

IN THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

OFFICE OF CRIMINAL CONFLICT AND
CIVIL REGIONAL COUNSEL, THIRD DISTRICT
COURT OF APPEAL REGION,

Appellant,

Case No. 3D08-2537
(L.T. Case No. 08-01)

v.

PUBLIC DEFENDER, ELEVENTH
JUDICIAL CIRCUIT,

Appellee.

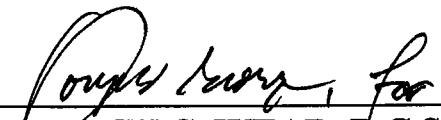
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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was mailed this 10th day of
December, 2008 to the attached Service List.

JOSEPH P. GEORGE, JR.
Regional Counsel
OFFICE OF CRIMINAL CONFLICT
AND CIVIL REGIONAL COUNSEL,
THIRD REGION
1501 N.W. North River Drive
Miami, Florida 33125
Phone: (305) 325-3000
Fax: (305) 325-3003

By: 
NANCY C. WEAR, B.C.S.
Florida Bar No. 181500

Service List

Parker D. Thompson
Alvin F. Lindsay
Julie E. Nevins
Matthew R. Bray
Hogan & Hartson, LLP
Mellon Financial Center
1111 Brickell Avenue, Suite 1900
Miami, Florida 33131

Chief Judge Joseph P. Farina
Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130

Administrative Judge Stanford Blake
Richard E. Gerstein Justice Building
1351 N.W. 12th Street
Miami, Florida 33125

Linda Kelly Kearson
General Counsel
Eleventh Judicial Circuit of Florida
Lawson E. Thomas Courthouse Center
175 N.W. First Avenue, 30th Floor
Miami, Florida 33128

Arthur J. Jacobs
Jacobs & Associates, P.A.
961687 Gateway Boulevard
Suite 201-I
Fernandina Beach, Fla. 32034

Katherine F. Rundle
Penny Brill, Don Horn
Office of the State Attorney
E.R. Graham Building
1350 N.W. 12th Avenue
Miami, Florida 33136

Scott D. Makar
Solicitor General
Louis Hubener
Chief Deputy Solicitor
Office of Attorney General
The Capital – PL-01
Tallahassee, Florida 32399

Stephen Presnell
General Counsel
Justice Admin. Commission
P.O. Box 1654
Tallahassee, Florida 32302

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,
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Case No. F08-14858 (CF01)
Case No. F08-12840 (CF02)
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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 (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

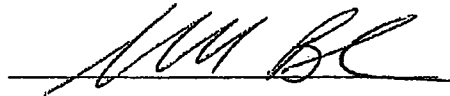
This Court concludes that the testimonial, documentary, and opinion evidence shows that PD-11’s caseloads are excessive by any reasonable standard. As a result, its attorneys are able to provide, at best, minimally competent representation in their assigned cases. Further, it is clear that future appointments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

⁴ The "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 OF FLORIDA IN AND FOR
MIAMI-DADE COUNTY**

CRIMINAL DIVISION

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

**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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Case No. F08-13649 (CF21)

Defendants.

MOTION FOR CLARIFICATION AND/OR NOTICE PERTAINING TO CASE STATUS

Bennett H. Brummer, the Public Defender for the Eleventh Judicial Circuit of Florida ("PD-11" or the "Public Defender"), respectfully moves this Court for clarification of the Order Granting in Part and Denying in Part Public Defender's Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases dated September 3, 2008 (the "Order") and/or submits the following notice pertaining to case status.

1. On or about September 4, 2008, the State Attorney for the Eleventh Judicial Circuit of Florida (SAO-11) filed a Notice of Appeal with the Third District Court of Appeal.
2. The Notice of Appeal purports to be filed on behalf of SAO-11 and the Attorney General even though this Court denied SAO-11 party status in the above-captioned proceeding and the Attorney General had never even sought party status prior to the filing of the Notice of Appeal, even for purposes of appealing the Order.
3. The Court specified that the effective date of the Order is Monday, September 15, 2008, which gave SAO-11 and the Attorney General twelve days to seek a stay of the Order and to do what was necessary to appeal. To date, the Attorney General has not intervened in the proceeding, and neither SAO-11 nor the Attorney General have moved for a stay of the Order.
4. On or about September 5, 2008, the Third District Court of Appeal issued an Acknowledgement of New Case and docketed the appeal as a criminal appeal. Pursuant to Rule 9.310, Fla. R. App. P., no criminal appeal creates an automatic stay.
5. PD-11 is taking the necessary steps to assist in the efficient implementation of the Order, which includes training its staff on how to properly handle the affected cases beginning on September 15. To the extent PD-11 is operating under a misimpression about the effective date of the Order, and given the limited time remaining before September 15 and PD-11's

limited resources, PD-11 respectfully requests assurance that the Order will not be stayed in the absence of a motion for stay and a ruling by this Court.

6. Additionally, PD-11 respectfully requests that this Court clarify which noncapital felony cases will be assigned to the Office of Criminal Conflict and Civil Regional Counsel for the Third District (RRC-3) at arraignment pursuant to the Order. Section IV of the Order states RRC-3 "is to accept all 'C' felony cases for indigent persons." However, on page 4 of the Order, when the Court first introduced the term "'C' felony cases," the Court included a parenthetical saying "(3d degree)." SAO-11 defines what is included in the category of "C" felony cases. To date, while largely comprised of third-degree felonies, "C" felony cases also include some second-degree felonies. PD-11 believes that the Court intended for all "C" felony cases to be assigned to RRC-3 and that the earlier parenthetical was merely explanatory so that a reader not familiar with the Criminal Division of the Eleventh Judicial Circuit would have some idea what constitutes the bulk of the "C" felony cases. In the interest of providing for an orderly transition, however, PD-11 respectfully requests the Court to clarify this point to avoid confusion among the twenty-one criminal divisions, the clerk's office, and RRC-3.

WHEREFORE, PD-11 respectfully requests the Court to clarify that: (i) the Order will go into effect on Monday, September 15, 2008, absent a prior controlling order creating a stay of the proceedings, and (ii) the Order applies to all "C" felony cases and is not limited to a third-degree felony subset of "C" felony cases.

Respectfully submitted,

Hogan & Hartson LLP
Attorneys for PD-11
Mellon Financial Center
1111 Brickell Avenue, Suite 1900
Miami, Florida 33131
Telephone: (305) 459-6633
Facsimile: (305) 459-6550

By: 

Parker D. Thomson
Florida Bar No. 081225
PDThomson@hhlaw.com
Alvin F. Lindsay
Florida Bar No. 939056
AFLindsay@hhlaw.com
Julie E. Nevins
Florida Bar No. 0182206
JENevins@hhlaw.com
Matthew R. Bray
Florida Bar No. 30070
MRBray@hhlaw.com

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 10th day of September, 2008.

Chief Judge Joseph P. Farina

Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130
Via Facsimile & U.S. Mail

Administrative Judge Stanford Blake

Richard E. Gerstein Justice Building
1351 N.W. 12th Street
Miami, Florida 33125
Via Facsimile & U.S. Mail

Linda Kelly Kearson

General Counsel
Eleventh Judicial Circuit of Florida
Lawson E. Thomas Courthouse Center
175 N.W. First Avenue, 30th Floor
Miami, Florida 33128
Via Facsimile & U.S. Mail

Richard Polin

Office of the Attorney General
444 Brickell Avenue
Suite 650
Miami, Florida, 33131
Via Facsimile & U.S. Mail

Patricia Conners

Office of the Attorney General
400 South Monroe Street
Tallahassee, Florida 32399
Via Facsimile & U.S. Mail

Arthur J. Jacobs

Jacobs & Associates, P.A.
961687 Gateway Blvd.
Suite 201-I
Fernandina Beach, Florida 32034
Via Facsimile & U.S. Mail

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

CRIMINAL DIVISION

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

JUDGE: BLAKE
SECTION CF 61

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

THE STATE OF FLORIDA,

Plaintiff,

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HAROLD LOVERIDGE,
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Defendants,

**REGIONAL COUNSEL'S MOTION TO INTERVENE, MOTION FOR A STAY
AND RESPONSE TO PD-11 MOTION FOR CLARIFICATION**

The Office of Criminal Conflict and Civil Regional Counsel for the Third Region of Florida (RC3) moves to intervene, responds to the Public Defender's Motion for Clarification and/or Notice Pertaining to Case Status, joins in the Motion for Stay Order Granting in Part Public Defender's Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases, and moves for stay of the Order Granting in Part Public Defender's Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases of September 3, 2008 ("Order"), and states as follows:

1. RC3 moves to intervene in the trial court because the Order has essentially conferred upon it party status by designating it as the primary recipient of court-appointments for indigent criminal defendants in Third Degree Felony cases in the Eleventh Judicial Circuit in the stead of the Public Defender for the Eleventh Judicial Circuit of Florida (PD-11) as of September 15, 2008.

2. On September 4, 2008, the State of Florida, by and through the State Attorney for the Eleventh Judicial Circuit of Florida (SAO) and the Attorney General for the State of Florida (Attorney General), appealed the Order to the Third District Court of Appeal.

3. In its motion for clarification, PD-11 argues the neither the State, SAO or Attorney General have standing to appeal the Order.

4. In an effort to protect its due process interests and the due process interests of the indigent criminal defendants for whom it may receive court appointments to represent on or after September 15 pursuant to the Order, RC3 has a vested interest in this case and the interests of justice require the Court to grant intervention at this time. To deny the motion may deny RC3 and its prospective clients due process of law.

5. By its Order, the Court has apparently found sections 27.40(1) and 27.5303(1)(a), Florida Statutes (2008) unconstitutional and appointed RC3 or has appointed RC3 outside of said

statutes pursuant to an inherent authority to appoint counsel.

6. With either method of appointment, RC3 has grave concerns that for it to accept appointments pursuant to the Order it may violate its statutory authority under sections 27.40, 27.511, and 27.5303(1)(a), Florida Statutes (2008).

7. Section 27.511 specifically established RC3 and the four (4) other Offices of Criminal Conflict and Civil Regional Counsel in the State as the attorneys to accept appointments to represent indigent criminal defendants in conflict situations after a public defender has withdrawn from a case. However, the Order has not allowed PD-11 to withdraw from cases to which it has been appointed, but to decline to accept appointments in "C" cases for which it has not yet received appointments.

8. Sections 27.40(1) and 27.5303(1)(a), Florida Statutes (2008) only permit the Court to appoint RC3 to represent indigent criminal defendants on a case by case basis after the Court has granted a public defender's motion to withdraw based upon a conflict.

9. RC3 intends to abide by and comply with the orders of this Court to the full extent of its statutory authority and abilities. However, the Order has placed RC3 in the untenable position of possibly exceeding the parameters of its statutory authority.

10. Other matters to be considered by the Court are that RC3 presently has: 1) twenty-two (22) Assistant Regional Counsel assigned to the criminal felony division (most of whom are part-time employees); 2) one (1) Assistant Regional Counsel assigned to handle misdemeanors in the Miami-Dade County Court; and, 3) one (1) part-time Assistant Regional Counsel handling criminal appellate cases for the Eleventh and Sixteenth Judicial Circuits of Florida.

11. Additionally, RC3 represents children alleged to be delinquent if PD-11 has conflicted off of the case and "has primary responsibility for representing persons entitled to court-

appointed counsel . . . in civil proceedings.” Section 27.511(6)(a), Fla. Stat. (2008). The appointments in the civil cases encompass a significant number of proceedings in the Probate Division, wherein an individual’s civil rights are subject to removal, in whole or part, by the State of Florida and in the Juvenile Dependency Division.

12. RC3 has a staff of fifty-nine (59), which is comprised of forty-four (44) attorneys (most of whom are part-time) and fifteen (15) support staff assigned to Miami. This number includes the Regional Counsel, Joseph P. George, Jr., the Chief Assistant Regional Counsel, D. Bruce Levy, and the undersigned.

13. Presently, RC3 has a total of 2,612 open cases in the Eleventh Judicial Circuit of Florida. Of this number, 1,593 are in the criminal felony division and 52 are misdemeanors. RC3 has already closed 1,054 felony and 65 misdemeanor cases.

14. Furthermore, there is a procedural snafu with depositions that will delay all criminal proceedings, if RC3 receives the appointments pursuant to the Order. Pursuant to an Administrative Order, depositions in criminal cases have to be held at the court, the offices of PD-11 or SA or at a mutually agreed upon location.

15. While PD-11 has cooperated with RC3 in scheduling depositions at its office, PD-11 limits access by RC3 to deposition rooms. And, PD-11 has objected to and will not appear at the office of RC3 for depositions. PD-11 restated its position on the matter as recently as August 26, 2008, by and through Carlos Martinez, Chief Assistant Public Defender. RC3’s office is located two (2) blocks west of the Richard E. Gerstein Justice Building.

16. On the other hand, the SA, by and through Don Horn, Chief Assistant State Attorney, has graciously agreed to work with RC3 on scheduling depositions at a mutually agreeable location.

17. But unfortunately, RC3 does not presently have adequate space to conduct multiple depositions simultaneously.

18. In respect to what cases the Order applies to, RC3 considers it to only apply to Third Degree Felonies and not Second and Third Degree Felonies as PD-11 suggests. RC3 needs clarification of what the Order defines as "C" cases.

19. In conclusion, RC3 joins in the SA's motion for a stay in addition to moving for a stay.

WHEREFORE, RC3 requests this Court grant its motion and grant it such further relief as the Court deems necessary, just and proper.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon: Parker D. Thompson, Esquire, Alvin F. Lindsay, Esquire, Julie E. Nevins, Esquire, and Matthew R. Bray, Esquire, Hogan and Hartson LLP, Attorneys for the Public Defender, 1111 Brickell Avenue, Suite 1900, Miami, Florida 33131; Chief Judge Joseph P. Farina, Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130; Administrative Judge Stanford Blake, Richard E. Gerstein Justice Building, 1351 N.W. 12th Street, Miami, Florida 33125; Linda Kelly Kearson, General Counsel, Eleventh Judicial Circuit of Florida, Lawson E. Thomas Courthouse Center, 175 N.W. First Avenue, 30th Floor, Miami, Florida 33128, Richard L. Polin, Bureau Chief, Office of the Attorney General, 444 Brickell Avenue, Suite 650, Miami, Florida 33131; Patricia Connors, Associate Deputy Attorney General, Office of the Attorney General, The Capitol PL-01, Tallahassee, Florida 32399-

1050; Don Horn and Penny Brill, Office of the State Attorney, E.R. Graham Building, 1350 N.W. 12th Avenue. Miami, Florida 33136; Stephen Presnell, General Counsel, Justice Administration Commission, P.O. Box 1654, Tallahassee, Florida 32302, by facsimile and mail or hand delivery on September 11, 2008 .

Respectfully submitted,

JOSEPH P. GEORGE, JR.
Criminal Conflict and Civil Regional Counsel,
Third Region of Florida
1501 NW North River Drive
Miami, Florida 33125
Tel.: (305) 325-3000
Fax: (305) 325-3003

By: 

RICHARD F. JOYCE
Executive Assistant Regional Counsel
Florida Bar No.: 915701

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 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.

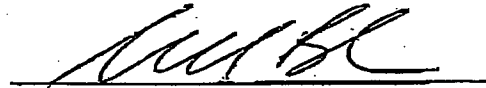
The State of Florida (State) filed its Response to Motion For Clarification and/or Notice Pertaining To Case Status. This Court, having considered PD-11's Motion and the State's Response, and being fully advised in the premises, hereby GRANTS PD-11's motion and finds as follows:

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)

LEAK, CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, MIAMI-DADE COUNTY, FLORIDA

2008 SEP 17 AM 7:59

FILED FOR RECORD

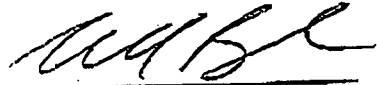
Amended ORDER DENYING MOTION TO INTERVENE AND MOTION TO STAY

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 ^{13th} day of September, 2008.



STANFORD BLAKE
ADMINISTRATIVE JUDGE
CRIMINAL DIVISION
ELEVENTH JUDICIAL CIRCUIT

CC: All Parties

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