

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
POINTS INVOLVED	3
SUMMARY OF THE ARGUMENT	4
ARGUMENT	
<u>POINT I</u>	5 - 6
THE DECISION BELOW DOES NOT AFFECT ANY CLASS OF CONSTI- TUTIONAL OFFICERS.	
<u>POINT II</u>	7 - 9
THE DECISION OF THE COURT BELOW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH <u>CIRAVOLO v. STATE</u> , 361 SO. 2D 121 (FLA. 1978).	
CONCLUSION	10
CERTIFICATE OF SERVICE	10

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE</u>
<u>Ciravolo v. State</u> , 361 So.2d 121, 125 (Fla. 1978)	7, 8
<u>Ford Motor Co. v. Kikis</u> , 401 So.2d 1341 (Fla. 1981)	8
<u>Jenkins v. State</u> , 385 So.2d 1356, 1359 (Fla. 1980)	7, 8
<u>Richardson v. State</u> , 246 So.2d 771 (Fla. 1971)	5, 6
<u>Sanchez v. Wimpey</u> , 409 So.2d 20 (Fla. 1982)	8
<u>Spradley v. State</u> , 293 So.2d 697 (Fla. 1984)	5, 6

OTHER AUTHORITY

Florida Constitution - Art. VI, §2	5
--	---

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts, as found on pages one (1) through three (3) of his brief, to the extent that it is applicable to the issue of this Court's jurisdiction to hear this case.

POINTS INVOLVED

POINT I

WHETHER THE DECISION BELOW AFFECTS
ANY CLASS OF CONSTITUTIONAL OFFICERS?

POINT II

WHETHER THE DECISION OF THE COURT
BELOW EXPRESSLY AND DIRECTLY CON-
FLICTS WITH CIRAVOLO v. STATE,
361 SO.2D 121 (FLA. 1978)?

SUMMARY OF THE ARGUMENT

I. The decision below does not expressly affect any class of constitutional officers so as to properly invoke this Court's jurisdiction. Members of The Florida Bar are not constitutional officers. State attorneys are not affected in such a manner as required by case law.

II. The decision below does not conflict with any appellate opinion. The Fourth District addressed an area of law which was not previously reached by this, or any other, appellate court.

ARGUMENT

POINT I

THE DECISION BELOW DOES NOT AFFECT
ANY CLASS OF CONSTITUTIONAL OFFICERS.

Petitioner first claims that members of The Florida Bar are constitutional officers because the Florida Constitution confers this Court with exclusive jurisdiction over the admission and discipline of Florida attorneys (PB 4). Such a bold claim clearly misinterprets the meaning of the term "constitutional officer". Under such an analysis "electors" would be constitutional officers since they are also mentioned in the Florida Constitution. See, Article VI, Section 2, Florida Constitution.

Petitioner next argues that the decision below affects a second class of constitutional officers: state attorneys (PB 5). To support this argument Petitioner relies on the fact that the Fourth District's opinion "excuse[s] a state attorney . . . from having to seek from this Court immunity from the use of statements it so elicits in any subsequent disciplinary proceeding . . ." (PB 5-6). However, the Fourth District Court of Appeal did nothing more than rely on the law as it stood at the time it rendered its opinion.

This Honorable Court in Spradley v. State, 293 So.2d 697 (Fla. 1984) limited the jurisdictional holding of Richardson v. State, 246 So.2d 771 (Fla. 1971), upon which the Petitioner relies as the basis for this Court's accepting jurisdiction of

this cause. This Honorable Court in Spradley, supra, recognized that a literal interpretation of Richardson, supra, would mean that the Supreme Court of Florida had jurisdiction to review nearly every case, both civil and criminal, because nearly all decisions which review the action or ruling of a trial judge imposed upon other trial judges (as well as state attorneys in criminal cases) a requirement to follow the law as stated therein in similar situations. Thus, in Spradley, supra, a more restrictive interpretation as to what types of decisions affect a class of constitutional or state officers was set forth. Therein, it was stated:

To vest this Court with certiorari jurisdiction, a decision must directly and, in some way, exclusively affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers.

293 So.2d at 701 (Emphasis in original)

As stated in Spradley, "a decision which 'affects a class of constitutional or state officers must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state. Such cases naturally affect all classes of constitutional or state officers, in that the members of these classes are bound by the law the same as any other citizen.'" Id.

The decision of the Fourth District Court of Appeal does not properly invoke the discretion of this Honorable Court because the decision below does not expressly affect a class of constitutional officers as contemplated by Spradley, supra.

POINT II

THE DECISION OF THE COURT BELOW DOES
NOT EXPRESSLY AND DIRECTLY CONFLICT
WITH CIRAVOLO v. STATE, 361 SO. 2D
121 (FLA. 1978).

Petitioner seeks to establish this Court's "conflict" jurisdiction by arguing that the decision below conflicts with Ciravolo v. State, 361 So.2d 121 (Fla. 1978) (PB 6). Respondent maintains that Petitioner has not demonstrated conflict with other state appellate decisions from the face of the decision sub judice, that the decision does not conflict with other decisions, and that this Honorable Court therefore lacks jurisdiction to grant Petitioner's application for discretionary review.

It is well-settled that in order to establish conflict jurisdiction, the decision sought to be reviewed (and not opinions or reasons contained therein or in a dissent) must expressly and directly create conflict. Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980). Petitioner has not and cannot demonstrate that the decision of the Fourth District Court of Appeal in the instant case expressly and directly conflicts with another state appellate decision.

Petitioner asserts that the opinion of the Fourth District Court of Appeal in the instant case conflicts with Ciravolo.

However, the issue reached in the instant case by the Fourth District Court of Appeal - the penal nature of Bar disciplinary proceedings - was never reached in Ciravolo. Thus, the two opinions cannot possibly be conflicting.

Petitioner further argues that the Fourth District Court of Appeal adopted the dissent in Ciravolo (PB 8). This is untrue. In the first place, there was no true dissent in Ciravolo. There was a third opinion authored by Justice England and joined by Justice Sundberg, which concurred in part and dissented in part. Ciravolo, supra, 361 So.2d at 125. The cause of the dissent was the majority's exoneration of the petitioners in that case. Id. The third opinion concurred with the rest of the majority opinion and stated:

I approve the procedural means now devised by which this Court may confer immunity from professional discipline in situations where the testimony or records of an attorney are deemed indispensable to some public purpose.

Since it is evident that the Court's holding below is not in express and direct conflict with other appellate decisions, it is apparent that Petitioner is seeking to invoke this Court's jurisdiction in a thinly veiled attempt to pursue another appeal. Such a use of this Court's jurisdiction is not permitted. Sanchez v. Wimpey, 409 So.2d 20 (Fla. 1982). The Court has repeatedly condemned such misguided efforts to invoke its discretionary jurisdiction and has repeatedly emphasized the need for finality in district court of appeal decisions. Jenkins, supra. The legal principles discussed by the Fourth District in its decision below do not conflict with the cases cited by Petitioner. Ford Motor Co. v. Kikis, 401 So.2d 1341 (Fla. 1981). Petitioner's reliance on extraneous material in his brief speaks for itself; conflict in the

decision is not present. This Court's discretionary jurisdiction is directed to a concern with decisions as precedents as opposed to adjudications of the rights of particular litigants. Mystan Marine, Inc. v. Harrington, 399 So.2d 200 (Fla. 1976).

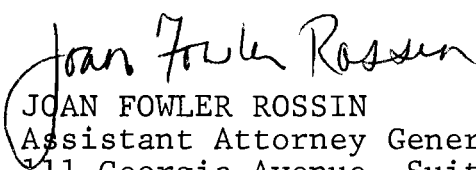
Therefore, as Petitioner has failed to show any express and direct conflict between this case and other state appellate cases, discretionary jurisdiction has not been established in the case sub judice and this Honorable Court lacks jurisdiction to grant Petitioner's application for discretionary review.

CONCLUSION

Since Petitioner has not established that the Fourth District Court of Appeal's decision expressly affects any class of constitutional officers, and has failed to show conflict between the decision in the instant case and other appellate decisions, Respondent would ask that this Court decline to accept jurisdiction.

Respectfully submitted,

JIM SMITH
Attorney General
Tallahassee, Florida


JOAN FOWLER ROSSIN
Assistant Attorney General
111 Georgia Avenue, Suite 204
West Palm Beach, Florida 33401
Telephone (305) 837-5062

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief on Jurisdiction has been furnished, by United States Mail, to DAVID R. DAMORE, ESQUIRE, Florida Bar #172844, P.O. Box 39312, Fort Lauderdale, Florida 33339, this 9th day of July, 1985.



of Counsel