third District Court of Appeal in support of the Public Defender's Response to the State of Florida's Emergency Motion for Stay (the "September 15 Affidavit") and in my affidavit from November 7, 2008 filed with the Supreme Court of Florida in support of the Public Defender's Motion to Dissolve the Temporary Stay Entered by the Third District Court of Appeal (the "November 7 Affidavit")

3. The situation in the Office of the Public Defender for the Eleventh Judicial Circuit of Florida ("PD-11") has continued to deteriorate at an accelerated rate since July 30 and 31, 2008, when the Honorable Stanford Blake heard the evidence reflected in the September 3, 2008, Order Granting in Part and Denying in Part Public Defender's Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases ("Order").

4. A total of 29 trial attorneys have resigned from PD-11 since the Florida Legislature finalized the FY08-09 budget on May 2, 2008. Twenty-two of the lawyers who resigned handled noncapital felony cases. In addition to these resignations, five noncapital felony attorneys are on various types of leave. Furthermore, on December 22, 2008, a sixth noncapital felony attorney is scheduled to take maternity leave.

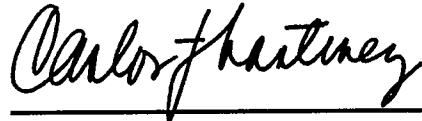
5. When PD-11 filed the certificates of conflict and motions to appoint other counsel in late June 2008, PD-11 had 105 attorneys (including all supervising and training attorneys) who handled noncapital felony cases. At the present time, PD-11 only has 96 attorneys assigned to handle noncapital felony cases. This figure was reached only after the addition of three new lawyers into the felony court division since the July 2008 hearing before Judge Blake.

6. Unless the existing emergency stay is dissolved, the 96 noncapital felony attorneys will be handling an average of 502 cases per year. This increase in caseload is likely to cause further departures of assistant public defenders. As set forth in Judge Blake's Order, the maximum number of cases a criminal defense attorney should handle annually was set at 150 by the National Advisory Commission on Criminal Justice Standards and Goals and at 200 by the Florida Public Defender Association and by the Florida Bench and Bar Commission. (See Order at 4.)

7. A continuation of the stay of the Order will cause further damage to PD-11's current clients, PD-11's professional responsibility under the Rules Regulating the Bar, the moral authority of the courts, the public's perception of fairness, the due process rights of the indigent, and the fair and efficient operation of the courts. Not only will the probability of actual ethical and constitutional

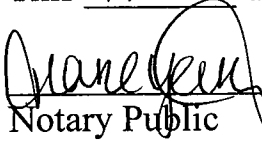
violations grow as a result of a continuation of the stay, but due to the attrition and the excessive caseloads, it will soon become impossible to ethically and constitutionally staff all required courtrooms.

FURTHER AFFIANT SAITH NOT.



Carlos J. Martinez
Public Defender-Elect for the
Eleventh Judicial Circuit of Florida

Sworn to and subscribed before me
This 14th day of November 2008.


Notary Public Diane Yanez

NOTARY PUBLIC-STATE OF FLORIDA
Diane Yanez
Commission # DD536118
Expires: APR 03, 2010
Bonded Thru Atlantic Bonding Co., Inc.

App. F

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

IN RE: REASSIGNMENT AND
CONSOLIDATION OF PUBLIC
DEFENDER'S MOTIONS TO APPOINT
OTHER COUNSEL IN UNAPPOINTED
NONCAPITAL FELONY CASES

CRIMINAL DIVISION

JUDGE: Stanford Blake
SECTION: CF 61

CASE NO.: 08-1
ADMINISTRATIVE ORDER NO.: 08-14

THE STATE OF FLORIDA
Plaintiff,

v.

HAROLD LOVERIDGE,
GANIT ADAMS,
TEDRICK MCINTYRE,
LONNIE CARSWELL,
REMIGIO CARRILLO,
RAUL RIVERO,
PABEL MIRANDA,
WILLIE KEELS,
EDWARD SHOEGREEN,
ALEXANDER ROBERTSON,
PATRICIA ANDUJAR,
SILVINO MEDEROS
JOHN THREATS,
JOEL CHARLES,
OSCAR MUNOZ,
FRANCISCO FRAGA-MARTINEZ,
BONNIE LOWERY,
JED GRANT,
JOSE AROCHA,
NYLUS STANTON,
JEFFREY JAMES,

Case No. F08-14858 (CF01)
Case No. F08-12840 (CF02)
Case No. F08-5820A (CF03)
Case No. F08-8919 (CF04)
Case No. F08-17339 (CF05)
Case No. F08-13758 (CF06)
Case No. F08-16093 (CF07)
Case No. F08-22408 (CF08)
Case No. F08-18074 (CF09)
Case No. F08-2462 (CF10)
Case No. F08-5109 (CF11)
Case No. F08-1872 (CF12)
Case No. F08-17830 (CF13)
Case No. F08-17334 (CF14)
Case No. F08-2314 (CF15)
Case No. F08-10548 (CF16)
Case No. F08-19720 (CF17)
Case No. F08-16823 (CF18)
Case No. F08-7374 (CF19)
Case No. F08-11423 (CF20)
Case No. F08-13649 (CF21)

Defendants.

ORDER GRANTING MOTION FOR CLARIFICATION AND /OR NOTICE
PERTAINING TO CASE STATUS

THIS CAUSE came before the Honorable Stanford Blake, Administrative Judge, Criminal Division, of the Eleventh Judicial Circuit Court, at the Richard E. Gerstein Justice Building, 1351 NW 12th Street, Courtroom 4-1, Miami, FL 33125. The matter was heard Wednesday, September 11, 2008, on the Public Defender's (PD-11's) Motion For Clarification and/or Notice Pertaining To Case Status.


The State of Florida (State) filed its Response to Motion For Clarification and/or Notice Pertaining To Case Status. This Court, having considered PD-11's Motion and the State's Response, and being fully advised in the premises, hereby **GRANTS** PD-11's motion and finds as follows:

1. Section IV of the September 3, 2008 Order states that "[a]t arraignment, the Office of Criminal Conflict and Civil Regional Counsel for the Third District (RRC-3) is to accept all "C" felony cases for indigent persons." On page 4 of the Order, the term "C" felony cases includes a parenthetical saying "(3d degree)." Although "C" felony cases are largely comprised of third degree felonies, there are some second degree (2d degree) felony cases included in this category. As a result, PD-11 seeks clarification of the type of noncapital felony cases that will be assigned to the Office of Criminal Conflict and Civil Regional Counsel for the Third District (RRC-3) at arraignment.
2. For the purpose of this ruling, this Court finds that "C" felony cases are third degree (3d degree). If the State files a multiple count information against a defendant, the highest level of the count will control the assignment of the case in chief. For example, if an indigent defendant is charged with a first degree (1st degree) felony and a third degree (3d degree) felony, PD-11 will be appointed to represent the defendant on all counts. Further, if an indigent defendant is on probation for a third degree (3d degree) felony and a probation violation is filed, RRC-3 will be appointed to represent the defendant at arraignment. If the probation violation is a combination of a new offense, that offense being a second degree or higher, PD-11 will be appointed to represent the defendant on the case in chief. PD-11 is expected to continue its representation of the defendant even if the new case is *nolle prossed* or dismissed.
3. Section IV of the Order also requires that PD-11 continue its bond hearing duties for all indigent cases on a limited basis, and its Early Representation Unit (ERU) must continue with their customary responsibilities up to the time of arraignment. At arraignment, RRC-3 is to accept all "C" (3d degree) felony cases for indigent persons.
4. The State alleges that the Court cannot appoint PD-11 for a limited purpose as set forth in the Order. It contends that by ordering PD-11 to accept appointments of the "C" felony cases until the time of arraignment, this Court's Order is allowing PD-11 to withdraw from appointed "C" felony cases. "Withdrawal" based on inadequacy of funding and excess workload would implicate Section 27.5303(1)(d), Fla. Stat. (2008).

5. This Court's Order does not fall within the scope of Section 27.5303 (1)(d). This Court has the authority to appoint PD-11 on a limited basis under Florida Rules of Criminal Procedure 3.130 (c) (1). This Rule reads, in pertinent part: "[I]f necessary, counsel may be appointed for the limited purpose of representing the defendant only at first appearance or at subsequent proceedings before the judge." Because PD-11's appointment is for a limited purpose, PD-11 is not "withdrawing" within the meaning of Section 27.5303 (1)(d), Fla. Stat. (2008).

6. This Court further finds that where conflict prevents PD-11 from taking "C" felony cases, it is the legislature's intent, through the creation of the offices of criminal conflict and civil regional counsel, that RRC-3 be the appropriate remedy to be appointed in said cases.

DONE and ORDERED this 11th day of September, 2008.



STANFORD BLAKE
ADMINISTRATIVE JUDGE
CRIMINAL DIVISION
ELEVENTH JUDICIAL CIRCUIT

CC: All Parties