

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC16-1852
CONSOLIDATED
L.T. Case No. 2D16-1328, etc.

JOHN DOE, et al.,
Petitioners,

vs.

STATE OF FLORIDA,
Respondent.

**THE CHIEF JUDGE OF THE FIFTEENTH JUDICIAL CIRCUIT'S
MOTION FOR LEAVE TO FILE AMICUS BRIEF
IN SUPPORT OF RESPONDENT**

The Honorable Jeffrey Colbath, Chief Judge of the Fifteenth Judicial Circuit ("Chief Judge"), by and through his undersigned counsel, files this Motion for Leave to File Amicus Brief in Support of Respondent, and in support thereof states as follows:

The Chief Judge moves pursuant to Florida Rule of Appellate Procedure 9.370 for leave to file an amicus brief. Petitioners filed an Emergency Petition for Writ of Certiorari and/or Prohibition and/or Mandamus ("Petition") in the Second District Court of Appeal to compel the judicial officers of the Twentieth Judicial Circuit to be physically present when judicial officers preside over section 394.467 involuntary commitment hearings ("Baker Act hearings"). In denying the petition, the Second District Court of Appeal certified the following question to this Court:

RECEIVED, 12/07/2016 07:58:29 PM, Clerk, Supreme Court

DOES A JUDICIAL OFFICER HAVE AN EXISTING
INDISPUTABLE LEGAL DUTY TO PRESIDE OVER SECTION
394.467 HEARINGS IN PERSON?

Petitioners would answer this question in the affirmative; Respondents, the State of Florida and the Twentieth Judicial Circuit,¹ would answer in the negative. The Chief Judge seeks to file an amicus brief in support of the Respondent the Twentieth Judicial Circuit.

INTEREST OF AMICUS CURIAE

The State's answer brief thoroughly analyzes whether a clear legal right to an in-person hearing exists. It did not, however, address the administrative considerations behind the use of video conference in Baker Act Hearings that could be supplied by a judicial circuit. Because the Twentieth Judicial Circuit did not file its own brief, the Court lacks the benefit of being fully advised on the significant impact that a decision in this case will have on the administration of a circuit court. For that reason, which is described more fully *infra*, the Chief Judge submits that the Court would benefit from considering an amicus brief filed by a chief judge of a circuit court in the State.

¹ The Twentieth Judicial Circuit, as a formal party to the Petition, is similarly a party to the instant proceeding. See Fla. R. App. P. 9.020(g) and 9.100(e). The Twentieth Judicial Circuit did not exercise its discretion to file a response either in this Court or before the Second District Court of Appeal. It appears that the Twentieth Judicial Circuit relied upon the response filed by the Attorney General on behalf of the State of Florida. See Fla. R. App. P. 9.100(e)(3).

Even if the Twentieth Judicial Circuit had filed its own brief, it is the Chief Judge's position that an amicus brief filed on behalf of the Fifteenth Judicial Circuit would still be appropriate. The chief judge of each judicial circuit is tasked with the administrative responsibilities for the circuit court. Fla. R. Jud. Admin. 2.215(a). The need for such localized administration is clear: there are 20 judicial circuits in Florida, most of which span more than one of Florida's 67 counties. The administrative needs of the Twentieth Judicial Circuit, serving Charlotte, Collier, Glades, Hendry, and Lee counties, differ from those of the Fifteenth Judicial Circuit, which serves only Palm Beach County—the geographically largest county in the state of Florida.

Although certain issues – such as whether to implement videoconferencing technologies in Baker Act hearings – may be universally considered by chief judges throughout the state, the degree to which such problems affect each circuit varies widely. Given the geographical distribution of Baker Act receiving facilities throughout Palm Beach County relative to the locations of its courthouses, the Fifteenth Judicial Circuit will face very different administrative challenges from a decision in this case than those faced by other circuits. As the largest county in Florida with more than six different mental health facilities spread out across the county, the Chief Judge must make administrative decisions as to how limited judicial resources are spent and how security concerns are addressed when judicial

officers travel to the facilities to conduct Baker Act hearings or when the patient/respondent, medical providers and parties travel to the courthouse for Baker Act hearings. Such decisions have a cascading effect on the circuit's ability to administer its responsibilities to its judicial workload. A decision that effectively quashes the ability of courts to hold hearings using videoconferencing technology will stifle the Chief Judge's ability to use such technology to improve services to the community, increase efficiency, and limit costs. Thus, the Chief Judge seeks to file an amicus brief that informs the Court of the various policy ramifications that a decision in this case will have upon the Fifteenth Judicial Circuit.

ISSUES TO BE ADDRESSED

The issue pending before the Court is “[d]oes a judicial officer have an existing indisputable legal duty to preside over section 394.467 hearings in person?” An affirmative answer to the certified question will adversely affect circuit courts generally and the Fifteenth Judicial Circuit specifically. The Chief Judge requests leave to file an amicus brief to advise the Court as to the practical impact an affirmative answer to the certified question will have on the ability of the Chief Judge to effectively and efficiently ensure the administration of justice within the Fifteenth Judicial Circuit.

HOW AMICUS CAN ASSIST THE COURT IN A DISPOSITION OF THE CASE

The Petitioners and Respondents' briefs are limited to the discrete issue of whether judicial officers have a clear legal duty to preside over Baker Act hearings in person. The Chief Judge seeks to advise the Court of the far-reaching impact such a decision would have on the administration of justice throughout the State.

TIME FOR FILING THE AMICUS BRIEF

The Court has set an expedited briefing schedule in this case. Florida Rule of Appellate Procedure 9.370(c) requires an amicus brief to be filed within ten days of the initial brief of the party being supported. The Chief Judge seeks to file an amicus brief in support of Respondent, which filed its Answer Brief on November 28, 2016. There is therefore insufficient time to file the instant Motion for Leave to File Amicus Brief, obtain a ruling, and file an amicus brief within the ten-day time period outlined in Rule 9.370. The Chief Judge respectfully requests the Court grant this Motion for Leave to File Amicus Brief in Support of Respondent and permit him to file an amicus brief no later than December 29, 2016.

PARTIES' POSITION ON MOTION

The undersigned counsel has asked counsel for the parties of record whether their clients oppose this Motion for Leave to File Amicus Brief in Support of Respondent. Counsel for Petitioners and Respondent have advised that they do not

have an objection to the Chief Judge's Motion for Leave to File Amicus Brief in Support of Respondent.

WHEREFORE, it is respectfully requested that this Court grant the Chief Judge's Motion for Leave to File Amicus Brief in Support of Respondent and to permit the Chief Judge to file an amicus brief no later than December 29, 2016.

Respectfully submitted,

/s/ Amy Singer Borman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document has been furnished to the following counsel by service through the e-portal on December 7, 2016: Caroline Elizabeth Johnson Levine, Assistant Attorney General, 501 E. Kennedy Boulevard, Tampa, Florida 33602, Caroline.JohnsonLevine@myfloridalegal.com; Robert A. Young, Assistant Public Defender, Post Office Box 9000 - PD, Bartow, Florida, 33830, RYoung@PD10.org, TLocke@PD10.org; and Peter P. Sleasman, 4723 NW 53rd Avenue, Suite B, Gainesville, Florida 32653, PeterS@DisabilityRightsFlorida.org, KristenL@DisabilityRightsFlorida.org

/s/ Amy Singer Borman

Amy Singer Borman, Esq.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document is in Times New Roman 14-point font and otherwise complies with the requirements of Florida Rule of Appellate Procedure 9.100(*l*).

/s/ Amy Singer Borman

Amy Singer Borman, Esq.