

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff,

CASE NO.: 16 2013-CF-005781A
FSC Case No.: SC18-822

vs.

DONALD JAMES SMITH, SR.,
Defendant

_____/

MOTION TO WITHDRAW
BASED ON CERTIFICATION OF CONFLICT OF INTEREST

Capital Collateral Regional Counsel-North (CCRC-North), by and through undersigned counsel, moves this Court for an Order allowing CCRC-North to withdraw from further representation of the Defendant, Donald James Smith, Sr., based on a conflict of interest. In support of this Motion, CCRC-North states as follows:

1. On June 30, 2021, the Florida Supreme Court appointed CCRC-North to handle postconviction proceedings for Mr. Smith.
2. Section 27.703(1), Florida Statutes, provides in pertinent part: “The capital collateral regional counsel shall not accept an appointment or take any other action that will create an actual conflict of interest.” If CCRC alleges that “representation of that person creates an actual conflict of interest, the sentencing court shall, upon determining that an actual conflict exists, designate another regional counsel.”
3. Section 27.703(1) further provides that: “An actual conflict of interest exists when an attorney actively represents conflicting interests.”
4. Immediately upon being appointed by the Florida Supreme Court, undersigned counsel was notified by an investigator of CCRC-North of a potential conflict in representing Mr. Smith in these proceedings.

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5. Based on the representations of the aforementioned investigator, counsel and her team began an investigation into the nature of the conflict and whether an actual conflict of interest existed.

6. In the course of investigating the conflict, undersigned counsel placed a call to the Florida Bar Ethics Hotline. (Call Number 553703). After divulging the nature of the potential conflict to the ethics specialist at the Florida Bar, undersigned counsel was advised that an actual conflict did exist.

7. In completing its investigation into the potential conflict, undersigned counsel hereby certifies that an actual conflict of interest exists that prevents CCRC-North from representing Mr. Smith in these proceedings. The nature of the conflict involves privileged matters and facts. Thus, in accordance with Section 90.502, Florida Statute, and Rule Regulating the Florida Bar 4-1.6, counsel is precluded from sharing the precise facts giving rise to the conflict of interest. *See Abdool v. Bondi*, 141 So. 3d 529, 553-55 (Fla. 2014); *see, also, Brower v. State*, 267 So. 3d 524 (Fla. 5th DCA 2019); *Young v. State*, 189 So. 3d 956 (Fla 2d DCA 2016).

8. Capital Collateral Regional Counsel - North has contacted Eric Pinkard, Capital Collateral Regional Counsel – Middle (CCRC-Middle), and he advised that his office is willing and able to represent Mr. Smith.

9. CCRC-North certifies that this motion is not being filed for purposes of delay.

WHEREFORE, CCRC-North requests this Honorable Court enter an order that a conflict of interest exists with CCRC-North and appointing CCRC-Middle to represent Mr. Smith.

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service to Eric Pinkard, Capital Collateral Regional Counsel – Middle, (pinkard@ccmr.state.fl.us); Charmaine M. Millsaps, Assistant Attorney General, (capapp@myfloridalegal.com and charmaine.millsaps@myfloridalegal.com); Mark Caliel, Assistant State Attorney (mcaliel@coj.net) and by U.S. Mail to Donald James Smith, DOC # 986205, Union Correctional Institution, P. O. Box 1000, Raiford, FL 32083; on this date, July 23, 2021.

Respectfully submitted,

ROBERT S. FRIEDMAN
Capital Collateral Regional Counsel – North

/s/ Alice Copek

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