

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

**THE STATE OF FLORIDA,**

*Plaintiff,*

v.

**ANTOINE BOWENS,**

*Defendant.*

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Case No. F09-019364

Division F15

Judge Thornton

**RESPONSE TO REQUEST FOR JUDICIAL NOTICE**

The State of Florida, by and through the undersigned counsel, files this Response to the Public Defender's request to take judicial notice of the transcripts of the evidentiary hearing and exhibits in *In re: Reassignment and Consolidation of Public Defender's Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases*, Case No. 08-1, and states as follows:


1. The purpose of a court taking judicial notice is to "accept as a fact a matter judicially noticed." Section 90.206, Florida Statutes (2009).
2. From the Request, it is unclear what specific "facts," PD-11 is asking this Court to take judicial notice of. Is it just the "fact" that an evidentiary hearing was held last year? If so, then there is no relevance to that "fact." If the purpose is to take judicial notice of any "factual findings by Judge Blake, this Court cannot do so. *See Wright v. State*, 581 So. 2d 882, 886 (Fla. 1991). Are there specific "facts" that were testified to at the evidentiary hearing that PD-11 is asking this Court to take judicial notice of? If so, there may be "facts" which the State may be willing to agree to.
3. If there are "facts" which the State is not willing to agree to, the State would then have an objection to this Court taking judicial notice of the transcripts and exhibits. Under

either section 90.202(11) or (12), Florida Statutes (2009), these would not be “facts” that “are not subject to dispute because they are generally known” in Miami-Dade County, or “because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.” The State was not given “party” status by Judge Blake for that Motion, and was rushed to the evidentiary hearing over its objection without being fully prepared. As such the State cannot agree that it had a fair opportunity to challenge the “facts.” Second, the existence of the “facts” may well depend on the credibility of the witnesses who testified to the “facts” at the evidentiary hearing. This Court did not have the opportunity to see the witnesses testify and as such cannot gauge their credibility on a cold record. Therefore, it cannot be said that these are “facts” that are not subject to dispute or are capable of accurate and ready determination.

Wherefore, based on the foregoing, the State requests that this Court deny the Public Defender’s Request for Judicial Notice.

Respectfully submitted,

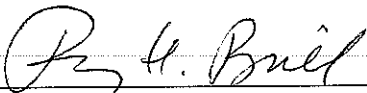
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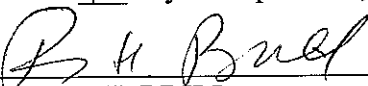
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent to Parker D. Thomson, Esquire, Julie E. Nevins, Esquire, and Matthew Bray, Esquire, Hogan & Hartson LLP, Attorneys for the Public Defender, 1111 Brickell Avenue, Suite 1900, Miami, FL 33131; Scott D. Makar, Solicitor General, Office of the Attorney General, The Capitol PL-01, Tallahassee, FL 32399-1050; Richard L. Polin, Bureau Chief, Office of the Attorney General, 444 Brickell Avenue, Suite 650, Miami, FL 33131; Chief Judge Joel Brown, Miami-Dade County Courthouse, 73 West Flagler Street, Miami, FL 33130; Administrative Judge Stanford Blake, Richard E. Gerstein Justice Building, 1351 N.W. 12th Street, Miami, FL 33125; The Honorable John Thornton, Richard E. Gerstein Justice Building, 1351 N.W. 12th Street, Miami, FL 33125; Linda Kelly Kearson, General Counsel, Eleventh Judicial Circuit of Florida, Lawson E. Thomas Courthouse Center, 175 N.W. First Avenue, 30th Floor, Miami, FL 33128; Joseph P. George, Jr., Regional Civil and Criminal Conflict Counsel, 1501 N.W. N. River Drive, Miami, FL 33125; Stephen Presnell, General Counsel, Justice Administration Commission, P.O. Box 1654, Tallahassee, FL 32302, and Carlos Martinez, Public Defender and Jay Kolsky, Assistant Public Defender, 1320 N.W. 14th Street, Miami, FL 33125, on this 14 day of September, 2009.

By:   
PENNY H. BRILL  
Assistant State Attorney