

IN THE SUPREME COURT OF FLORIDA

Case No.: SC08-1827

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

STATE OF FLORIDA,

Appellant/Petitioner,

v.

PUBLIC DEFENDER, ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA,

Appellee/Respondent.

**PUTATIVE INTERVENOR'S
AMENDED OBJECTION TO DISSOLVING THE STAY**

The Office of Criminal Conflict and Civil Regional Counsel, Third District Court of Appeal Region of Florida (“Regional Counsel” or “RC3”), putative intervenor herein, by and through JOSEPH P. GEORGE, JR., Regional Counsel, hereby submits an amended objection (paragraph 14 only) to dissolving the stay of 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 Third District Court of Appeal on September 12, 2008, and in support thereof responds as follows.

1. The order of the Honorable Stanford Blake, Administrative Judge for the Criminal Division of the Eleventh Judicial Circuit, appointing RC3 at arraignment as court-appointed counsel for indigent persons in all third-degree felony cases, instead of the Public Defender of the Eleventh Judicial Circuit (PD-11), who is allowed to decline out of case representation at arraignment, violates Section 27.511, Florida Statutes (2008). This is because RC3 may not accept a criminal case unless PD-11 “withdraws” from a case pursuant to section 27.5303, Florida Statutes (2008). Allowed to proceed, court-ordered case acceptance will cause irreparable injury to the RC3 and as to the constitutional rights of any clients forced upon the agency.
2. After the trial court entered its order and PD-11 moved for clarification, the RC3 unsuccessfully moved to intervene and for a stay.
3. The RC3 has filed a notice of appeal of the order denying its motions.
4. The RC3 has also filed a new motion in this Court to intervene.
5. The RC3 maintains that continuation of the stay is warranted because dissolution puts RC3 in the untenable position of exceeding its statutory authority in accepting court-appointments.
6. Furthermore, Judge Blake’s order does not allow RC3 the same opportunity extended to PD-11, to “decline” cases because of a prospective conflict due to

overwhelming caseloads. The order states in paragraph IV on page 6, that RC3 must “withdraw” from each case instead.

7. This discriminatory ruling could severely and adversely affect the administration of justice if RC3 must accept all third-degree felony cases. This amounts to (at least) 60% of PD-11's caseload, and would require RC3 to withdraw from conflicts on a case by case basis individually. The RC3 is not presently equipped to handle an inundation of cases, stated by PD-11 to amount to 11,693 per year or 974 cases per month.

8. The RC3 was created by the legislature and staffed to handle no more than five percent (5%) of PD-11's caseload, as estimated authentic conflicts, not sixty percent (60%) of artificial ones.

9. If the stay is lifted, RC3 believes it will receive court appointments of roughly fifty (50) or more cases per division, per month, at arraignment. Even based upon PD-11's figures, the number of cases is estimated at forty-six (46.4) after arraignment, because PD-11 has stated in footnote 9 on page 15 of its motion that 20,388 is the number of cases it had last year after arraignment.

10. Judge Blake's order will require RC3 to have an attorney in each of the twenty-one (21) felony divisions each morning. They will have to handle the arraignments of the third-degree felony cases. The RC3 was never staffed to have

an attorney in each division for many hours every day.

11. Ordering RC3 to accept these appointments impermissibly violates the constitutionally fundamental separation of powers doctrine. *See, Florida Constitution, Article 2, Section 3; Office of the State Attorney and Office of the Public Defender v. Polites*, 904 So. 2d 527 (Fla. 3d DCA 2005). The court has improperly involved itself in RC3's daily operations.

12. Presently, neither RC3 nor Private Court-Appointed Counsel (PCAC), are required to appear for arraignments, unless the matter has been reset and the office has received reasonable due process notice of the appointment. Furthermore, RC3 is precluded from filing a notice of appearance and written plea of not guilty, which obviates the necessity of RC3 or PCAC, appearing for the arraignment pursuant to Rule 3.160(a), of the Florida Rules of Criminal Procedure. The court's order has fundamentally altered the rules by requiring only RC3 to appear.

13. As for costs possibly incurred by the court's order, if you use PD-11's monthly figure of nine hundred seventy-four (974) third degree felony cases and RC3 handles five percent (5%) of these, being forty-nine (49), the balance of the cases, nine hundred twenty-five (925), would be sent to PCAC at \$750.00 per case. This would obligate the State of Florida for \$693,750.00 monthly in PCAC fees at a minimum, or \$8,325,000.00 annually.

14. The RC3's total State budget is \$4.9 million dollars for 2008-09 and RC3 presently receives zero County funding. The PD-11 receives more than \$31,400,000.00 from the State alone for 2008-09. Clearly, RC3 is ill equipped to handle all of the additional caseload.

15. The RC3 respectfully requests this Court maintain the stay and status quo. To dissolve the stay will cause irreparable harm and seriously undermine the criminal justice system in the Eleventh Judicial Circuit for Miami-Dade County.

CONCLUSION

For all of the foregoing reasons, the RC3 requests this court maintain the stay entered by Third District Court of Appeal until this Honorable Court reaches a decision on the merits in this matter. To do otherwise is simply unfair and unjust.

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 16th day of October, 2008.

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