

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA,
Appellant/Petitioner,

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

-vs-

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

**REPLY TO STATE OF FLORIDA'S RESPONSE
TO ORDER TO SHOW CAUSE**

Pursuant to this Court's Order dated October 2, 2008, Bennett H. Brummer, the Public Defender for the Eleventh Judicial Circuit of Florida ("PD-11"), files this Reply to the State of Florida's Response to Order to Show Cause (the "Response"). This Court has jurisdiction to review the Order appealed from either as a final order appealable under Rule 9.110 of the Florida Rules of Appellate Procedure or as a nonfinal order appealable under Rule 9.130(a)(3)(B). Further, the Court should exercise its jurisdiction and accept the certification by the Third District Court of Appeal (the "3d DCA") as the issues in the order on review are matters of great public importance and could have a very significant impact on the proper administration of justice throughout Florida. In support thereof, PD-11 states:

I. INTRODUCTION

The State has appealed the Order Granting in Part and Denying in Part Public Defender's Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases entered by the Honorable Stanford Blake on September 3, 2008 (the "September 3 Order").¹ The September 3 Order decided Motions to Appoint Other Counsel in Unappointed Noncapital Felony Cases ("Motions") filed in one case pending in each of the twenty-one felony trial divisions of the Eleventh Judicial Circuit. By Administrative Order No. 08-14, dated June 26, 2008,² Chief Judge Joseph P. Farina reassigned and consolidated the twenty-one Motions into a separate case before Judge Blake. That was the only administrative order entered and was never the subject of this, or any other, appeal.

The trial court conducted a two-day evidentiary hearing in which the State Attorney for the Eleventh Judicial Circuit of Florida ("SAO-11") participated fully, even though only *amicus curiae*. The Office of the Attorney General and the Office of Criminal Conflict and Civil Regional Counsel for the Third District ("RCC-3"), were served with all pleadings and were present throughout the proceedings, but they made no effort to appear in any capacity. Judge Blake granted PD-11's Motions in part and denied them in part, affording partial relief

¹ The September 3 Order is attached to this Reply at Appendix A. In this Reply, the abbreviation "App." followed by a letter and a number refer to the tabbed section of the Appendix and the page number of the document therein.

² Administrative Order No. 08-14 is attached to this Reply at Appendix B.

from the excessive caseloads and scheduling recurring 60-day reviews of the caseloads. (App. A at 6-7).

This Court has at least two independent bases for discretionary jurisdiction to review the September 3 Order. As the State appears to concede in its Response, the September 3 Order can be viewed as either a final order appealable under Rule 9.110 or a nonfinal order granting an injunction appealable under Rule 9.130(a)(3)(B). (Response at 8 & 9). The September 3 Order can be viewed as a final order because PD-11's Motions were consolidated and reassigned into a separate case. The trial court completed all judicial labor on the merits of the Motions, after the issues were fully litigated with limited discovery, extensive briefing, and an evidentiary hearing. The September 3 Order also can be viewed as an appealable nonfinal order, because it has the effect of an injunction on PD-11's appointments to third-degree felony cases.

The State's arguments that the September 3 Order is subject only to certiorari review are unavailing. First, the State mischaracterizes the September 3 Order as an administrative order. The only administrative order in any way relating to this appeal is Administrative Order No. 08-14 entered by Chief Judge Farina directing the reassignment and consolidation of PD-11's Motions into a separate case. (App. B). The September 3 Order was issued after a full and fully adversarial proceeding in that separate case. (App. A at 2, 3). Second, the State

mischaracterizes the September 3 Order as being analogous to a defender's motion to withdraw in a criminal case. The Motions related only to *future* appointments that would interfere with PD-11's competent continuing representation of previously appointed clients in accordance with PD-11's ethical and constitutional obligations.³

Lastly, this Court would be ill-advised to follow the State's suggestion that it need not decide whether it has jurisdiction, but instead should assume jurisdiction exists in order to decline to review the September 3 Order. (Response at 12). Before the Court can exercise its discretion to accept or decline the certification, it first must have jurisdiction. If the Court does have jurisdiction, as PD-11 asserts, then PD-11 submits the Court should accept the certification because of the statewide importance of the issues in the September 3 Order to not just Florida public defenders, but to the proper and constitutional functioning of the Florida criminal justice system and to upholding the rules of professional conduct adopted by this Court and expected of every attorney in Florida, public or private.

³ In addition to discretionary jurisdiction to accept the certification of the appeal, the Court may have an independent basis to review the September 3 Order in that the Court has exclusive original jurisdiction to entertain petitions dealing with the regulation of the practice of law in Florida and petitions involving the rules for practice and procedure in the courts of Florida. See Art. V, §§ 2(a) & 15, Fla. Const.

II. PROCEDURAL AND FACTUAL BACKGROUND

Facing significant budget and staff reductions and increasing caseloads, PD-11 filed certificates of conflict and the Motions. PD-11 did not seek to withdraw from cases to which it had already been appointed, but simply to halt the assignment of additional noncapital felony cases until the caseloads reached appropriate levels to allow PD-11 and its attorneys to meet their obligations under the Rules of Professional Conduct and to satisfy their duty of providing effective assistance of counsel to their indigent clients as required by the U.S. Constitution. (App. A at 2).⁴

Chief Judge Farina entered Administrative Order No. 08-14, separating PD-11's Motions and certificates of conflict from the underlying criminal cases and consolidating them into a single case before Judge Blake. (App. B; App. A at 2). The criminal cases in which these Motions were filed proceeded normally. In fact, some of those cases were resolved and closed before entry of the September 3 Order, and new cases were substituted as needed.

All pleadings, including copies of PD-11's certificates, motions, and memoranda, were served on SAO-11, the Attorney General (both in Miami and in Tallahassee), RCC-3, and the Justice Administration Commission. Only SAO-11

⁴ U.S. Const. amend. VI & XIV; Art. I, §§ 2&16, Fla. Const.; R. Regulating Fla. Bar 4-4-1.7(a)(2) (“[A] lawyer shall not represent a client if: . . . there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer’s responsibilities to another client . . .”).

made an appearance, although representatives from RCC-3 and the Attorney General's office were present in the courtroom at the evidentiary hearing and all subsequent proceedings.

SAO-11 opposed PD-11's Motions. PD-11 objected to SAO-11, who is the PD-11's adversary every day in court, participating as a party in a proceeding regarding PD-11's duties to its clients. Further, PD-11's position was, and still is, that it is inappropriate for the prosecutor and the State to have any role in the determination of a public defender's certification of a conflict of interest because a public defender's professional and ethical obligations to his clients require him to act independent of and adverse to the State . See Polk County v. Dodson, 454 U.S. 312, 321-22 (1981); Kight v. Dugger, 574 So. 2d 1066, 1069 (Fla. 1990); see also Escambia County v. Behr, 384 So.2d 147, 150 n.1 (Fla. 1980) (C.J. England, concurring). The trial court agreed that SAO-11 should not participate as a party, but permitted SAO-11 to participate fully as *amicus curiae*. (App. A at 2-3).

The proceedings below were intensely litigated.⁵ Judge Blake, as the specially designated judge, presided over PD-11's disclosure of vast portions of PD-11's operating database to SAO-11 pursuant to a Chapter 119 public records

⁵ The trial court had the discretion to dispose of PD-11's certification of a conflict of interest and the Motions without an evidentiary hearing or any further proceeding. See § 27.5303(1)(a), Fla. Stat. (2007) ("The court shall review and *may* inquire or conduct a hearing into the adequacy of the public defender's representations regarding a conflict of interest without requiring the disclosure of any confidential communications." (emphasis added)). The trial court elected to have a full hearing.

request. Judge Blake set briefing schedules for PD-11 and SAO-11. Judge Blake presided over a two-day evidentiary hearing at which PD-11 presented factual and expert testimony on the excessive caseloads of PD-11's attorneys and the deleterious effects of such high caseloads on those attorneys' abilities to represent their clients and perform such basic tasks as meeting with clients, investigating cases and filing motions. (App. A at 3-5). SAO-11 conducted discovery, made opening and closing statements, and cross-examined PD-11's witnesses. SAO-11 introduced documentary evidence and was permitted to call the one witness whom SAO-11 asked to call. Judge Blake never curtailed SAO-11's advocacy because of its *amicus curiae* status.⁶

After hearing PD-11's and SAO-11's evidence, and receiving oral and written closing statements from both PD-11 and SAO-11, the trial court entered the September 3 Order on appeal here, which stated:

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

⁶ The litigation of PD-11's Motions in this case was unlike that in any routine certification of conflict based on the specific facts of a specific criminal case. Routine certificates of conflict are heard by the judge presiding over the criminal case. Written memoranda are rare, and there is no discovery. The attorney certifying a conflict files the appropriate motion on which there may be a judicial "inquiry" into the factual basis, but generally not an evidentiary hearing. See, e.g., Scott v. State, 33 Fla. L. Weekly D2242, D2242 (Fla. 1st DCA Sept. 22, 2008).

will create a conflict of interest in the cases presently handled by PD-11.

(App. A. at 6).

On September 10, 2008, the State filed a notice of appeal through the Attorney General and SAO-11. Since then, the Office of the Attorney General has assumed direct representation of the State in this appeal through the Solicitor General, which PD-11 welcomes.

The State filed an emergency motion to stay the September 3 Order with the 3d DCA. The 3d DCA temporarily granted the motion for stay and ordered PD-11 to file a response to the motion. PD-11 filed a response along with a suggestion for certification to this Court. The 3d DCA subsequently certified the appeal to this Court as one passing on a question of great public importance or that will have a great effect on the administration of justice throughout the State. PD-11 then filed in this Court a Motion to Dissolve the Temporary Stay Entered by the Third District Court of Appeal.

III.
THE SEPTEMBER 3 ORDER IS APPEALABLE AS
A FINAL ORDER OR A NONFINAL ORDER

This Court has jurisdiction to “review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme

court.” Art. V, § 3(b)(5), Fla. Const. The “great effect on the proper administration of justice throughout the state” of the September 3 Order seems incontestable despite the State’s assertion to the contrary in the Response. (Response at 12-14).

To determine whether an order is appealable for jurisdictional purposes, the *effect* of the order controls, not the title. Allstate Ins. Co. v. Arvida Corp., 421 So. 2d 741, 742-43 (Fla. 4th DCA 1982) (holding court had jurisdiction to review a partial summary judgment as a final judgment, as a mandatory injunction, or as an order seeking the determination of liability in favor of a party seeking affirmative relief); Alanco v. Bystrom, 544 So. 2d 217, 218 (Fla. 3d DCA 1989) (holding that an order on a motion for judgment on the pleadings ordering plaintiff “to refile a pending claim and pay a filing fee or suffer a dismissal” is a dismissal on the grounds of misjoinder and reviewable as an appeal from a final order); see also Boyd v. Goff, 828 So. 2d 468, 469 (Fla. 5th DCA 2002) (holding that the controlling issue is what “a court order does and [the court should] not focus only on how the order is labeled.”).

As noted above, this Court has at least two independent bases for jurisdiction. First, the September 3 Order can be viewed as a final order appealable under Rule 9.110. Alternatively, the order can be viewed as granting an

injunction, which is appealable under Rule 9.130(a)(3)(B). PD-11 believes the former is the more appropriate basis.

A. The September 3 Order Can Be Regarded as a Final Order

An order has “the degree of finality necessary to support an appeal when it adjudicates the merits of the cause and disposes of the action between the parties, leaving no judicial labor to be done except the execution of the judgment.”

McGurn v. Scott, 596 So. 2d 1042, 1043 (Fla.1992). The trial court completely adjudicated the relief requested in the Motions with no need for any additional judicial labor beyond enforcement.

Courts determine the finality of orders based on “the legal effect, rather than the language of a judgment.” Alanco, 544 So. 2d at 218; see also Boyd, 828 So. 2d at 469. After an evidentiary hearing, the trial court found that PD-11 is operating under excessive caseloads impairing the attorneys’ abilities to competently represent their clients. (App. A at 3-5). The trial court held that “the proper course to be followed in such a situation is for PD-11 to decline to accept appointments to “C” felony cases⁷ until such time as this Court determines that PD-11 is able to resume its constitutional duties with respect to these cases.” (Id. at 6). The trial court then set recurring 60-day reviews to monitor PD-11’s caseload. (Id. at 6-7).

⁷ On September 11, 2008, the trial court clarified that the “C” felony cases to which the September 3 Order applies are third-degree felonies.

The trial court's labor in adjudicating PD-11's motions to appoint other counsel is over. All that remains is the Court's monitoring of PD-11's caseloads to determine when PD-11 shall resume its duties — which will amount to a modification of the remedy, but not a modification of the decision on the merits. Only changes in PD-11's budget, workload, and/or caseload will cause a remedy modification, and any such *future* change in these circumstances would not destroy the finality of the September 3 Order. See Ross v. Phillips, 913 So. 2d 771, 773 (Fla. 2d DCA 2005) (holding that an order entered after an evidentiary hearing that a father shall have no contact with his minor child because not in the child's best interests "at this time" was a final visitation order even if the order could be modified later to accommodate changed circumstances).

The State argues that the trial court's reservation of jurisdiction to monitor PD-11's caseloads will be "ongoing and substantial" and undercuts the finality of the September 3 Order. (Response at 10). The case law, however, is clear that reservation of jurisdiction to enforce, modify or terminate an order does not destroy its finality. "When a decree which is otherwise final contains a clause purporting to reserve jurisdiction for the purpose of entering other orders that may be proper, this does not in and of itself destroy the finality of the decree." Prime Orlando Properties, Inc. v. Department of Bus. Regulation, 502 So. 2d 456, 459 (Fla. 1st DCA 1986) (holding order requiring information that parties must furnish

to the Department of Business Regulation, the time period for compliance, and the amount of the civil penalty if no compliance met was a final order even though the court reserved jurisdiction to determine the actual amount of the penalty if the parties failed to comply with the terms of the final order). Further, orders based on existing circumstances at the time the order was entered are no less final if the circumstances later change. See Ross, 913 So. 2d at 773.

This Court has previously rejected attempts to characterize litigation as forever ongoing, and therefore nonappealable:

[T]he Circuit Court retained jurisdiction of the cause ‘for the purpose of making such further orders herein as may be found necessary to carry out the purposes and objects of the decree,’ The only effect of reserving jurisdiction in this manner is to promulgate such orders as are necessary to effectuate the judgment but this does not make it any less a final judgment. The application of any other principle would mean that there would be no end to litigation.

Finston v. Finston, 37 So. 2d 423, 424 (Fla. 1948). Indeed, any other construction would circumvent the constitutional right to appeal. See Art. V, § 4(b)(1), Fla. Const. If the September 3 Order were not now a final order reviewable on appeal, no final, appealable order could ever exist in this case. This would be an unacceptable result.

The September 3 Order is distinguishable from a routine criminal trial court’s order on a defender’s motion to withdraw that would be reviewable by certiorari. The State’s reliance on Remeta v. State, 707 So. 2d 719, 719 (Fla.

1998), involving a defense attorney’s motion to withdraw from one criminal case, is misplaced. Remeta did not involve the consolidation and reassignment into a separate case of motions to appoint other counsel in *future* cases, but rather a motion to withdraw from a specific, previous appointment in a single *continuing* case.

B. The September 3 Order Can Be Regarded as a Nonfinal Appealable Order Granting Injunctive Relief

The September 3 Order also can be characterized as a nonfinal appealable order granting an injunction pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(B).⁸ The standard to be applied in determining whether the September 3 Order fits within this category is whether the order had the “practical effect” of ordering injunctive relief, even if the trial order did not characterize the order as such. See Miami Heat Ltd. Partnership v. Leahy, 682 So. 2d 198, 201 (Fla. 3d DCA 1996) (holding an order allowing an election to proceed with a certain question on the ballot had the “practical effect of denying appellants’ request for injunctive relief” where claim sought to prohibit the question being placed on the ballot, although the order stated the court would rule on the legality of the issue at a later date).

⁸ Injunctive relief is not a remedy in a criminal case, and therefore Rule 9.130 applies rather than Rule 9.140, which has no provision for the State to appeal from an injunction in a criminal case.

Courts have allowed appeals under Rule 9.130(a)(3)(B) even when the underlying action did not seek injunctive relief. Thus, the Fourth District Court of Appeal allowed an appeal from an order in a case brought under the public records act, holding that an order to run a specific program on a database was “in the nature of a mandatory injunction.” Seigle v. Barry, 422 So. 2d 63, 64 (Fla. 4th DCA 1982). In another instance, the 3d DCA allowed an appeal from the denial of a motion to dismiss an interpleader action because the denial effectively restrained the use of funds prior to judgment and therefore was “in effect” an order granting an injunction. CMR Distrib., Inc. v. Resolution Trust Corp., 593 So. 2d 593, 594 (Fla. 3d DCA 1992); see also Hughes v. First Fed. Sav. & Loan Ass’n, 621 So. 2d 557, 557 (Fla. 4th DCA 1993). Again, the First District Court of Appeal granted review of a partial summary judgment giving an employee the right to be paid pending resolution of an employment termination dispute, noting that appellate courts have “broad authority” to review “orders subject to characterization as” injunctive relief. Terex Trailer Corp. v. McIlwain, 579 So. 2d 237, 240 (Fla. 1st DCA 1991). By this same reasoning, the September 3 Order may be construed as granting injunctive relief even though PD-11 never filed a claim seeking such relief.

C. **The September 3 Order Is Not an Administrative Order**

One thing is certain: the September 3 Order on appeal here is not Chief Judge Farina's Administrative Order 08-14. The September 3 Order is a final order in the case *created by* that administrative order.⁹ (App. A at 2). The State erroneously characterizes the September 3 Order as an administrative order because the style of the September 3 Order references Chief Judge Farina's Administrative Order No. 08-14 . (Response at 4, 6). The September 3 Order kept the administrative order number as a way to distinguish it from criminal cases, which does not make it an administrative order. The September 3 Order made a decision on the relief PD-11 requested based on a full hearing and includes findings of fact and conclusions of law. The September 3 Order is not a "directive" as described in Rule 2.120(c) of the Judicial Administrative Rules. The State's reliance on 1-888-Traffic Schools v. Chief Circuit Judge, 734 So. 2d 413 (Fla. 1999), is therefore misplaced.¹⁰

⁹ As this case created by the administrative order was not a criminal case, the State had a right to appeal this final order. The State has a right to appeal in non-criminal cases just like any other litigant. See Osborne v. State, 907 So. 2d 505, 507 (Fla. 2005). The fact that SAO-11 was denied party status by the trial court does not bar the State from appealing. See, e.g., Litvak v. Scylla Properties, LLC, 946 So. 2d 1165, 1172 (Fla. 1st DCA 2006) (holding that a denial of a motion to intervene is appealable as a final order).

¹⁰ No party or any other interested entity sought to review Chief Judge Farina's Administrative Order No. 08-14 by appeal, certiorari, or any other means. Whether a chief judge has the power to bifurcate and create new cases as part of "an administrative plan for the efficient and proper administration of all courts

IV.
**THIS COURT SHOULD EXERCISE ITS
DISCRETION AND ACCEPT THE
CERTIFICATION BY THE 3D DCA BECAUSE OF
THE STATEWIDE IMPORTANCE OF THE
ISSUES IN THE SEPTEMBER 3 ORDER**

The September 3 Order in this case is of great public importance and could have a very significant impact on the proper administration of justice throughout Florida 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.

Public defenders across Florida (along with the courts and the state attorneys) have suffered budgetary and staff reductions while operating under increasing caseloads. If affirmed on appeal, the September 3 Order will certainly have a substantial impact not only on PD-11, indigent defendants in the Eleventh Judicial Circuit, RCC-3, and the Criminal Division of the Eleventh Judicial Circuit, but all other public defender offices in Florida, the hundreds of thousands of indigent defendants within their jurisdictions, other regional counsel, and the criminal divisions of these circuits. This Court's ruling will guide the courts, public defenders, and regional counsel in other judicial circuits with regard to similar proceedings throughout the State.

within that circuit" is a question for another case. Fla. R. Judicial Admin. 2.215(b)(3). This case was created by the *fait accompli* of the Chief Judge's Administrative Order.

Leaders across the spectrum of The Florida Bar¹¹ have acknowledged the statewide importance of this issue. Even the State’s trial-court pleadings acknowledge the statewide importance of this issue. SAO-11 claimed 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” (SAO-11’s Post-Hearing Memo. at 2).¹² While SAO-11 has its causality backwards (the constitutional and ethical crisis caused PD-11 to seek relief), PD-11 agrees that the crisis is statewide, as will be the effect of any ruling in this case.

Given the statewide importance of this issue, this Court will ultimately decide this case, just as it has decided previous excessive caseload cases. See In re Order on Prosecution of Criminal Appeals, 561 So. 2d 1130 (Fla. 1990); Skitka v. State, 579 So. 2d 102 (Fla. 1991); In re Certification of Conflict, 636 So. 2d 18 (Fla. 1994); In re Public Defender’s Certification of Conflict, 709 So. 2d 101 (Fla.

¹¹ 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, Aug. 15, 2008, at 1. Likewise, Buddy Jacobs, the longtime lobbyist for the Florida Prosecuting Attorneys Association, who also represented the state in the 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 matters.” Id. at 5. The trial court took judicial notice of this article. (App. A, at 4 n.1).

¹² An excerpt of SAO-11’s Post-Hearing Memorandum is attached at Appendix C.

1998). The State’s suggestion that these cases first began in or proceeded through the district courts, (Response at 12), ignores that these cases were all withdrawals from appeals *in* the district courts—they could have begun nowhere else. The State fails to cite Hatten v. State, 561 So. 2d 562 (Fla. 1990), where this Court addressed this issue on an original petition for writ of mandamus. See id. at 563. Hatten neither “proceeded through” nor needed a prior ruling by the district court of appeal.

Thus, any decision by a district court of appeal is likely to be an interim step before “before the case comes to this Court.” (Response at 13). While such a procedure might be appropriate in ordinary cases, this case is far from ordinary. PD-11’s situation is urgent, very important, and involves extremely time-sensitive pressures as shown by the findings in the September 3 Order and the deteriorating conditions set forth in the affidavit of Carlos Martinez filed in this Court as an exhibit to PD-11’s Motion to Dissolve the Temporary Stay Entered by the Third District Court of Appeal.

This Court is fully capable of reviewing the record on appeal. The legal standard for the trial court was “solely to determine the factual basis for the Public Defender’s claim of conflict.” In re Certification of Conflict, 636 So. 2d at 22; see id. at 23 (approving evidentiary hearings “limited to an objective assessment . . . in order to confirm that a factual basis existed for the Public Defender’s motions.”).

This Court requires no assistance from a lower court to help determine whether the trial court followed that law.

More importantly, PD-11 submits that any further delay is unconscionable given the factual findings below. “[T]he assistant public defenders of the Eleventh Judicial Circuit function under extreme and excessive caseloads.” (App. A at 3-4). “[T]he caseload of the felony public defenders in the Eleventh Judicial Circuit . . . far exceeds any recognized standard for the maximum number of felony cases a criminal defense attorney should handle annually.” (*Id.* at 4 (citations omitted)). “[T]he number of active cases is so high that the assistant public defenders are, at best, providing minimal competent representation to the accused.” (*Id.* at 4). “‘C’ felony cases are clogging the system and negatively impacting PD-11’s felony attorneys’ caseload.” (*Id.* at 4-5). “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.” (*Id.* at 5).

Finally, the trial court wrote:

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.

(Id. at 5).

The State's suggestion that two levels of appellate review are required in the face of these facts simply ignores the professional, ethical and constitutional responsibilities of PD-11's attorneys. The delay thereby created would likewise ignore the immediate need of indigent defendants for effective counsel in the cases commencing today and each day thereafter, and the similarly immediate need of assistant public defenders to comply with the Florida Rules of Professional Conduct and their performance of the constitutional obligation imposed on the State by the United States Constitution and in Gideon v. Wainwright, 372 U.S. 335 (1963), and its progeny.

The trial court found 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" (App. A at 5). The trial court also noted that SAO-11's "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." (Id. at 4 n.1). This Court has inherent and exclusive jurisdiction over lawyers' compliance with the Florida Rules of Professional Conduct. See Art. V, § 15, Fla. Const. The conditions impairing PD-11's compliance with the

professional ethical rules are widespread and institutional, rather than individual. This Court, therefore, should not countenance further delay in remedying these conditions.

CONCLUSION

PD-11 respectfully requests that this Court acknowledge its jurisdiction and then exercise its discretion to accept the certification by the 3d DCA. The September 3 Order certified by the 3d DCA is an appealable order, either as a final order or an appeal from an order in the nature of injunctive relief. Few cases will have broader statewide effects than this one.

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 20th day of October 2008.

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