

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

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

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**CASE NO.: 3D08-2272  
L.T. CASE NO.: 08-1**

**SUGGESTION FOR CERTIFICATION**

Pursuant to Article V, section 3(b)(5) of the Florida Constitution and Florida Rule of Appellate Procedure 9.125, Bennett H. Brummer, the Public Defender for the Eleventh Judicial Circuit of Florida ("PD-11"), respectfully suggests that this Court certify for review by the Supreme Court of Florida the Order Granting in Part and Denying in Part Public Defender's Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases issued by the Honorable Stanford Blake of the Eleventh Judicial Circuit on September 3, 2008 (the "Order") because it is of great public importance, could have a great effect on the proper administration of justice throughout the state, and deserves prompt resolution by the Supreme Court of Florida.<sup>1</sup> In support thereof, PD-11 states as follows:

1. The Order is of great public importance and could have a very significant impact on the proper administration of justice throughout Florida

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<sup>1</sup> The Order is attached as Appendix A . Citations to this appendix will be

because the Order ensures indigent defendants' right to assistance of counsel as required by the United States and Florida Constitutions and upholds the ethical and professional responsibilities of lawyers. The trial court found that "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." (App. A at 5). The trial court's ruling was based on its finding that PD-11 is operating under the impossible condition of having to handle a sharply increasing caseload under a sharply reduced budget. (App. A at 5). The trial court found that PD-11's noncapital felony "caseloads are excessive by any reasonable standard" and that "future appointments to noncapital felony cases will create a conflict of interest in the cases presently handled by PD-11." (App. A, at 6). On September 4, 2008, the State Attorney's Office for the Eleventh Judicial Circuit (SAO-11) filed a notice of appeal of the Order.

2. Public defenders across Florida (along with the courts and the state attorneys) also have suffered budgetary reductions while operating under similarly increasing caseloads. The Order, therefore, if affirmed on appeal, will certainly have a substantial impact not only on PD-11, its indigent clients, and the criminal division of the Eleventh Judicial Circuit, but all other public defender offices in

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abbreviated as "App." herein.

Florida, their indigent clients, and the criminal divisions of their circuits. Other Florida public defenders have indicated that they will file similar motions to appoint other counsel in unappointed cases, and the Order will be persuasive authority in those courts. Leaders across the spectrum of The Florida Bar<sup>2</sup> and even SAO-11<sup>3</sup> have acknowledged the statewide importance of the impact of the Florida Legislature's recent budget cuts on the fair administration of justice and the integrity of the courts.

3. Given the statewide importance of this issue, the Supreme Court of Florida will ultimately decide this case, just as it has decided previous excessive caseload cases. *See Escambia County v. Behr*, 384 So. 2d 147 (Fla. 1980); *Hatten v. State*, 561 So. 2d 562 (Fla. 1990); *In re Order on Prosecution of Appeals by the*

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<sup>2</sup> At a recent summit convened by The Florida Bar's Criminal Law Section, former Bar President Hank Coxe stated: "The entire system appears, from anecdotal evidence, to be spiraling downward for the reason that needs cannot be met." Gary Blankenship, *Budget woes slow the courts*, The Florida Bar News, at 1. The trial court took judicial notice of this article. (App. A, at 4 n.1).

<sup>3</sup> SAO-11's trial court pleadings state that "if the PD-11 is allowed the relief he requests then the criminal justice system in Miami-Dade County, and most likely the rest of Florida, would face a constitutional crisis . . . ." (State's Post-Hearing Memorandum at 2). While SAO-11 has its causality backwards (the constitutional and ethical crisis caused PD-11 to seek relief, not the other way around), PD-11 agrees that the crisis is statewide, as will be the effect of any ruling in this case.

Likewise, Buddy Jacobs, the longtime lobbyist for the Florida Prosecuting Attorneys Association who also represented the state in proceedings below, admitted at this summit: "Our people are at the point of breaking." He went on to state: "You cannot cut the criminal justice system like you cut . . . another government agency. If your criminal justice system doesn't work, nothing else

*Tenth Judicial Circuit Public Defender*, 561 So. 2d 1130 (Fla. 1990); *Skitka v. State*, 579 So. 2d 102, 104 (Fla. 1991); *In re Certification of Conflict*, 636 So. 2d 18 (Fla. 1994); *In re Public Defender's Certification*, 709 So. 2d 101 (Fla. 1998).

4. The Order reflects that PD-11 is already under caseload pressure that prevents its lawyers from fulfilling their ethical and constitutional responsibilities. What the Order cannot reflect is that circumstances have significantly *worsened*, as detailed by the Affidavit of Carlos J. Martinez, Chief Assistant Public Defender and Public Defender-Elect for the Eleventh Judicial Circuit of Florida, attached to the Appendix at tab B.

5. Therefore, PD-11 is requesting that this Court certify this case to the Supreme Court of Florida to expedite the review process. PD-11 requests that the expedited briefing schedule set forth in this Court's Order of September 12, 2008, remains in place. Requiring two levels of appellate review will not help indigent defendants who need effective assistance of counsel in their cases today, and certification by this Court can eliminate one of these levels. A certification also would help to alleviate disruption and delay in thousands of effected criminal cases, and may avoid raising issues about the finality of judgments in those cases.

WHEREFORE, PD-11 respectfully requests that the Court certify the appeal of the Order to the Supreme Court of Florida.

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matters.” Blankenship, *supra* note 2, at 5.

**CERTIFICATE OF COUNSEL**

I EXPRESS A BELIEF, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the supreme court and (a) is of great public importance, or (b) will have a great effect on the administration of justice throughout the state.

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 15th day of September 2008.

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