

IN THE SUPREME COURT OF FLORIDA

Case No.: SC08-1827

Lower Tribunal No(s): 2008-1
3D08-2272

STATE OF FLORIDA,

Appellant/Petitioner,

v.

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

FILED
THOMAS D. HALL
2008 OCT -1 A 10:40
CLERK, SUPREME COURT
BY

**THE OFFICE OF CRIMINAL CONFLICT AND CIVIL REGIONAL
COUNSEL FOR THE THIRD DISTRICT
MOTION FOR LEAVE TO INTERVENE AS NECESSARY PARTY
OR OTHERWISE IN THE INTEREST OF JUSTICE**

The Office of Criminal Conflict and Civil Regional Counsel, Third District Court of Appeal Region of Florida (“Regional Counsel” or “RC3”), by and through JOSEPH P. GEORGE, JR., Regional Counsel, pursuant to Rules 9.040(a), (c) and 9.125, Florida Rules of Appellate Procedure, moves for leave to intervene as a matter of right or otherwise in the interests of justice in these matters and in support thereof states as follows.

INTRODUCTION

1. The law establishing the Office of Criminal Conflict and Civil Regional Counsel(s) was created July 1, 2007 and is defined in Section 27.511, of the Florida Statutes. The Legislature found that the creation of the offices of criminal conflict and civil regional counsel were necessary and best steps toward enhancing the publicly funded provision of legal representation and other due process services under constitutional and statutory principles in a fiscally responsible and effective manner. Further, the legislature stated:

It is the intent of the Legislature to facilitate the orderly transition to the creation and operation of the offices of criminal conflict and civil regional counsel, as provided in this act, in order to enhance and fiscally support the system of court-appointed representation for eligible individuals in criminal and civil proceedings. To that end, the Legislature intends that the five criminal conflict and civil regional counsel be appointed as soon as practicable after this act becomes law, to assume a term beginning on July 1, 2007. . . . The Justice Administrative Commission shall assist the regional counsel as necessary in establishing their offices. *In addition*, it is the intent of the Legislature that the various agencies and organizations that comprise the state judicial system also assist with the transition from current law to the creation and operation of the regional offices (Emphasis supplied).

Ch. 2007-62, § 31(1)-(2), Laws of Florida.

2. The RC3 has conflict attorney responsibility for all criminal cases (and civil delinquency and Florida Mental Health Law cases) where the court ratifies that the Office of the Public Defender for the Eleventh Judicial Circuit (PD-11) truly has an authentic, genuine, bona fide conflict of interest. In addition, the RC3 has primary

attorney responsibility for representing persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law in civil proceedings, including, but not limited to, proceedings under Chapters, 39, 384, 390, 392, 393, 394, 397, 415, 743, 744, and 984, of the Florida Statutes. Importantly, while these primary responsibilities are considered no less worthy of the attentions of judicial labors than criminal cases, as the Florida Supreme Court appeared to recognize six months ago in *F.A.C.D.L. v. Crist, et al.*, 978 So. 2d 134, 145, Footnote 8 (Fla. Sup. Ct. 2008); yet, in the situation now before the court, authentic criminal conflict cases must be and are here presented as preeminent.

BACKGROUND

3. The Regional Counsel was not an original party to this dispute, not asked by any party to become involved in this litigation nor joined into this proceeding. Like any member of the public (or government agency), the RC3 has been privy to the proceedings but was never joined into the dispute. Now that RC3 has been ordered (on September 3, 2008) to be the solution, it has become apparent that the RC3 will be injuriously affected by the trial court order as it directly impacts it, the RC3 must protect the public's interests and intervention is therefore sought to appropriately review the trial court's order. See, **EXHIBIT 1 – Order Granting In Part And Denying In Part Public Defender's Motion To Appoint Other**

Counsel In Unappointed Noncapital Felony Cases. See, *King v. Brown*, 55 So. 2d 187 (Fla. Sup. Ct. 1951)(Before a person may bring an appeal he must be a party or privy to the record and must show that he is or will be injuriously affected by the order sought to be reviewed); *Robertson v. Baker*, 11 Fla. 192 (Fla. Sup. Ct. 1866)(A party having a beneficial interest in a decree, which is sought to be obtained, has a right to intervene by petition at any stage of the proceedings).

4. The RC3 moved to intervene and for a stay in the lower court only after the trial court's first order and after PD-11 sought to include second degree felony cases on top of and in addition to thousands of third degree felony cases (also including sentencing enhancements), in moving for clarification of the lower court's initial September 3, 2008 order. Said order directly affects the RC3 by first, presumptively and wrongfully asserting jurisdiction over the RC3 agency operations, and second, by requiring the office to accept thousands of criminal felony cases both in an expedited manner and on questionable grounds. While the motion for clarification of PD-11 was granted on September 11, 2008, the RC3 motions to intervene and for stay in the trial court were heard and denied during the same hearing. See, **COMPOSITE EXHIBIT 2 – Order Granting Motion for Clarification and/or Notice Pertaining to Case Status, and Amended Order Denying Motion To Intervene And Motion For Stay.** See, *Smith v.*

Chepolis, 896 So. 2d 934 (Fla. 1st DCA 2005)(“An order denying a right to intervene directly adjudicates the legal rights of the prospective intervenor, and thus, a litigant who is denied the right to intervene may appeal the order denying intervention, even though he is not a party.”)

5. It is the position of the RC3 (as peacemaker), that

a) it was made a necessary party to this litigation by the trial court and submits that it should be permitted to intervene in the interests of justice and as a matter of right;

b) the court only has jurisdiction over the RC3 by way of the Florida Statutes involved in this matter, specifically Section 27.5303, Florida Statutes, and that the court has declared its September 11, 2008 order does not fall within the scope of this law; and

c) the statutory criteria, pursuant to Section 27.5303, for the court to refer criminal conflict cases away from PD-11 and for RC3 being able to accept the criminal conflict cases in the first place, has not and is not being properly followed. See, *J.R. v. R.M.*, 679 So. 2d 64 (Fla. 4th DCA 1996)(Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention).

6. Further, if RC3 were to unquestionably agree to follow the court’s directive, accept conflicted criminal cases, that are designated as properly *declined* by the

PD-11, by the court, instead of being *withdrawn* from, and then RC3 had a conflict of interest, which is believed to be inevitable at some point, the RC3 does not believe that it could properly *decline* the entire class of cases, but would be unduly and unjustly burdened as, pursuant to the lower court's order, "it is their [RC3] responsibility to separately move to withdraw and ask the court to appoint other counsel."

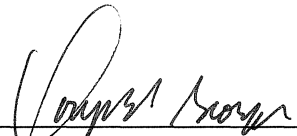
7. This arguably creates a double standard where RC3 is deprived of and loses any availability of the summary PD-11 conflict of interest by declination judicial procedure. It is questionable whether the RC3 is being or would be allowed to decline cases like the PD-11, or must withdraw from thousands of cases after individual case appointment, on a case by case basis as directed by Section 27.5303, Florida Statutes.

8. Because the RC3 is prohibited from accepting conflict cases in any manner apart from that established by the Florida Statutes, which has not occurred or been followed by the plain language of the court's order, the RC3 needs this court's guidance by further statutory interpretation and direction on the exact procedure it must follow in being able to accept both criminal and civil conflict cases from the PD-11, and seeks the right to intervene to help guide the court in this determination.

CONCLUSION

For all of the above reasons, the RC3 seeks leave to intervene as a necessary and/or indispensable party or otherwise as the interests of justice must require.

Respectfully submitted,



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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 26th day of September, 2008.

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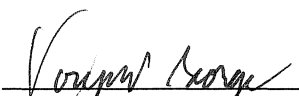
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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

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)
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 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 ... the office, so as to make an impact on ... 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

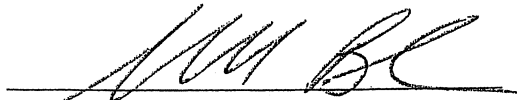
This Court concludes that the testimonial, documentary, and opinion evidence shows that PD-11’s caseloads are excessive by any reasonable standard. As a result, its attorneys are able to provide, at best, minimally competent representation in their assigned cases. Further, it is clear that future appointments 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.

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

IN RE: REASSIGNMENT AND
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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,
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EDWARD SHOEGREEN,
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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.

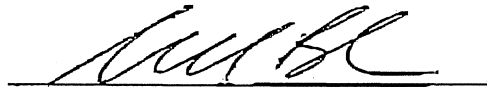
The State of Florida (State) filed its Response to Motion For Clarification and/or Notice Pertaining To Case Status. This Court, having considered PD-11's Motion and the State's Response, and being fully advised in the premises, hereby **GRANTS** PD-11's motion and finds as follows:

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

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,

Defendants.

- 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)

FILED FOR RECORD
2008 SEP 17 AM 7:59
LEAK, CIRCUIT CLERK
DADE COUNTY
CIRCUIT COURT

Amended ORDER DENYING MOTION TO INTERVENE AND MOTION TO STAY

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 Office of Criminal Conflict and Civil Regional Counsel for the Third Region of Florida's (Regional Counsel's) Motion to Intervene and Motion for a Stay of the Order Granting In Part And

Denying In Part Public Defender's Motion To Appoint Other Counsel In Unappointed Noncapital Felony Cases. The Court, having considered the motions and being fully advised in the premises, hereby **DENIES** Regional Counsel's Motion to Intervene and Motion for a Stay.

WHEREFORE, it is **ORDERED** and **ADJUDGED** that the Motion to Intervene and the Motion for a Stay are **DENIED**.

DONE and **ORDERED** this 18th day of September, 2008.



STANFORD BLAKE
ADMINISTRATIVE JUDGE
CRIMINAL DIVISION
ELEVENTH JUDICIAL CIRCUIT

CC: All Parties